



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding GAVIOTA HOLDI  
and [Tenant name suppressed to protect privacy]

Dispute Code

ARI-C

**DECISION**

## Introduction

This hearing dealt with the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the July 5, 2024, hearing that had been re-scheduled by Interim Decision issued June 14, 2024.

The Landlord confirmed service of the proceeding package, including the Interim Decision, the Notice of Hearing for the re-scheduled date, and copies of all evidence submitted, to each Tenant by registered mail or in person to the Tenant. The Landlord submitted a Proof of Service for each of the rental units. I find the Tenants were served with the required materials in accordance with the Act.

## Issue for Determination

- Is the Landlord entitled to impose an additional rent increase for capital expenditures?

## Background and Evidence

While I have considered the submission of the parties and documentary evidence, not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision.

The Landlord's application is for capital expenditure (the "Work") incurred, namely roof replacement throughout the rental unit complex. The Landlord's operations manager C.F. and resident manager C.R. presented testimony that there are 11 rental unit buildings together with one common area building that contains the resident's pool, sauna, laundry facility and office, for a total of 12 buildings in the rental unit complex. There are a total of 112 residential rental units.

The Landlord's operations manager C.F. testified that the buildings were constructed in 1969 (based upon the date of issuance of occupancy certificates) and each replaced roof was original to the building. He stated the Landlord was able to extend the life of the original roofing material by the addition of a layer of tar and gravel in 1989-1990. He estimated that this additional layer extended the life of the original roof approximately 25 years; but, in any event, the roof was 50 years old at time of replacement. C.F. further testified that over the years, the roof in various places was leaking, particularly near vents and similar openings. He stated there was evidence of mold growth where the roofs were leaking. He also stated that it was difficult to obtain insurance for "hot" work permits, referring to torch-on roofing.

Therefore, the Landlord determined that it would be cost-effective to replace the roofs with a modern version of asphalt shingle roofing material. This type of roofing material is expected to last at least 10 years based upon the roofing company's guarantee (a copy submitted in evidence) but it was anticipated that the new roof would last 20 to 30 years. For the project, the Landlord retained the professional services of consulting engineers who would oversee the work and authorize periodic payments to the roofing installation company as the capital improvement project progressed. The Landlord submitted a copy of the engineer consulting company's outline of work it would perform, but representative C.F. confirmed that the consultant's fees were not included in the application.

The Landlord presented evidence the project commenced on March 30, 2022, and was completed June 29, 2023, with final payment made by the Landlord on December 6, 2023. The Landlord's operations manager stated all progress payments were authorized by the consulting engineer retained to oversee the project before payment was made by the Landlord. The Landlord submitted invoices from the roofing company, together with evidence of payment, in the total amount of \$1,952,323.50. The Landlord's operations manager stressed that none of these funds pertained to any work or improvement other than the replacement of each roof for the 12 residential tenancy buildings and common building. The operations manager further confirmed there were no third-party sources for payment.

Tenant L.G. inquired as to the chimneys where leaking occurred as referenced by the Landlord's operations manager's testimony. He clarified that two buildings (A block and B block) had cinder block chimneys that were old fire chimneys for the buildings but remained in place and were presently used to conceal the building's boiler exhaust vents. He also testified that all the buildings had ventilation pipes for plumbing, bathroom fans, appliances and the like, and where the roofing material met the ventilation pipes was where the roofing material had aged most quickly. Tenant L.G. noted there appeared to have been improvements made to downspouts and similar and inquired whether this was included in the invoices from the roofing company. Landlord's operation manager testified that the downspouts and other improvements throughout the complex were not part of the roofing company's work. He stated that the roofers installed downspout connectors as part of the roof installation, but that was the extent of

their work regarding the downspouts. The operations manager testified that the Landlord had also replaced the boiler, made repairs to the awnings, replaced two roofs that failed in electrical rooms, replaced a sewer line, and more, but stressed that none of this work was included in the present application which was strictly limited to the roof replacement work.

Tenant L.G. also questioned an invoice for approximately \$69,000.00 for additional plywood and whether the invoice concerned material used for other improvements throughout the complex. The operations manager C.F. responded that the overage for plywood was for the roof and included the cost of delivery and delivery labor.

Tenant S.P. inquired whether clean-up costs were included in the roofing invoices, and noted that the clean-up was less than satisfactory, as she cleaned roofing construction debris from her balcony. C.F. testified that the cost of cleaning roofing debris from the construction was included in the project price but noted that the roofing company's employees may not have performed as well as was hoped for in cleaning up the worksite.

Tenant C.W. stated he is a recent tenant, having moved in on September 1, 2023. The operations manager stated that an additional rent increase would not be assessed against his unit as his monthly rent had been adjusted accordingly.

Tenant L.W. raised issues regarding the Landlord's testimony concerning leaks to the roofs, and whether the cause of the leak was not the age of the roofing material but rather attributable to other elements, such as the flashing. He further stated that roof leaks had occurred for several years, and inquired whether it was negligence not to have replaced the roof sooner rather than make repairs. However, there was no evidence that the repairs undertaken were, at the time, negligent or that the extension of the life of the roof by work done in 1989-1990 was otherwise negligent.

## **Analysis**

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord has the burden to support their application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

## 1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. In summary, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
  - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
    - because the system or component:
      - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
      - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
    - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
    - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

Tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges its evidentiary burden and tenants fail to establish an additional rent increase should not be imposed (for the reasons set out above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

## 2. Prior Application for Additional Rent Increase

In this matter, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation contains the following definitions:

"dwelling unit" means the following:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit;

[...]

"specified dwelling unit" means

- (a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or
- (b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

There are 112 specified dwelling units to be used for calculation of the additional rent increase.

## 4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **\$1,952,323.50** as set forth in the Landlord's application for capital expenditure in replacing the roof throughout the residential tenancy complex, including the common building that houses the pool, sauna, office and tenant laundry facilities.

## 5. Is the Work an *Eligible* Capital Expenditure?

As stated above, for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- the Work was undertaken for one of the following reasons:
  - to comply with health, safety, and housing standards;
  - because the system or component:
    - was close to the end of its useful life; or
    - had failed, was malfunctioning, or was inoperative

- to achieve a reduction in energy use or greenhouse gas emissions;  
or
- to improve the security of the residential property;
- the capital expenditure was incurred less than 18 months prior to the making of the application;
- the capital expenditure is not expected to be incurred again within five years.

Section 21.1 of the Regulation defines “major system” and “major component”:

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

- (a) to the residential property, or
- (b) to providing services to the tenants and occupants of the residential property;

"major component", in relation to a residential property, means

- (a) a component of the residential property that is integral to the residential property, or
- (b) a significant component of a major system;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

Pursuant to Policy Guideline 37, I find the roof is a major component of the building. I find the Work was necessary in this case as the original roof on each building had exceeded its useful lifespan. I find this is sufficient to satisfy the requirements of the Regulation. I find that the roof replacement was required because the original roof had exceeded its expected serviceable life as permitted by 23(1)(4)(a)(ii) of the regulations.

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I accept the Landlord’s evidence that the final payment for the Work was made December 6, 2023, and falls within 18 months of the Landlord making this application on February 29, 2024.

The Landlord provided proof of payment for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find it is

reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

In this case, because the useful life of the roof had been exceeded, the issue of inadequate repair or maintenance was not material to the issue for determination. Additionally, the Landlord's operation manager stated there was no other source for payment of the roof replacement.

Based on the above, I find the Landlord is entitled to recover the amount of **\$1,952,323.50**.

### **Summary**

The Landlord has been successful in its application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures for roof replacement in the amount of **\$1,952,323.50**.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 112 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$1,952,323.50**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$145.26** ( $1,952,323.50 \div 112$ )  $\div 120 = 145.26$ ). If this amount exceeds 3% of a tenant's monthly rent, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I find the additional rent increase of capital expenditures of **\$145.26** per rental unit per month as per the formula set out in the regulations and illustrated in RTB Policy Guideline 37C.

The parties may refer to RTB Policy Guideline 40, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide a tenant three months'

notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

### **Conclusion**

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$1,952,323.50**. The Landlord must impose this increase in accordance with the Act and Regulations.

I order the Landlord to serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 08, 2024

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Residential Tenancy Branch