



Order under Section 126 Residential Tenancies Act, 2006

Citation: Dai v Henderson, 2026 ONLTB 8661

Date: 2026-01-28

File Number: LTB-L-003340-23

In the matter of: 1162 West 5th Street, Hamilton, Ontario, L9B 1J6

Between: Tiefeng Dai Landlord

And

Chaundell Henderson Tenants
Sandro Deangelis

Tiefeng Dai (the 'Landlord') applied for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex.

Order Preamble

This Application was filed with the Board on October 17, 2022, by Tiefeng Dai (the 'Landlord'). The Application seeks an order permitting the rent charged for the rental unit, a single-family home, to be increased by more than the guideline. The first effective date (FED) identified on the Application is February 1, 2023.

The Application was resolved by a written hearing.

Preliminary Matters

1. On April 9, 2025, the Board advised the Landlord that the Application was deficient and could not proceed to hearing until all deficiencies were rectified.
2. On June 27, 2025, the Landlord advised the Board a licensed paralegal from Golden Star Legal had been retained to represent the Landlord in this proceeding.
3. The Landlord filed an amended Application on July 9, 2025. I find the amendments to the Application made by the Landlord rectify the deficiency identified in the Board's letter of April 9, 2025. I have accepted the Landlord's amended application filed with the Board on July 9, 2025.

4. The Tenants filed evidence in response to the Application on July 17, 2025.
5. The Board conducted a virtual Case Management Hearing (CMH) on July 28, 2025. Following completion of the CMH, the Board directed that the merits of the Application be determined by way of a written hearing.
6. On July 30, 2025, the Board Ordered the Landlord to serve a Notice of Written Hearing together with a copy of the Application on each Tenant affected by the Application. The Notice of Written Hearing set the following deadlines:
 - a. The Landlord was required to serve a copy of the Application together with a copy of the Notice of Written Hearing on the Tenants no later than August 19, 2025; and
 - b. The Notice gave the Tenants until September 18, 2025, to make submissions in response to the Application, and provided the Landlord until October 3, 2025, to reply to any submissions filed by the Tenants.
7. The Tenants filed a submission in response to the Application on September 15, 2025.
8. The Landlord filed a submission in Reply to the Tenants on September 29, 2025.

Capital Expenditures

It is determined that:

9. The Landlord has justified a rent increase above the guideline because the Landlord incurred an eligible capital expenditure for the residential complex or one or more of the rental units in it.

THE DEFINITION OF CAPITAL EXPENDITURE

10. The Landlord must lead evidence to establish that each of the capital expenditures claimed meets the definition of "capital expenditure" as set out in s. 18(1) of the regulation. It says:

"capital expenditure" means an expenditure for an extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years including,

- a. an expenditure with respect to a leased asset if the lease qualifies as determined under subsection (2), and
- b. an expenditure that the landlord is required to pay on work undertaken by a municipality, local board or public utility, other than work undertaken because of the landlord's failure to do it,

but does not include,

- c. routine or ordinary work undertaken on a regular basis or undertaken to maintain a capital asset in its operating state, such as cleaning and janitorial services, elevator servicing, general building maintenance, grounds-keeping and appliance repairs, or
- d. work that is substantially cosmetic in nature or is designed to enhance the level of prestige or luxury offered by a unit or residential complex;

"ELIGIBLE" CAPITAL EXPENDITURES

11. In addition to meeting the definition of capital expenditure, each of the Landlord's claimed items must be an "eligible" capital expenditure.

12. Subsections 126(7) and (8) of the Act say:

(7) Subject to subsections (8) and (9) and except under the prescribed circumstances, a capital expenditure is an eligible capital expenditure for the purposes of this section if,

- a. it is necessary to protect or restore the physical integrity of the residential complex or part of it;
- b. it is necessary to comply with subsection 20 (1) or clauses 161 (a) to (e);
- c. it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system;
- d. it provides access for persons with disabilities;
- e. it promotes energy or water conservation; or
- f. it maintains or improves the security of the residential complex or part of it.

(8) A capital expenditure to replace a system or thing is not an eligible capital expenditure for the purposes of this section if the system or thing that was replaced did not require major repair or replacement, unless the replacement of the system or thing promotes,

- g. access for persons with disabilities;
- h. energy or water conservation; or
- i. security of the residential complex or part of it.

THE 18-MONTH WINDOW

13. Pursuant to s. 26(2) of the regulation a rent increase shall not be ordered in respect of a capital expenditure unless the work was completed during the 18-month period ending 90 days before the effective date of the first intended rent increase referred to in the application. In this case the 18-month window is from May 3, 2021 to November 3, 2022.
14. The expenditure must also be "incurred" which essentially means the work must have been paid for prior to the application being filed. This is not an issue with respect to any of the items claimed in this application.

THE USEFUL LIFE

15. If the expenditure meets the requirements set out above, then the Board must establish the useful life of the work done in order to calculate the allowable increase.
16. Section 27 of the regulation says:
 27. (1) The useful life of work done or a thing purchased shall be determined from the Schedule subject to the following rules:
 - a. Where the useful life set out in Column 3 of the Tables in the Schedule is less than 10 years, the useful life of work done or a thing purchased shall be deemed to be 10 years.
 - b. If, when a thing is purchased, it has previously been used, the useful life of the thing shall be determined taking into account the length of time of that previous use.
 - c. If the work done or thing purchased does not appear in the Schedule, the useful life of the work or thing shall be determined with reference to items with similar characteristics that do appear in the Schedule.
 - d. Despite paragraphs 2 and 3, for the purposes of making a finding under this section, the useful life of work done or a thing purchased shall not be determined to be less than 10 years.
 - (2) If the useful life of work done or a thing purchased cannot be determined under subsection (1) because the work or thing does not appear in the Schedule and no item with similar characteristics appears in the Schedule, the useful life of the work or thing shall be what is generally accepted as the useful life of such work or thing but in no case shall the useful life be determined to be less than 10 years.

Capital Expenditure

17. The Landlord justified a rent increase above the guideline because of capital expenditures.
18. The maximum rent increase for capital expenditures is 1.94%. The increase is to be taken in the first year.
19. The Landlord's application is for the following capital expenditure:
 1. Workshop Roof Replacement.

Item #1 – Workshop Roof Replacement

20. The Landlord submits the replacement of the workshop roof was necessary to protect or restore the physical integrity of the residential complex, or part of it, and is therefore an eligible capital expenditure under s. 126(7)(a) of the Act. The Landlord further submits the new roof was necessary to comply with the Landlord's obligations under s. 20(1) of the Act, and that the work promotes energy or water conservation, and is therefore eligible under Section 126(7)(e) of the Act.
21. The Landlord filed before and after photos of the workshop roof. The "before" photo shows the shingles on part of the roof were significantly damaged or deteriorated.
22. The Landlord submits the cost of the work was \$4,124.50, and the work was completed on May 13, 2022. The Landlord provided invoices and proof of payment in support of the amount claimed.
23. I accept the Landlord's evidence that the existing roof of the workshop was deteriorated, and the physical integrity of the workshop roof was compromised. I further find that the workshop, while separate from the house, forms part of the Tenants' rental unit, and therefore part of the residential complex.
24. In accordance with subsection 18(1) of O. Reg, 516/06, the term "Physical Integrity" means "...the integrity of all parts of a structure... that provides a weather envelope and includes the integrity of the roof...".
25. Having found that the workshop forms part of the residential complex, and that the integrity of the roof of the workshop was compromised, I find that the replacement of the workshop roof was required to protect the physical integrity of part of the residential complex, and therefore constitutes an eligible capital expenditure under s. 126(7)(a) of the Act.
26. Based on the invoice filed by the Landlord, I find that the work was completed on or about May 13, 2022, at a cost of \$4,124.50. I therefore find the work meets

the requirements for an eligible capital expenditure under s. 26(2) of O. Reg. 516/06.

27. The Landlord submits that the anticipated useful life of the work in the new roof is 15 years. This is consistent with the useful life of “sloped (asphalt shingles) roof”, which is item #18 on Table 6 (“Thermal and Moisture Protection”) on the on the Schedule titled “Useful Life of Work Done or Thing Purchased”, which forms part of O. Reg. 516/06. Therefore, I find that the useful life of the new roof is 15 years.

Written Submissions

28. The Tenants submit they maintain the lawn, perform snow removal and conduct “minor repairs” in the unit at their own expense. They submit this is unreasonable and “indicative of poor property management”.
29. The Tenants submit the Landlord has made no significant upgrades or maintenance on the unit, such as a new furnace, air conditioner or primary roof, in more than 20 years.
30. According to the Tenants, while the Landlord replaced the roof of the workshop, the “primary roof” of the house remains in disrepair. The Tenants provided photographs of the new roof of the workshop and the existing roof of the main house. Visible in the Tenants’ photographs are several shingles which appear to be lifting slightly away from the roof structure on the main house. However, nothing in the Tenants’ submissions suggest the roof is no longer watertight, and the Tenants provided no direct evidence with respect to the condition of the furnace or air conditioner.
31. The Tenants submit the Landlord inappropriately requested to use their names and “financial accounts” to qualify for discounted appliances and regularly enters the property unannounced.
32. The Tenants submit the Landlord did not provide them with an N1 notice of rent increase at any time during the period of February 1, 2023, to March 30, 2024. As a result, the Tenants submit the application is moot and should be dismissed.
33. Finally, the Tenants submit that the rent increase sought by the Landlord would impose a sever financial burden and threaten their ability to remain in the rental unit.
34. In response to the Tenants’ submissions concerning whether the Landlord provided proper notice of the rent increase sought in this application, the Landlord admits an N1 Notice of Rent Increase Form was not provided to the Tenants. However, the Landlord submits that the Landlord served the Tenants with an N10 Agreement to Increase the Rent Above the Guideline. The Landlord

submits the completed N10 form contained all the substantive information required for a lawful notice of rent increase. Therefore, the Landlord submits the notice provided constitutes “substantial compliance” with the notice provisions in the Act.

35. On the issue of the financial impact of the Application, the Act does not provide the Board with authority to consider the financial impact of an above guideline rent increase on the Tenants when determining whether a Landlord’s Application should be granted or denied. Likewise, submissions concerning the Landlord’s alleged behavior (allegedly attempting to use their names to purchase appliances and attending the property unannounced) are not issues the Board can consider on this Application.
36. With respect to the Tenants’ submissions concerning maintenance, to warrant relief for the Tenants on an above guideline rent increase application under section 126 of the Act a maintenance issue must rise to the level of a “serious” breach of the Landlord’s maintenance obligations. In my view, the Tenants have not demonstrated that the Landlord is in “serious breach” of its maintenance obligations under s. 20 of the Act. Therefore, I find that relief under subsection 126(13) of the Act is not warranted.
37. Finally, the issue of whether the Landlord has given the Tenants proper notice of the above guideline rent increase sought in this Application, which is asserted by the Tenants, is an issue beyond the jurisdiction of the Board in this proceeding. This is a proceeding is under s. 126 of the Act. The Board’s jurisdiction in this proceeding is limited to determining whether the Landlord has **justified** a rent increase above the guideline amount. Whether the Landlord is **lawfully entitled to collect** a rent increase depends on whether the Landlord has satisfied the notice requirements set out in the Act.
38. I draw the attention of the parties to Note #1 in the “Important Notes” section below, which reads:
 1. The landlord may increase the rent charged by the ordered increase within the time period specified if at least 12 months have passed since the last rent increase or since the tenant moved in, and **if the landlord has given the tenant at least 90 days proper Notice of Rent Increase. (emphasis is mine)**
39. If the Tenants wish to challenge whether proper Notice of Rent Increase has been given, and whether the Landlord is lawfully entitled to collect the rent increase justified in this proceeding, the Tenants must do so in a separate Application brought under the Act. Nothing in this Order should be construed as a determination of whether the Landlord has given the Tenants proper Notice of Rent Increase in respect of the increase justified in this proceeding.

40. The weighted useful life for the capital expenditure is 15 Years.

It is Ordered that:

1. The Landlord may increase the rent charged by 1.94% for 1162 West 5th Street, Hamilton, Ontario, L9B 1J6.
2. The percentage increase set out in paragraph 1 is to be taken as follows:
 - a) The Landlord may increase the rent charged by 1.94% within the time period of February 1, 2023, to January 31, 2024.
3. The percentage increase set out in paragraph 1 may be taken in addition to the annual guideline in effect on the increase date for the unit.
4. If any monies are owing as a result of this Order, the Landlord or the Tenants shall pay to the other any sum of money that is owed within 90 days of the date of this order.

January 28, 2026
Date Issued

James Gorham
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

Important Notes:

1. The Landlord may increase the rent charged by the ordered increase within the time period specified if at least 12 months have passed since the last rent increase or since the tenant moved in, and if the landlord has given the Tenant at least 90 days proper Notice of Rent Increase.
2. If the Landlord has given a Notice of Rent Increase for a rent increase that is less than the ordered increase, the Landlord may only take the rent increase set out in the Notice.

3. If the Tenant's rent is increased pursuant to the percentage increase ordered for capital expenditures and the same Tenant remains in the unit after the expiration of the weighted useful life for capital expenditures, then the rent will be reduced. Refer to Schedule 1 for information about the date and amount of the rent reduction.
4. The annual guideline for 2023 is 2.50%, for 2024 is 2.50%, for 2025 is 2.50% and for 2026 is 2.10%.

Schedule 1 - Rent Reduction related to Capital Expenditures

A. Date of Rent Reduction

If the Tenant's rent is increased based on capital expenditures during the period 2023 then:

The date of the rent reduction will be the day before:

- the date of the Tenant's first rent increase under this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in this order).

Example:

If the Tenant's rent was increased on June 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on May 31, 2031.

If the Tenant's rent was *not* increased based on capital expenditures during the period 2023 but was increased during the later periods set out in the order then:

The date of the rent reduction will be the day before:

- the First Effective Date of Rent Increase in this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in this order).

Example:

If the first effective date of increase in this order is April 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on March 31, 2031.

B. Amount of Rent Reduction

If the Tenant's rent is increased by the total percentage increase set out in this order then:

The rent must be reduced by the total percentage increase set out in this order for capital expenditures.

If the Tenant's rent is *not* increased by the total percentage increase set out in this order then:

The rent must be reduced by an amount determined in accordance with the prescribed rules which may be equal to or less than the total percentage increase set out in this order for capital expenditures.