



(Disponible en français)

File Number: LTB-L-076488-23

How to Prepare for an Above Guideline Increase Hearing

Please note: The following acronyms are used in this guide:

- LTB – Landlord and Tenant Board
- RTA – Residential Tenancies Act
- AGI – Above Guideline Increase
- FED – First Effective Date (of the rent increase)
- CMH – Case Management Hearing
- NOH – Notice of Hearing

Generally, a landlord can only increase the rent by the rent increase guideline. However, under certain circumstances a landlord can apply to the LTB for a rent increase that is above the guideline amount.

Your landlord has applied for an above guideline rent increase for one or more of the following reason(s) listed on page 2 of the attached application:

1. capital expenditures;

How much could the rent increase?

- The highest rent increase that could be ordered by the LTB is **8.27%** for capital expenditures based on the costs claimed by the landlord in the application. Additional information about which costs a landlord can claim and whether a capital expenditure is considered eligible is provided below.
- If the Landlord is claiming a rent increase because of capital expenditures, the increase cannot be more than 3% above the annual guideline rent increase in any one year. However, if the LTB decides that the landlord's application proves that an increase of more than 3% is justified, the order would increase the rent to a maximum of 3% above the guideline for the first year, and the remaining increases could be taken in the following two 12-month periods, at a maximum of 3% above the guideline per year.

Note: If the capital expenditure is for “infrastructure work” in a mobile home park, there is no 3% per year maximum and the LTB has the ability to set the amount and the number of years over which the landlord may take the increase.

- There is no limit on the percentage rent increase above the guideline allowed for an extraordinary increase in the cost for municipal taxes and charges.

Note: The ordered above guideline rent increase is in addition to the annual rent increase guideline that the landlord may charge.

You can call the LTB if you want to know the highest possible rent increase that could be ordered for your unit (416-645-8080 or toll free at 1-888-332-3234).

When can the rent increase take effect?

- The effective **date of the first rent increase** in the application is **January 1, 2024**. This date is identified on the first page of the application (FED). This is the earliest rent increase date that will be ordered for any unit in the residential complex. However, it may not be the same increase date for all units. The *Notice of Rent Increase* (Form N1) you previously received from the landlord must identify the increase date for your unit.

1. Capital Expenditures

The RTA sets out many rules about what can be considered when reviewing an application based on capital expenditures. Read the information below to understand these rules and what you can do to prepare for your LTB hearing.

What is a capital expenditure? It is an expenditure that is for extraordinary or significant renovations, repairs, replacements or new additions. The expected benefit of a capital expenditure must be at least five years.

Check Schedule 2 of the application and the *Capital Expenditures: Additional Details* forms. Do the expenditures on the application meet the definition of a capital expenditure?

The capital expenditure must be “eligible”, which means it must meet one of the following tests:

1. Necessary to protect or restore the physical integrity of the residential complex;
 2. Necessary to maintain health, safety or housing standards;
 3. Necessary to maintain plumbing, heating, mechanical, electrical, ventilation or air conditioning systems;
 4. Provides access to persons with disabilities;
 5. Promotes energy or water conservation; or
 6. Maintains or improves the security of the residential complex.
- Review the description of each capital expenditure claimed. Does each capital expenditure meet this eligibility test?

- **Note:** A capital expenditure is not eligible if it is routine or ordinary work (such as general maintenance, janitorial or cleaning services, appliance repairs, etc.). As well, work that is substantially cosmetic or designed to enhance the level of prestige or luxury in the building would not be eligible.

If the capital expenditure is a replacement, was it “necessary”? If it wasn’t necessary, then the capital expenditure is not eligible.

- Review the list of capital expenditures to see if any of them are replacement items and, if they were necessary.
- **Note:** Under the RTA, if the new capital expenditure item promotes access for persons with disabilities or promotes energy or water conservation or security then it is considered to be necessary regardless of whether it needed to be replaced or not.

All capital expenditures claimed in the application must have been completed during the 18-month period ending 90 days before the effective date of the first intended rent increase (FED) identified on the first page of the application.

The 18-month period in this application is **April 3, 2022 to October 3, 2023.**

- Look at the completion date for each capital expenditure that is listed on Schedule 2 or the *Capital Expenditures: Additional Details* forms that are included in the application file. (See the Notice of Hearing for information about how you can view these forms.)
 - Are any of the completion dates before or after this 18-month period? If yes, then they may not be eligible.
 - Are any of the completion dates before your tenancy began? If yes then that capital expenditure may not apply to your rental unit.

The capital expenditure must be “incurred”. The expenditure must have been paid for in full before the application was filed, and the invoices and proof of payment must have been submitted with the application.

- Review the *Capital Expenditures: Additional Details* forms and the invoices that were submitted with the application. Is proof of payment included for each capital expenditure amount? (See the Notice of Hearing for information about you can view these documents.)

Confirm the useful life for each capital expenditure. The useful life is the estimated number of years that the capital expenditure is expected to last or benefit the residential complex.

- Refer to the “Useful Life” table in Part VIII of Ontario Regulation 516/06 to the RTA. If the useful life for any of the capital expenditure items claimed in the

application is different than the useful life set out in the table, raise this during the hearing.

Review all other information related to capital expenditures included in the application.

- Review the information in the application, the attachments and the invoices submitted.
- Confirm that the rent information for your unit is correct on the *Information about Rental Units in the Complex* form.

What cannot be considered in an AGI application?

- General maintenance problems: the LTB can only consider maintenance issues during an AGI hearing if they are **existing serious breaches** of health, safety or housing standards, or of the landlord's obligation to maintain and repair the residential complex. If a tenant wants to raise these types of issues they must give the landlord and the LTB all of their evidence and submissions by the deadline in the Notice of Hearing. Tenants can also file their own applications about maintenance (T6) and have those issues considered at a separate hearing.
Note: there are special rules in the RTA about elevators. If the landlord has not completed ordered elevator repairs the LTB may not be able order an above guideline rent increase,
- The guideline rent increase amount: Each year the Minister of Housing sets a guideline rent increase amount that can be charged by the landlord. The LTB cannot change the guideline rent increase. The landlord's application is for a rent increase above the guideline amount. It is the amount above the guideline that can be negotiated at the CMH.
- The landlord or tenants' financial circumstances.
- Income tax rules that may apply to the expenses claimed by the landlord.