



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code      ARI-C

### **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 hearing on August 6, 2024.

The Landlord confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord, by posting on the rental unit or in person on May 29, 2024 for the Hearing Notice and July 4, 2024, for copies of the Landlord's evidence. The Landlord submitted evidence to confirm this service on the Tenants. I find the Tenants were served with the required materials in accordance with section 89(1) of the Act.

No evidence was submitted by any Tenant.

The Landlord testified that tenants for three units signed voluntary rent increases for the capital expenditures; and two tenants recently moved-in to their respective units, the Landlord having already adjusted the rent to account for the relative cost of the capital expenditures for those units. The Landlord stated the remaining three respondent-Tenants were not in agreement with the requested additional rent increase.

### **Issues to be Decided**

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

## Background and Evidence

While the Landlord attended the hearing by way of conference call, none of the Tenants attended. The Landlord who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I have considered the submission of the Landlord and documentary evidence, however, not all details of their submissions are reproduced below. The relevant and material 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 capital expenditure (the “Work”) incurred as follows:

- Replacement of the residential building’s intercom system - \$3,798.77
- Installation of security cameras - \$952.37
- Replacement of sidewalks, installation of retaining walls, resurfacing of parking lot, and installation of concrete garbage bin pad - \$25,997.87
- Installation of fencing with gates - \$10,637.35
- Replacement of hot water tank - \$1,942.50

The rental property, a three-storey walk-up, was constructed in 1964. The Landlord stated he purchased the building approximately 20 years ago. There are 8 rental units in the building.

The Landlord submits the capital expenditures were incurred in relation to the projects within 18 months preceding their application and none are expected to recur for at least five years. The Landlord submitted copies of invoices supporting the amounts claimed for the capital expenditures (Work) set forth above.

The Landlord states these capital expenditures were incurred to repair or replace a major system or a major component of a major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life. The capital expenditures were also required to install, repair or replace a major system or major component to maintain the building in a state of repair that complies with section 32(1)(a) of the Act, and to enhance building security.

The Landlord has not previously applied for an additional rent increase within the past 18 months for capital expenditure as required by 23.1(2) of the Regulations for this

residential property.

The Landlord was not entitled to be paid from another source for the any of the work subject to this application. The Landlord also testified that he worked on several of the improvements, including replacing the intercom system, installing security cameras, constructing forms and pouring concrete, and working on installation of the security fence, but stated he included no charge for his work.

#### Item 1 – Replacement of Intercom System

The Landlord testified that he purchased the rental property approximately 20 years ago and the intercom system was pre-existing at that time. The Landlord stated he believed the intercom was original with the building. The Landlord submitted photographs to establish the intercom utilized a handset which the caller would use to reach a particular unit. The Landlord stated the handset was broken, and although repairs had been made to the system over the years, it had reached the end of its useful life.

The Landlord incurred \$3,798.77 to install a modernized intercom system for tenant security. The sum included the cost of the system only, the Landlord installing the system and assessing no cost for his labor. The work was completed on January 17, 2023.

#### Item 2 – Installation of Security Cameras

The Landlord explained that there were many trespassers in the area and despite posting “no trespassing” signs, it was a persistent issue. To enhance tenant security, the Landlord installed security cameras at the entrance to the building. The cost (parts only) is \$952.37 and the work was done by the Landlord (no assessment for Landlord labor) and was completed on June 1, 2023.

#### Item 3 – Repair of Sidewalk, Installation of Retaining Walls, Resurfacing of Parking Lot

The Landlord submitted that the retaining walls were installed to assist with drainage on the property, thereby precluding the ponding of water and consequent trip hazards where tenants walked. Additionally, the retaining walls served as support for the installation of the fence, as the fence was erected and secured onto the retaining wall.

The Landlord also constructed concrete forms and repaired cracked sidewalks around the rental property. The sidewalks had been patched from time to time as needed but had been in place from the time the Landlord had purchased the property. The Landlord submitted photographs of the sidewalks before and after repair. The Landlord noted that the condition of the sidewalks prior to repair was quite poor and posed a trip hazard to tenants, occupants and guests.

The cost for the retaining wall, repair of sidewalks and the garbage bin concrete pad installation was \$18,332.87.

The Landlord expended \$7,665.00 for the resurfacing of the asphalt parking lot to the residential rental building. The Landlord testified that there were four useful parking spots, two of which were currently occupied by tenants of this building, one spot used by a third party and one parking spot currently vacant. The Landlord stated that the parking spaces were available to tenants of the rental building but not every unit was assigned a space (due to shortage of spaces to allocate per unit). The parking spaces were subject to a separate agreement between the Landlord and the parking occupant, and was not included in the tenancy agreement.

#### Item 4 – Installation of Security Fencing

The Landlord testified he installed aluminum fencing around the rental property in order to increase tenant security. The Landlord testified that he had continuing issues with trespassers walking through the side yard to the building, as well as with dog excrement. For the safety and security of tenants, the Landlord had at first attempted to ameliorate the problem with “no trespassing” signs but this proved ineffective. Therefore, the Landlord constructed an aluminum fence with gates. The Landlord testified that he had noticed a marked improvement in the lack of trespassers and others using the side yard to the building, thereby improving overall tenant security.

The Landlord hired a design professional for the fence as well as a metal fabricator. The Landlord painted and installed the fence himself but did not charge for his labor. The cost for the fence was \$10,637.35.

#### Item 5 – Hot Water Tank Replacement

The Landlord retained a licensed plumber to install a new hot water tank for the building. The Landlord submitted text message evidence from a tenant stating there was no hot water (again) in the building. The Landlord testified that the hot water tank was previously replaced approximately 15 years ago and had exceeded its useful life. He anticipated the new hot water tank would last for 10-15 years.

The cost for the hot water tank replacement was \$1,942.50.

### **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 bears the burden of proof 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. I will not reproduce the sections here but to summarize, 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)).

A tenant 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 their evidentiary burden and the tenant fails to establish that 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 8 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 \$43,328.86 as outlined above for capital expenditures.

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

As stated, for 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 37C states: “Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.”

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.

Residential Tenancy Branch Policy Guideline 37 states:

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

The Landlord provided receipts for the Work done and I accept the Landlord’s evidence that the final payment for the Work was made between January 17, 2023 and February 29, 2024; within 18 months of the Landlord making this application on May 6, 2024.

In this case, I make the following findings with respect to each item of capital expenditure:

Intercom System

I find the intercom system for the building to be a major system. It functions, in part, as a security system in permitting tenants the ability to permit only authorized individuals into the building. The Landlord's representative testified the system was modernized as the replaced system operated using a traditional handset. The Landlord testified that the intercom system was original to the building's construction (1964) and was past its useful life. The Landlord testified this system would not require replacement for more than 5 years from time of installation.

I find the Landlord is entitled to recover \$3,798.77 for this Work.

Security Cameras and Exterior Fence

The security cameras for the building and exterior fencing with gates are also major systems that promote tenant safety and security. The Landlord testified these were the reason for installing the security cameras and the exterior metal fencing with gates as the building was located in an urban area with a high number of transients or trespassers. The fencing also serves to prohibit the entry of dogs onto the property. The Landlord stated the security cameras would be operational for at least 5 years and the fence would have a useful life well in excess of 5 years as it was metal and secured to the property by concrete.

I find the Landlord is entitled to recover \$952.37 for installation of the security cameras, and \$10,637.35 for installation of the fence.

Replacement of Hot Water Tank

The hot water tank that was replaced was approximately 15 years old and had malfunctioned. The Landlord's submitted a tenant text complaining of lack of hot water as evidence of the unit's malfunction. The Landlord expected the replacement tank to last beyond 5 years (he estimated between 10 and 15 years of useful life). The hot water tank is a component of a major system and is necessary for tenant health, safety and to comply with housing standards.

I find the Landlord is entitled to recover \$1,942.50 for this Work.

Repair of Sidewalks, Retention Wall

The retention wall serves a dual purpose in providing the necessary support upon which the metal fencing is secured to and for the purpose of water drainage issues, which would lead to ponding of water which is also a safety hazard to Tenants. The sidewalks



around the building are for tenant safety and when in disrepair (as the Landlord evidenced with photographs) posed a safety hazard to Tenants. The sidewalks and retention wall are thus major components as these form a critical function of the residential property and protect its physical integrity.

However, with respect to the asphalt resurfacing of the parking lot, I find this capital expenditure is not “in respect of a rental unit that is a specified dwelling unit.” Although the parking lot is adjacent to the rental building, parking spaces are less than the number of rental units. The Landlord testified these parking spaces are subject to a separate agreement and currently one space is rented to a non-tenant. The parking lot is not a common area and rental units are not allocated specific spaces such that a specified dwelling unit could bear the cost of the capital expenditure.

I find the Landlord is entitled to recover \$18,332.87 for Work pertaining to the retention wall and drainage of the property as well as the sidewalk repair. I decline to award the cost of resurfacing the parking lot in the amount \$7,665.00.

## Summary

The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$35,663.86**.

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 8 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$35,663.86**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$37.15 ( $35,663.86 \div 8 \div 120=37.15$ )**. If this amount exceeds 3% of a respondent-Tenant’s monthly rent, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

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 is imposed.

## Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$35,663.86**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the respondent 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: August 07, 2024

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Residential Tenancy Branch