# 37C. Additional Rent Increase for Capital Expenditures



**In This Guideline:**

A. Takeaway

B. Legislative Framework

C. Eligibility Requirements for Capital Expenditures

1. Install, repair, or replace a major system or major component as required or permitted
2. Expected to not reoccur for at least 5 years
3. 18-Month Requirement
4. Landlord's onus and submitting proof of eligibility

D. Ineligibility Criteria for Capital Expenditures

1. Inadequate Repair or Replacement
2. Payment from Another Source
3. Landlord's Own Labour
4. Tenant's Onus to Prove Ineligibility

E. Applying for an Additional Rent Increase for Capital Expenditures

F. Additional Rent Increase for Capital Expenditures Dispute Resolution Process

1. Director's order related to service
2. Timelines for submitting evidence
3. Landlord must provide documents related to ineligibility criteria

G. Possible Outcomes of Additional Rent Increase for Capital Expenditures Application

H. Imposing an Additional Rent Increase for Capital Expenditures

Further guidance on calculating the amount of an ARI-C that can be imposed

I. Disputing a Proposed Rent Increase

J. Policy Guideline Intention

K. Changes to Policy Guideline

## A. Takeaway

This policy guideline addresses additional rent increases for capital expenditures (ARI-C). A landlord can apply for an additional rent increase if they have incurred eligible capital expenditures related to the residential property where a rental unit is located. The legislation sets out strict criteria that capital expenditures must meet to be eligible to be claimed for an additional rent increase.

# 37C. Additional Rent Increase for Capital Expenditures



Given the complexity of ARI-C applications, there are specific rules that only apply to ARI-C dispute resolution proceedings, including different service timelines. If the Residential Tenancy Branch (RTB) grants a landlord an ARI-C, the landlord must impose it in accordance with the legislation.

Keywords: additional rent increase, capital expenditures

## B. Legislative Framework

Under section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount:

- calculated in accordance with the regulations (annual rent increase),
- agreed to by the tenant in writing (agreed rent increase), or
- ordered by the director on an application in the circumstances prescribed in the regulations (additional rent increase).

This Policy Guideline is about ARI-Cs. Information on the other permitted rent increases can be found in the following Policy Guidelines:

- Policy Guideline 37A: Annual Rent Increase
- Policy Guideline 37B: Agreed Rent Increase
- Policy Guideline 37D: Additional Rent Increase for Expenditures (ARI-E)

Information that applies to all permitted rent increases is available in Policy Guideline 37: Permitted Rent Increases.

The following sections describe ARI-Cs.

| *Residential Tenancy Act* (RTA) | Residential Tenancy Regulation (Regulation) |
|---|---|
| • section 43 (1) (b) | • section 23.1-23.4 |

## C. Eligibility Requirements for Capital Expenditures

A landlord may apply an order approving an additional rent increase if they have

incurred eligible capital expenditures. A capital expenditure is eligible for an additional rent increase if it:

- is in respect of a rental unit that is a specified dwelling unit;
- was incurred in the 18-month period preceding the date on which a landlord made the application;
- is not expected to recur for at least five years; and
- was incurred for one or more of the following reasons:
    - to install, repair, replace a major system, or major component in order to maintain the residential property in a state of repair that complies with section 32(1)(a) of the RTA;
    - to install, repair, replace a major system, or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life; or
    - to install, repair, replace a major system or major component to:
        - reduce energy use or greenhouse gas emissions; or
        - improve the security of the residential property.

The Regulation defines a "specified dwelling unit" as:

(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 capital expenditures were incurred.

As can be seen by the use of past tense in the Regulation, a rental unit is only considered a "specified dwelling unit" once the work associated with a capital expenditure (e.g., installation, repair, or replacement) is completed. In other words, ARI-C applications can only be made once the work associated with the capital expenditure is complete.

# 37C. Additional Rent Increase for Capital Expenditures



***1. Install, repair, or replace a major system or major component as required or permitted***

The Regulation defines a “major system” as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A “major component” is a component of the residential property that is integral to the property or a significant component of a major system.

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. Examples of major systems or major components include, but are not limited to,

- the foundation,
- load-bearing elements (e.g., walls, beams, and columns),
- the roof,
- siding,
- entry doors,
- windows,
- primary flooring in common areas,
- subflooring throughout the building or residential property,
- pavement in parking facilities,
- electrical wiring,
- heating systems,
- security systems, including cameras or gates to prevent unauthorized entry,
- plumbing and sanitary systems, and
- elevators.

A major system or major component may need to be repaired, replaced, or installed

so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.

Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.

Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life. Policy Guideline 40: Useful Life of Building Elements establishes general timeframes for the useful life of various elements, including some major systems and major components. The timeframes set out in Policy Guideline 40 will be used to determine the expected useful life of a capital expenditure, except in cases where the arbitrator determines that documentary evidence is required to establish the useful life of a capital expenditure.

Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.

The following is a non-exhaustive list of expenditures that would **not** be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink,
- routine wall painting, and
- patching dents or holes in drywall.

An installation, repair, or replacement of a major system or major component that

was not described above will be eligible for an additional rent increase if it reduces energy use or greenhouse gas emissions or improves the security of the residential property.

Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other substance prescribed in the regulations to the *Climate Change Accountability Act*.

Any reduction in energy use or greenhouse gas emissions established by a landlord will qualify the installation, repair, or replacement for an additional rent increase. Some examples of installations, repairs, or replacements of major systems or major components that may reduce energy use or greenhouse gas emissions include:

- replacing electric baseboard heating with a heat pump,
- installing solar panels, and
- replacing single-pane windows with double-paned windows.

If an installation, repair, or replacement of a major system or major component better protects people and property at the residential property, the security of the residential property has been improved. A landlord is not required to establish that additional or better security was necessary for the director to grant an additional rent increase. Some examples of installations, repairs, or replacements of major systems or major components that may improve security include:

- installing CCTV cameras,
- replacing a keyed entry with a FOB system, and
- installing or repairing the lighting in the parking garage.

***2. Expected to not reoccur for at least 5 years***

The capital expenditure must not be expected to be incurred again for at least 5 years to be eligible to be claimed for an additional rent increase. Some examples of major systems or components that are expected to last at least 5 years may include:

- A boiler
- A roof

- Carpets in a common area
- Pipes
- Electrical wiring
- Windows
- Asphalt pavement

Routine repairs to or maintenance of a major system or major component are not eligible capital expenditures because they are expected to be incurred again within a 5-year period. Examples may include:

- Replacing filters on an HVAC system
- Carpet cleaning
- Resetting an elevator's systems because the door was held open too long
- Annual servicing of the hot water heater

***3. 18-Month Requirement***

The capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application to be eligible for an additional rent increase. A "capital expenditure" refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted (see section C.1). As such, the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.[1]

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the

[1] If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be "incurred" is the date the landlord issued the final cheque. If a landlord pays for the capital expenditure using a post-dated cheque, the date the capital expenditure is considered to be "incurred" is the date the post-dated cheque is dated.

project was incurred in the 18-month period.

***4. Landlord's onus and submitting proof of eligibility***

A landlord has the onus of establishing on a balance of probabilities (in other words, that it is more likely than not) that a capital expenditure meets the requirements to be eligible for an additional rent increase.

A landlord should submit documents that could support their application. For the installation, repair or replacement of a major system or major component, a landlord should provide relevant:

- Photographs or video taken before and after the repair or replacement was done,
- Permits
- Laws/bylaws/construction standards,
- Expert reports about:
    - the useful life of the prior system or component,
    - the expected lifespan of the installed, repaired or replaced system or component, and
    - the reason the installation, repair or replacement was needed,
    - Maintenance records for the system being repaired or replaced,
    - Records showing the date the prior system or component was purchased and installed, and
    - Manufacturer's documents relating to the prior system's or component's useful life expectancy.

For a capital expenditure that reduces energy use or greenhouse gases, a landlord should provide relevant:

- Utility bills that show the reduction in energy use after the installation, repair or replacement of the major system or major component,

- Manufacturer's documents showing the efficiency ratings of the new major system or major component compared to the old system or component,
- Expert reports.

A landlord must also establish the amount of the capital expenditure. This can be done by providing invoices and proof of payment for the costs of the installation, repair, or replacement of the major system or major component. If a landlord received payment from another source, a landlord must exclude this amount from the value of the claimed expenditure.

**D. Ineligibility Criteria for Capital Expenditures**

A capital expenditure that meets the eligibility requirements will be ineligible for an additional rent increase if:

- the repair or replacement was required because of inadequate repair or maintenance on the part of a landlord, or
- a landlord has been paid or is entitled to be paid from another source. Another source includes a grant scheme or similar scheme (such as subsidies or rebates), an insurance plan or the settlement of a claim. A landlord's own labour is also not eligible for an additional rent increase.

***1. Inadequate Repair or Replacement***

An example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life. However, if the extent of the repairs or replacement necessary is due to a landlord's inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.

Unanticipated repairs may be discovered during a repair or renovation. For example, if a landlord is replacing a roof that is at or near the end of its service life and discovers some of the sheathing is rotted and must be replaced, the expenditure for

this may be eligible for an additional rent increase. A landlord may undertake regular maintenance yet the need for major repairs develops because of a delay that was outside of their control. For instance, if they hired a roofer to fix a leak and the roofer cancelled, this would not make additional expenditures to repair the worsening leak ineligible. A landlord is expected to act like any other reasonable homeowner.

***2. Payment from Another Source***

If an amount of a capital expenditure is recovered or could have been recovered through grants, rebates, subsidies, insurance plans, or claim settlements, that amount becomes ineligible and must be deducted from an order for an ARI-C. For example, a landlord may be eligible to receive a rebate for installing a high-efficiency boiler. An owner's insurance typically covers repairs required due to a fire. Similarly, if repairs become necessary because of inadequate work by an earlier tradesperson, those repairs may be able to be claimed through a lawsuit.

Landlords can access tax credit and deduction schemes to reduce their taxable income when they incur capital expenditures. Some examples include:

- capital cost allowance (CCA), which allows landlords to deduct the depreciation from the cost of some depreciable assets purchased for a rental property (e.g., electrical wiring, plumbing, elevators) from their taxable income over many years, and

- the clean buildings tax credit, which landlords can claim to deduct from their taxable income if they complete a qualifying retrofit.

To be considered a "payment from another source," a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

***3. Landlord's Own Labour***

A landlord cannot claim an amount for their own labour as part of an eligible capital expenditure. For example, if a landlord rewired a house, the value of their labour is not part of an eligible capital expenditure. The cost of the materials and other related costs, such as the costs to dispose of the old materials and any required permits or inspections, would be eligible. Similarly, if a landlord *rented* tools to rewire a house, the cost of the tool rental would be an eligible capital expenditure, but if a landlord *purchased* new tools to complete the work, the purchase cost of the tools would not be an eligible capital expenditure.

***4. Tenant's Onus to Prove Ineligibility***

If the director determines that all or part of the claimed capital expenditure is eligible, the director must grant an additional rent increase unless a tenant establishes that the expenditure is ineligible.

Tenants bear the onus to establish on a balance of probabilities that what is otherwise an eligible capital expenditure is ineligible. Under Rule of Procedure 11.4, landlords are required to submit as evidence any documents in their possession that relate to the ineligibility criteria described above (see Section F for more information). A tenant can also request any documents from the relevant person (e.g., landlord, tradesperson, etc.) in advance of the hearing. If a landlord or other person fails to provide the requested documents, tenants can, as soon as possible before the hearing, apply for the production of these documents pursuant to Rules 5.3 and 5.4.

A tenant can also apply to the director for a summons requiring a person to attend a hearing and give evidence. The tenant must provide conduct money for a witness in accordance with Rule 5.5.

**E. Applying for an Additional Rent Increase for Capital Expenditures**

A landlord must make a single application to increase rent for all the rental units on which a landlord intends to impose an additional rent increase. As noted in Policy Guideline 37B, a tenant may voluntarily agree in writing to a rent increase greater than the maximum annual rent increase. When a condition of the voluntary agreement is that a landlord will not seek to impose an additional rent increase on the tenant, the tenant does not need to be named and served with the Application

for an Additional Rent Increase. However, a landlord must include all specified dwelling units in calculating the percentage of the rent increase that will apply to each unit, even if they are not part of the application. Each tenant named on the application must be served with a copy of the Application and hearing package. Any evidence that supports the Application must be given to each of the named tenants.

A landlord cannot make more than one application for an additional rent increase for the same capital expenditure. A landlord can make a single application for an additional rent increase for multiple capital expenditures when all the expenditures were incurred within the 18-month period prior to making the application. A landlord may apply for an additional rent increase against a tenant, even if that tenant moved into the rental unit after an eligible capital expenditure was incurred.

A landlord cannot make an application for another additional rent increase in respect of a rental unit for 18 months after a landlord last made an application for an additional rent increase that was granted in respect of that rental unit. The relevant date is the date the application was made (the date it was submitted), and not the date the director actually granted the application.

**F. Additional Rent Increase for Capital Expenditures Dispute Resolution Process**

Subsections F.1-F.3 only apply to applications made on or after February 17, 2023. Applications made prior to February 17, 2023, are bound to the version of the Rules of Procedure that was in effect from August 29, 2022, to February 17, 2023.

***1. Director's order related to service***

On February 17, 2023, the director of the RTB issued a standing order allowing landlords to serve the application for an ARI-C by attaching a copy to the door or other conspicuous place at the address at which the tenant resides.[2]

***2. Timelines for submitting evidence***

Given the number of parties that are often involved in dispute resolution proceedings related to additional rent increase applications, there are extended timelines for submitting evidence to ensure all parties have sufficient time to review

[2] The Standing Director's Order is available here: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/misc/directororderaricservice20230217.pdf

documents in advance of the hearing. Under Rule 11.2, evidence that the applicant intends to rely on at the hearing must be served on the respondent(s) and the RTB at least 30 days before the hearing. Under Rule 11.3, evidence that a respondent intends to rely on at the hearing must be served on the applicant and the RTB at least 15 days before the hearing.

***3. Landlord must provide documents related to ineligibility criteria***

Section 23.1(5) of the Regulation states that an arbitrator must not grant an additional rent increase application for capital expenditures that were incurred:

1. For repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

2. For which the landlord been paid, or is entitled to be paid, from another source.

The onus is on the tenant(s) to prove that a capital expenditure that is otherwise eligible is ineligible (see Section D for more information).

Rule 11.4 requires that applicants submit as evidence any documents in their possession[3] at the time they made their application that relate to the maintenance of the major system or component that was repaired or replaced. For example, if a landlord replaced a boiler, they must provide any maintenance records they have in their possession that relate to the boiler that was replaced. For clarity, landlords do not need to provide documents in their possession that relate to maintenance of other aspects of the residential property, only documents that relate to the major system or component that was repaired or replaced.

Similarly, applicants must submit as evidence any documents in their possession at the time they made their application related to payments they have received or are entitled to receive from other sources for installing, repairing, or replacing a major component or system. For example, if a landlord installed heat pumps, they must

[3] To be in possession of a document, a party must have a proprietary interest in it, not merely custody of or access to it. For example, the courts found that documents belonging to an applicant which had been left in a house formerly inhabited by both the applicant and respondent and now inhabited by the respondent only were not in the possession of the respondent. Rather, the respondent had custody of the documents (*Manson v. Manson* [1997] BCJ No. 203).

provide any documents in their possession related to incentives they have, or are entitled to, claim for installing heat pumps (e.g., grant applications, rebate eligibility information).

### G. Possible Outcomes of Additional Rent Increase for Capital Expenditures Application

The possible outcomes of an application for an ARI-C are:

- arbitrator grants an additional rent increase for the full amount of the capital expenditure claimed;
- arbitrator grants an additional rent increase for part of the amount of the capital expenditure claimed; and
- dismissed with or without leave to reapply.

If all parties to the dispute resolution proceeding attend a hearing and reach an agreement with respect to an additional rent increase, the arbitrator may record it in a binding settlement agreement.

### H. Imposing an Additional Rent Increase for Capital Expenditures

If an arbitrator approves an ARI-C, a landlord must follow specific requirements when imposing the additional rent increase. The maximum amount a landlord can increase rent by per "phase" when they are granted an additional rent increase is 3% of the tenant's rent for up to three phases.[4] Amounts exceeding this cannot be carried over or given in another twelve-month period. This maximum does not include the annual rent increase (see Policy Guideline 37A). If a landlord is granted an additional rent increase, a landlord must impose it at the same time as the annual rent increase.

When first imposing an ARI-C, a landlord may only impose whichever is the lower amount between 3% of the rent or the "Total ARI" as recorded in the decision. "Rent" is the amount payable in the year the rent increase is to be imposed plus the annual rent increase for that year. For example, if a landlord is providing a tenant with notice of a rent increase in October 2021 with an effective date in February 2022, a

[4] These phases, including how to determine when each phase begins and ends, are discussed in more detail below.

landlord must calculate the "rent" with the 2022 annual rent increase percentage. To determine what the maximum additional rent increase is, a landlord must multiply that "rent" by 3%.

If the "Total ARI" amount as recorded in the decision is lower than the maximum additional rent increase (3%), a landlord may impose the "Total ARI" amount in the first 12 months in which it may be imposed to comply with the timing and notice requirements in section 42 of the RTA. For example, if a tenant's rent was last increased on January 1, 2022, and a landlord was granted an additional rent increase in June 2022 where the "Total ARI" was less than 3%, it may be imposed in the twelve-month period between January 1, 2023, and December 31, 2023.

If the "Total ARI" amount as recorded in the decision is higher than the maximum additional rent increase of 3%, the additional rent increase for eligible capital expenditures may only be imposed in up to three phases (ARI1, ARI2, and ARI3). Each "phase" means the first 12 months in which that additional rent increase may be imposed to comply with the timing and notice requirements set out in section 42 of the RTA. For example, if the first phase of an additional rent increase was imposed on a tenant on June 1, 2022, ARI2 may be imposed in the twelve-month period between June 1, 2023, and May 31, 2024. Phase 2 begins on June 1, 2023, because under section 42, a landlord must not impose a rent increase for at least 12 months since the last rent increase.

For each phase, a landlord may only impose the lower amount between the maximum additional rent increase and the "Total ARI" amount or its remaining balance. Any unused eligible rent increase amount that is not imposed during the relevant 12-month period cannot be carried forward or added to any future rent increase. If a tenant vacates a rental unit before an additional rent increase, or a phase of an additional rent increase, is imposed, a landlord cannot impose it on the new tenant.

For more information and guidance on the amount of an additional rent increase that can be imposed, please see the below section ("Further guidance on calculating the amount of additional rent increase that can be imposed").

Landlords may only impose the ARI-C with the annual rent increase under section 43(1)(a) of the RTA. The RTB has developed forms for the Phase 1 and Phase 2 additional rent increases that landlords can use. These forms set out a step-by-step process to calculate the rent increase:

# 37C. Additional Rent Increase for Capital Expenditures



- Form #RTB-53-P1: Notice of Additional Rent Increase – Eligible Capital Expenditures (Phase 1)
- Form #RTB-53-P2: Notice of Additional Rent Increase – Eligible Capital Expenditures (Phase 2)

A landlord may impose only one ARI-C at one time. If they are granted another ARI-C while an earlier additional increase is still being phased in, a landlord must impose the increases in the order the ARI-Cs were granted. A landlord may not omit a phase from an earlier ARI-C to begin imposing another additional rent increase that was subsequently approved. For example, a landlord may not forego imposing a remaining 1% increase in phase ARI3 of their first additional rent increase to impose a 3% increase for phase 1 of their second additional rent increase sooner.

***Further guidance on calculating the amount of an ARI-C that can be imposed***

As noted above, landlords are responsible for calculating the amount by which rent can be increased in each phase. The Regulation sets out the following formula to calculate the amount of the additional rent increase that can be imposed in each phase:

$$ARI1 = the\ lesser\ of\ [Rent \times .03]\ and\ Total\ ARI$$

$$ARI2 = the\ lesser\ of\ [Rent \times .03]\ and\ [Total\ ARI - ARI1]$$

$$ARI3 = the\ lesser\ of\ [Rent \times .03]\ and\ [Total\ ARI - \{ARI1 + ARI2\}]$$

*Where:*

$$Total\ ARI = \frac{(eligible\ capital\ expenditures\ )\ \div\ (number\ of\ specified\ dwelling\ units)}{120}$$

*ARI1 = First phase additional rent increase*

*ARI2 = Second phase additional rent increase*

*ARI3 = Third phase additional rent increase*

*Rent = The amount of rent payable in the year that the rent increase is to be imposed plus the annual rent increase for that year*

"Eligible capital expenditures" is the amount of the capital expenditures that the

director has determined to be eligible, less any ineligible amounts.

A “dwelling unit” includes living accommodation that is not rented and not intended to be rented and a rental unit (defined in the RTA as living accommodation rented or intended to be rented to a tenant). Rental units, units occupied by a landlord, or other units not occupied under a tenancy agreement (for example, a short-term vacation rental) are all dwelling units.

The following examples illustrate how to determine the number of dwelling units in a residential property:

- a house where a landlord occupies the upper floor and rents out the lower floor under a tenancy agreement has two dwelling units.
- a fourplex with three rental units and a short-term vacation rental unit has four dwelling units.

A “specified dwelling unit” means the following:

(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 capital expenditures were incurred.

A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property. For example:

- If the roof of a building has been replaced, all dwelling units located in the building are specified dwelling units.
- If the roof of a separate building that houses laundry facilities for tenants and occupants is replaced, all of the dwelling units at the residential property would be specified dwelling units because a functioning roof is integral to the use of the common area and so they are affected by that replacement.

- Repaving a parking lot on the residential property affects all dwelling units at the residential property who have use of the parking spaces. Therefore, all of those dwelling units are specified dwelling units and must be used in the calculation.

Unless they are located in the building where the capital expenditure was incurred, dwelling units that are not affected by the capital expenditure must not be used in the calculation. For example, if there are two rental buildings on the residential property and a landlord incurs $1,000,000 in eligible capital expenditures on the first building, the dwelling units in the second building are not specified dwelling units and must not be used in the calculation.

In some situations, there can be uncertainty about the number of specified dwelling units. Landlords should provide documentary evidence establishing the number of specified dwelling units in these situations. Evidence could include architectural drawings, building floor plans, or tenancy agreements.

If the arbitrator approves an ARI-C, the arbitrator will set out in the decision the amount of eligible capital expenditures and the number of specified dwelling units. The arbitrator will calculate the "Total ARI" and record it in the decision. a landlord must calculate ARI1, ARI2 and ARI3 themselves. The RTB provides web tools on its website that can be used to assist landlords when calculating the ARI1, ARI2, and ARI3 amounts.

Tenants may apply for dispute resolution if they believe a landlord has calculated the amount that can be imposed incorrectly, and a landlord does not change their calculation after the tenant raises the issue with them. If a landlord collects a rent increase above the permitted amount, a tenant may deduct the increase from their rent, or apply for a monetary order for the excess rent collected.

**I. Disputing a Proposed Rent Increase**

A tenant cannot dispute an additional rent increase amount ordered by an arbitrator. A tenant is not required to pay an additional rent increase until served with the Notice of Rent Increase and a copy of the arbitrator's order granting the additional rent increase. If a landlord collects an unlawful rent increase, the tenant may deduct the increase from their rent, or apply for a monetary order for the excess rent collected. A tenant can also apply for dispute resolution if a landlord does not impose the additional rent increase properly (see Section H).

# 37C. Additional Rent Increase for Capital Expenditures



## J. Policy Guideline Intention

The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act. This policy guideline may be revised and new guidelines issued from time to time.

## K. Changes to Policy Guideline

| Section | Change | Notes | Effective Date |
|---|---|---|---|
| all | new | New Policy Guideline. Adapted from previous version of Policy Guideline 37. | 2023-02-17 |
| all | am | Reformatted to new template. Sections re-lettered to reflect new template. | 2023-06-23 |
| C.3 | new | New subsection added to clarify 18-month requirement | 2023-06-23 |
| D.2 | am | Added information clarifying that tax deduction schemes are not “payments from another source” | 2023-06-23 |

Change notations
am = text amended or changed
del = text deleted
new = new section added