



How to Prepare for an Above Guideline Increase Case Management 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

The landlord has filed an application with the LTB for a rent increase above the guideline. The application is based on capital expenditures.

How much of a rent increase?

- The rent increase for capital expenditures cannot be more than 3% above the guideline in any one year. This is in addition to the annual rent increase guideline that the landlord is permitted to charge.
- Based on the costs claimed by the landlord in this application, the highest rent increase calculated for units that are affected by all of the capital expenditures is 7.74%. However, if the LTB determines that the landlord's costs justify an increase of more than 3% (as is claimed in this application), the order would limit the increase to a maximum of 3% above the guideline for the first year, with the remaining increase taken in the following two 12-month periods, at a maximum of 3% above the guideline per year.
- 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 July 1, 2017 (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) from the landlord will set out the increase date for the unit.

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 the application and what has been claimed under capital expenditures. Do the expenditures on the application meet this definition?

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 are replacement items and, if they are replacements, were they 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 period from October 2, 2015 to April 2, 2017.

- Look at the completion date for each capital expenditure that is listed on the application. Also review the *Capital Expenditures: Additional Details* forms that

are included in the application file. (See the NOH for information as to how you can review these forms.)

- o Are any of the completion dates before or after this 18-month period? If yes then they may not be eligible.
- o Also check to see if any of the completion dates are before the date a new tenant's tenancy agreement took effect. If yes then the capital expenditure may not be eligible in respect of that rental unit.

The capital expenditure must be "incurred". The expenditure must have been paid for 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?

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 V111 of Ontario Regulation 516/06 to the RTA. Is the useful life for any of the capital expenditure items claimed in the application different than the useful life set out in the table? If yes, raise this at the hearing.

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

- Be prepared at the hearing to raise any questions you have about 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: Under the RTA, the LTB can only consider existing serious breaches of health, safety or housing standards, or of the landlord's obligation to maintain and repair the residential complex during an AGI hearing. If a tenant intends to raise that there is a serious breach, they should bring evidence with them to the CMH. Tenants can also file their own applications about maintenance (T6) and have those issues considered at a separate hearing.

- 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 guideline rent increase amount cannot be challenged. 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 financial position, income and expenses of the landlord or the tenant.
- Income tax rules that apply to the expenses claimed by the landlord in the application.