Order under Section 126
Residential Tenancies Act, 2006

File Number: LTB-L-009569-23

In the matter of:	77 Spencer Avenue, Toronto, Ontario, M6K 2K4	
Between:	Akelius Canada Ltd.	Landlord
	And	
	Refer to attached Schedule 2	Tenants

Akelius Canada Ltd. (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

A Case Management Hearing was held on June 9, 2025. The parties were unable to resolve the issues at that hearing and this application was scheduled for a virtual merits hearing.

A Merits hearing was held by videoconference on November 18, 2025.

The following parties attended the hearing:

For the Landlord:

- Heather Waese, Legal Representative

Witnesses:

- *Ken Maschke, Structural Consultant*
- *Aashvi Ghandi*
- *Derek Oh, Asset Manager*

For the Tenants:

- Erin Tobin, Legal Representative

Witness:

- Sinthea Chowdurhy - 603
- Laura Ann Gibson - 501
- Vesna Plazacic - 208
- Simon Fielder - 204
- Stephanie Fung – 509
- Sana Poornasiri – 310

The Certificate of Service filed by the Landlord on (the date will be specified), indicates that some rental units listed in the application were not served with the application and notice of hearing. The Board shall therefore amend the application by removing these rental units. As a result, this order for a rent increase above the guideline under section 126 of the Act does not apply to the following units: 101, 103, 201, 304, 310, 402, 407, 502, 507, 604, 607, and 609.

Preliminary Matters

Member Endorsement – Permitting Post Hearing Maintenance Submissions

At the Virtual Merits Hearing of this matter, the Landlord raised that there was a large volume of maintenance issues raised by the Tenants to which the Landlord did not have sufficient time to respond. They argued that the issues were not raised to them in advance at the Case Management hearing or prior to this hearing other than submitting their evidence within the 7 days requirement prior to the hearing. As a result, the Landlord requested an opportunity to consider the Tenant's testimony on the maintenance issues raised at the hearing and provide written reply submissions.

The Tenants testified that they submitted their evidence within the required timeframe and that their evidence would show that the Landlord was made aware of the issues.

As set out at the hearing, I issued a post hearing Member Endorsement wherein I directed the parties to make post-hearing submissions on the maintenance issues raised at the hearing. For clarity, the Tenants, Simon Fielder – 204, Vesna Plazacic - 208, and Laura Ann Gibson – 501 gave testimony about maintenance issues at the hearing.

The Landlord was directed to submit responding evidence and submissions by December 11, 2025. The Tenants were to file any responding submissions to the Landlord.s December 11, 2025 submissions by Monday January 5, 2026. The Landlord was to provide their reply by January 12, 2026.

The Landlord filed submissions and their reply to the Tenant's submissions within the deadlines set out in the Member Endorsement. Likewise, the Tenants filed their reply submissions within the deadlines set out in the Member Endorsement.

I have considered all of these submissions in the body of this Order below.

It is determined that:

1. I find that 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

2. 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

3. In addition to meeting the definition of capital expenditure, each of the Landlord's claimed items must be an "eligible" capital expenditure.
4. 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

5. 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.

6. 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

7. 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.

8. 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.

<u>Capital Expenditure</u>

9. The Landlord justified a rent increase above the guideline because of capital expenditures.
10. The Landlord's evidence justifies a rent increase above the guideline of 4.38%, because of capital expenditures. However, pursuant to subsection 126(11) of the Act, the maximum permitted rent increase above the guideline because of capital expenditures in any year is 3.00%. As a result, the rent increase justified in this Application may be taken as follows: 3.00% in the first year, 1.38% in the second year. These increases are in addition to the annual guideline rent increase.
11. The Landlord's application is for the following capital expenditure:

    a. Balcony Repairs

Capital Expenditure #1: Balcony Repairs

12. The Landlord submits that the balcony repairs were necessary because the steel supports and guards were corroded in numerous locations causing the concrete around these areas to fail/deteriorate

13. The Landlord called Ken Maschke (hereafter Mr. Maschke) in support of this capital expenditure. Mr. Maschke testified that they have been employed by Thornton Tomasetti for 21 years and that they are a professional engineer. Mr. Maschke testified that they were retained by the Landlord and undertook an investigation of the balconies and guardrails, prepared tender documents, and undertook a construction review.

14. Mr. Maschke testified that he undertook a pre-inspection of the balconies by taking a representative sampling of the conditions, using binoculars, sampling on the balconies, and looking at what work is required to maintain the building in a safe condition. He testified to the "Final Property Condition Assessment" for the

residential complex dated August 28, 2013 prepared by Halsall engineers noting some minor instances of corrosion and structural issues.

15. Mr. Maschke testified to the Landlord's 1st Evidence Package, the Thornton Tomasetti Memorandum dated April 19, 2019, on page 4 of the Landlord's 1st Evidence Package which summarized the investigation and included photographic evidence of the balconies as well as the Thornton Tomasetti Letter dated June 25, 2025 (the "Thornton Tomasetti Letter"). Mr. Maschke testified to the deficiencies, shown in photographs and outlined in the Thornton Tomasetti Memorandum and the Thornton Tomasetti Letter which outlined four areas requiring work as follows:
    1. The balcony guardrails
        a. Bulging and cracking shown in photograph 1 of the Thornton Tomasetti Memorandum.
        b. Gaps in the bottom railing between components shown in photograph 2 of the Thornton Tomasetti Memorandum.
    2. Steel outriggers showing significant corrosion – shown in photographs 4 and 5 of the Thornton Tomasetti Memorandum.
    3. Brick damage where water was seeping in due to changes in temperature – shown in photographs 6, 7, and 8 of the Thornton Tomasetti Memorandum.
    4. Condition of the balcony slabs and coatings no longer protecting the concrete below – shown in photograph 5 of the Thornton Tomasetti Memorandum.

16. Mr. Maschke testified to the Thornton Tomasetti recommendations to replace guardrails, perform scraping and painting of outriggers, perform repairs to bricks to prevent water seeping in causing further damage, repairs to spalling bricks, and new waterproofing membrane over slabs to protect the concrete to prevent concrete deterioration and spalling. He testified that three contractors tendered bids with KIB Restoration having the lowest bid and being selected to undertake the work.

17. Mr. Maschke testified to the scope of work as set out in the Bid Breakdown – section 2 - at page 16-19 of the Landlord's 1st Evidence package which included:
    - Brick replacement – removing all cracked and/or spalled brick, repair backup masonry, replacing brink units to match existing, and scrape, prime, and coat any significant steel corrosion.
    - Repointing mortar joints.
    - Concrete patch repairs removing unsound, cracked and spalled concrete.

- Waterproofing to the top face of balcony decks and coating the bottom of balcony decks.
- Balcony railing and anchor replacement including sealant replacement where missing or damaged – installation of new glass guardrail system.
- Steel repainting at the balcony outriggers.
- Reinstall pigeon netting at balconies affected by construction work.

18. Mr. Maschke testified that there were some changes to the scope of work which included unit price changes and change orders to address deteriorating conditions at door thresholds, some additional areas of spalling on the west façade, above balconies at roof level, and waterproofing which was no longer effective on the west side balconies where it was determined that the waterproofing had worn away, discovered when the base plates from the old railings were removed.

19. Mr. Maschke testified that if the claimed work was not completed, it would have an impact on the structural integrity of the residential complex which would deteriorate, no longer be able to carry the loads, result in spalling, falling concrete hazards, and create risks to Tenants on their balconies. Mr. Maschke testified to the photographic evidence on pages 14-18 and 63-86 of their 2nd Evidence Package, as a part of the Thornton Tomasetti Construction Review Reports, showing deficiencies and work done to address the deficiencies including where repointing was required, concrete spalls, deficiencies in previous balcony waterproofing coating wearing away, water seepage into concrete rusting steel in the concrete, balcony anchor corrosion, and corroded bird netting anchors.

I. Previous Work to Balconies

20. The Tenant, Vesna Plazacic - Unit 208, testified that their balcony was repaired in 2015 and 2021. The Tenant testified to the Tenants evidence entitled “AGI Evidence – 77 Spencer Tenant’s Submission”, specifically, the following:
    a. Exhibit 4 – a photograph showing balcony repairs to their balcony.
    b. Exhibit 5 – a notice from the Landlord to the Tenants, dated July 16, 2013, that there would be balcony concrete, brick and ceiling testing.
    c. Exhibit 6 - a notice of entry to suites to review balcony slabs dated November 10, 2014.
    d. Exhibit 7 – a letter from the Landlord to the Tenants dated November 25, 2015 about the starting of balcony repairs
    e. Exhibit 8 – an email from the Tenant to the Landlord dated June 21, 2021 about whether the construction work applies to their unit given the work to their balcony in 2015.

21. The Tenant, Vesna Plazacic - Unit 208, testified that in 2015 their railings were removed, the slab was removed, and the same railings were re-installed. They testified that in 2021 there were new railings installed and that a new slab was put on again in 2021, and that they heard that waterproofing was applied to their balcony in 2021.

22. In rebuttal, Mr. Maschke testified that the slab was not removed or replaced for the work done to the balconies in 2021, which is the work claimed in this application. He testified there was only small patchwork done to the slabs. The Landlord argued that there was no replication of work other than waterproofing which Mr. Maschke testified had deteriorated. The Landlord argued that it is irrelevant to the decision that some the work had been done in the past and was redone.

23. While I agree that there appears to have been work done to the Tenant's balcony in 2015, as the Tenant testified to, based on the evidence before me, that work did not overlap with the work claimed in this application, with the exception of the waterproofing.

24. In this application, the old railings were replaced with new railings, unlike the work done in 2015 where, as testified to by the Tenant, the old railings were removed and then reinstalled. The evidence supports that the Landlord relied on the findings and recommendations of the Thornton Tomasetti Letter which noted the following:

> "Prior to carrying out the repairs, we observed structural damage to the aluminum guardrail posts. Several posts had vertical cracks running along their length and bulges near the base connection. We theorized that the damage was caused by moisture seeping into the posts and expanding in freezing temperatures. The visible cracking would likely have exacerbated the ongoing deterioration.
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> In our opinion, the cracked guardrail posts could not reasonably be relied upon to provide the code-prescribed restraint. Since up to 50% of the existing guards exhibited cracking, we recommended replacing all guards. New aluminum and glass guardrails were subsequently installed throughout the building."

25. The evidence supports that there was no balcony slab replacement work claimed in this application, but rather balcony slab repair work done. Notwithstanding that the Tenant's balcony slab received waterproofing in 2015 and then again in

2021, the findings set out in the Thornton Tomasetti Letter are compelling, detailing the need for the work, wherein it notes the following:

> “The balconies are composed of precast concrete slabs supported by steel outriggers. The west balconies had a protective coating, but the other balconies were exposed, bare concrete. During the repair project, we identified that the existing protective coating was prematurely wearing off and therefore also needed to be replaced to properly protect the slab.
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> […]
>
> Likewise, applying a protective coating is best practice for preserving exposed exterior concrete balcony slabs. Precast slabs can be more difficult to repair than cast-in-place slabs, so it is prudent to protect the concrete surfaces. Before applying the coating, approximately 250 square feet of slab surface repairs were budgeted.

26. There is nothing in the Act which prevents a Landlord from claiming a capital expenditure for work done to address identified deterioration/degradation of an item, notwithstanding that the same/similar work was done several years prior. I am satisfied that the Landlord relied on the findings and recommendations set out in the Thornton Tomasetti Letter, which identified the need for the work to waterproof the slabs due to prior waterproofing “prematurely wearing off” where it had been done, and the need to protect balcony slabs from deterioration after repair work was done.

II. A Capital Expenditure

27. On a careful review of the evidence including invoices, and testimony of the parties, I am satisfied that the balcony repair work completed at the rental complex was significant and meets the definition of a “capital expenditure” as set out in s. 18(1) of O. Reg. 516/06 as the work was a significant replacement, the expected benefit of which extends for at least five years.

III. Structural Integrity and Units Without Balconies

28. The Landlord submits that the balcony repairs are “eligible” under s. 126(7)(a) of the Act as it is necessary to protect or restore the physical integrity of the residential complex or part of it.

29. The Tenants asked Mr. Maschke about whether the bricks, being a veneer to the building, provided structural support to the building including whether the

balconies rested on the outriggers impacting the structural integrity of the building.

30. Mr. Maschke testified that the bricks “act as a skin” to the building and that the building would not be maintainable or safe without the veneer bricks, being essential to protect the structure within. He testified that the failure to maintain the outriggers, being connected to the building, would have an impact on the interior structure as well and that the waterproofing provides an impermeable surface to protect against rusted metal, expansion of the concrete, and chunks of concrete breaking out.

31. The Landlord argued that the brickwork and outriggers are just one element of the building envelope, acting as a skin and supporting the structural elements of the building as described by Mr. Maschke.

32. The Tenant, Sinthea Chowdury – Unit 603, testified that while their balcony was renovated in June to November 2021, that there were 21 units without balconies.

33. The Landlord addressed the case law cited by the Tenants in their book of authorities. Specifically, the Landlord addressed CEL-82065-18-AM 2021 CanLII 150791 (ONLTB), noting that the decision does not say that balcony work is an independent element of the building, but rather notes that the Member in that decision says, at paragraph 5, that the engineering estimates did not make a link between the balcony repairs and waterproofing repairs and the overall building envelope, and that he could not make an inference, based on lack of information, of a link where none was reported. The Landlord argues that in this case, we have the testimony of Mr. Maschke, supporting that the work was related to the structural integrity of the residential complex.

34. The Landlord argued, citing several decisions, that balconies are considered part of the structural integrity of the residential complex such as in SWL-142446 where some windows were done, but not all, but were considered part of the building envelope and costs were spread across the building. The Landlord referenced SOL-49262-14 where a roof was replaced on one building of the residential complex and not on two but was considered part of the structural integrity of the residential complex. The Landlord argued that the decisions they cited were in keeping with findings that the cost of the work to the balconies should be spread across all units, first because the work is part of the structural integrity of the complex, and second because it would be unfair to impose the costs on only those who happen to have balconies in the residential complex.

35. The Tenants argued that this capital expenditure should not affect units not having balconies as they do not form common areas of the building. They argued that s. 26(6) of O. Reg. 516/06 which provides that the Board must determine which capital expenditures affect the unit themselves. They submit this excludes the units not having balconies. They argued that no waterproofing was done to the internal building envelope and that waterproofing to the balconies does not mean that this work should be considered part of the internal building envelope of the building despite being connected to it. They cite CEL-82065-18 in support of the proposition that the balconies don't form part of the common areas of the building. They argue that the waterproofing contributed to the balcony slabs themselves and not the integrity of the building and therefore the costs should not be spread across all units.

36. I am satisfied that the brick exterior of the building, as described by Mr. Maschke, functions as "skin" to the building, protecting the building envelope including the structure underneath against outside elements acting on the building. Likewise, the balconies are connected to and a part of the structure of the building – as testified to, they sit on outriggers which are connected to the building. It stands to reason therefore, that deterioration of the outriggers would impact on the structural integrity of the building and have serious implications for the structural integrity of the balconies themselves.

37. Members are not bound by the decisions of other Members. However, I do not find the case cited by the Tenants, CEL-82065-18, to be helpful because the Member in that case pointed to the evidence before them, being engineering reports, and their inability to make a link between the balcony repairs/waterproofing and overall building envelope. In this case, the testimony of Mr. Maschke and evidence does support a finding that the balconies are connected, by way of outriggers, to the building structure. Given the plain reading of the s. 18(1) of O. Reg. 516/06, the elements contiguous with the structure contribute to the to the physical integrity of the complex as a whole. Despite the fact that one or more units do not have balconies, the work protects the physical integrity of the residential complex and their units are part of the residential complex. In keeping with Guideline 14 of the Board's Interpretation Guidelines the rent increase will be applied to all the units in the complex.

38. The application reflects that the Landlord did not receive any rebates or government grants for this capital expenditure.

39. Therefore, the cost of this capital expenditure is $354,194.00.

40. The Landlord submits that the useful life of this capital expenditure is 12 years.

Oral Testimony and Written Submissions – Maintenance

41. The maintenance issues raised by the Tenants at the hearing concern pest infestation in the rental units and laundry room cleanliness and venting issues. The oral testimony and submissions of the parties on these issues are summarized below.

I. Pest Infestation - Oral Testimony

42. The Tenants, Vesna Plazacic - Unit 208, Laura Ann Gibson – Unit 501, Simon Fielder – Unit 204 testified about maintenance issues at the residential complex. They submit that these maintenance issues warrant the dismissal of the Landlord's application as they believe these issues to be serious and ongoing breaches of the Landlord's maintenance obligation. They testified to the following maintenance issues:
    a. Tenant's second evidence document entitled "T6 Application" – Exhibit 4 – a letter from Unit 208 concerning cockroach infestation and noises from their refrigerator to the Landlord.
    b. Tenant's second evidence document entitled "T6 Application" – Exhibit 5 – the Notice to Tenants about in unit pest treatments.
    c. Ongoing pest infestation in units – cockroaches, mice, and house centipedes.
    d. Work done under kitchen sinks where section of wall was removed and not replaced, allowing access to pests.
    e. Pests damaging appliances and/or leaving them in an unsanitary condition.

43. The Tenant, Vesna Plazacic - Unit 208, testified that they reported the cockroach issue in their unit to the Landlord in 2012 but that the Landlord took no action to address the issue until 2014 when the Tenant raised the issue again to the Landlord. The Tenant testified that in 2014 the Landlord treated their unit with gel and that over the past 11 years the cockroach issue has persisted but that, prior to the hearing, they notified the Landlord of the issue and that the Landlord took steps to treat their unit.

44. The Landlord noted that a number of Tenants rental units were listed as having pest infestation issues in the Tenant's evidence package, but noted that the Tenant, Laura Ann Gibson – Unit 501, was not noted as one of the units with pest infestation issues.

45. The Tenant, Laura Ann Gibson – Unit 501, testified that they did not have a current pest infestation issue in their unit, but that others reported to them that they had pest issues in their units.

46. The Tenant, Simon Fielder – Unit 204, testified that they reported the pest infestation to the Landlord a few days prior to the hearing, but also a number of times prior to that. They testified that cockroaches were found in some of their appliances which were replaced.

47. A Tenant, Stephanie Fung – Unit 509, testified about pest issues in their rental unit. After their testimony, the Landlord raised that this Tenant is not a party to this application and argued that the issues raised by the Tenant, Stephanie Fung – Unit 509, were related to their rental unit only and that therefore, their evidence is not relevant to the proceeding. The Tenants argued that the testimony of Stephanie Fung – Unit 509 supports that the pest issue is a building wide issue. As set out at the hearing, I held that the testimony of the Tenant's witness, Stephanie Fung – Unit 509, was repetitive of the same pest issues already raised by other Tenants who gave testimony at the hearing and as such, their testimony was not necessary.

II. Pest Infestation – Post-Hearing Written Submissions

48. The Landlord submits, with copies of Work Orders submitted by Simon Fielder – Unit 204, that the Tenant made a number of requests to the Landlord concerning cockroaches or mice to which the Landlord responded within one week to ten days. The Landlord submits that the Tenant gave testimony that their appliances required replacement due to pests, but that this was false since the Landlord's records indicate that the Tenant requested their replacement due to age and frequent breakdowns.

49. The Landlord submits that they did not own the property in 2012 at the time the Tenant, Vesna Plazacic - Unit 208 reported pest issues, and therefore cannot make submissions about that issue (See Schedule B in the Landlord's submission). They argue that the Tenant's testimony that a building wide cockroach issue existed in 2014, where treatment was done in September 2014, does not further the Tenant's argument that the Landlord is in serious breach of

their maintenance obligations. They submit that over the course of eight years, the Tenant submitted four work orders relating to cockroaches in their unit and that the Landlord responded each time, arranging for their third-party pest control to address their unit or the issue affecting a block of neighboring units as well as their unit.

50. The Landlord submits that the latest report submitted by the Tenant, Vesna Plazacic - Unit 208, was addressed in early November, two days after reported by the Tenant. The Landlord submits that they conducted a full building spraying on November 28, 2025, but that the Tenant advised that they would be away and so the Landlord arranged for follow-up treatment to their unit on December 12, 2025. They submit that a number of Tenants denied access to the pest control company to carry out the treatment which makes it difficult to eradicate the issue which may ultimately affect neighbouring units (See Schedule C in the Landlord's submission).

51. The Landlord takes issue with the testimony of Laura Ann Gibson – Unit 501 that they spoke with other Tenants who advised them that they had cockroaches, mice, and centipedes in their unit. They argue that this testimony should not be accepted, as no specific information about the experience of other units was provided and the Tenant themselves testified that they had no pest issues.

52. The Landlord submits that they maintain a regular monthly contract with Epic Pest Control (formerly Green Thermal Solutions), since 2022, which continues to provide pest control services to the property. The Landlord submits that the pest issues were not part of a single incident but rather several separate incidents where the Landlord addressed concerns when they occur. The Landlord relies on the test for serious breach set out in *Onyskiw v. CJM Property Management Ltd., 2016 ONCA*. They submit that the test is whether the Landlord has taken reasonable actions to address the issue under the circumstances, which they submit has been done with respect to the pest issue in the buildings.

53. In reply, the Tenants submit that Schedule D to the Landlord's submissions, contained a report on the pest control treatment from November 28, 2025, which provides evidence of a serious and ongoing issue with pest control in the building. They submit that the Tenants of the residential complex have been forced to manage pest control themselves, including filling in cracks and holes that contribute to the ongoing pest problems, because the Landlord has failed to implement a thorough and effective response including sealing cracks.

54. In reply, the Tenants submit that Tenant, Simon Fielder – Unit 204, has dealt with multiple mice and cockroach infestations and that the issue persists. They submit that the Landlord’s pest operator stated that further action needs to be taken to address the cockroach issue. They submit that Simon Fielder – Unit 204’s testimony was not a claim that the appliances needed to be replaced due to infestation but clarified that the Tenant notified the property manager that the appliances had issues but that when they observed cockroaches in the front window of their microwave, that they no longer used it due to sanitary issues. They submit that the property manager indicated the Landlord would investigate the issue (See Tenant’s Exhibit 13).

55. In reply to the Landlord’s submissions about the cockroach treatment of the Tenant, Vesna Plazacic - Unit 208, the Tenants submit that the Tenant did not refuse pest control but wanted to be present when the pest control treatment was going to be done. The Tenant’s submit that the pest control technician was rescheduled to December 18th, 2024 and then a follow-up treatment to be done on January 15, 2026. The Tenants submit that the infestation in Unit 208 is evidence of a serious, ongoing problem.

56. For clarity, I see nothing in the Landlord’s submissions which alleges that the Tenant refused treatment, but rather, the Landlord’s submissions appear to be consistent with the Tenant’s submissions that treatment was delayed, as agreed at the Tenant’s request, so that the Tenant could be present when the treatment was done.

57. The Tenants submit that the Landlord failed to coordinate with the pest control firm in November of 2025 so that all units could be accessed for treatment due to a number of reasons including that the security guard could not open the door to some units, and some Tenants opted out due to safety concerns for pets due to the chemicals used.

58. The Tenants argue that the repeated infestations of mice and cockroaches over years support that the prior treatments were insufficient to fix the problem, and that it is not sufficient that the Landlord merely respond, but that they must effectively address and resolve the issue. They submit that this amounts to a serious breach of the Landlord’s maintenance obligations and seek dismissal of the Landlord’s application.

59. In reply, the Landlord submits that the suggestion that the pest treatments to the residential complex were ineffective was not accurate and that their unrefuted

evidence was that there were five work orders over nine years from Tenant, Simon Fielder – Unit 204, where the Landlord promptly responded by sending the professional pest control company to carry out a treatment which they submit was successful. They argue that the treatments undertaken in 2024 and 2025 to address two sitings of pests each year were successful but likely recurred due to outside influences as suggested by the pest control company.

60. In reply to the Tenants reply submissions about pest issues experienced by the Tenant, Vesna Plazacic - Unit 208, the Landlord submits that on December 18, 2025, the pest control company did not find any activity in the kitchen or bathroom which were the areas of concern and recommended a follow-up inspection in four weeks. The Landlord submits that they responded on each of the four occasions for this rental unit where a Work Order was received over eight years. They submit that this suggests the treatments previously undertaken were successful at eliminating the pest issue at that time and that the most recent treatments indicate that the Landlord was not in serious breach of it's obligation to maintain the unit. Finally, the Landlord included in their reply the reports prepared by Epic Pest Control for the follow-up treatments undertaken in December 2025 and on January 5th, 2026.

III. **Laundry Room Cleanliness and Venting – Oral Testimony**

61. The Tenant, Laura Ann Gibson – Unit 501, testified about maintenance issues in the laundry room of the residential complex. They submit that these maintenance issues warrant the dismissal of the Landlord's application as they believe these issues to be serious and ongoing breaches of the Landlord's maintenance obligation.

62. The Tenant, Laura Ann Gibson – Unit 501, testified that there are venting issues, lint and debris in the laundry room, machines are dirty with pet hair, mold, and rust, and condensation into the floor creating a tripping/falling hazard. The Tenant submits that they made requests to the Landlord to address laundry room issues in Exhibits 10, 11, 13, 14, 19 of the Tenant's T6 Application evidence document. Photographs of lint and dust in the laundry room Exhibit 12 and dirt, rust, and debris in the laundry machines in Exhibit 18 and 20 of the Tenant's T6 Application evidence document.

63. The Tenant, Laura Ann Gibson – Unit 501, testified that they were unsure of whether the laundry room venting issue was addressed by the Landlord at the time of the hearing, but that they believed it to be a serious and ongoing issue. The Tenant testified that they were unsure as to whether the condensation on the

floor of the laundry room was ongoing in that they did not know if there was condensation on the floor at the time of the hearing. The Tenant testified that the laundry room machines were owned by Coinomatic but believed the Landlord is responsible to upkeep the machines and the laundry room. The Tenant testified that currently, to the best of their knowledge, the machines in the laundry room were currently operational.

IV. Laundry Room Cleanliness and Venting - Post Hearing Written Submissions

64. The Landlord submits that Coinomatic owns the laundry machines and therefore, the Landlord is not responsible for their maintenance. However, they submit that they hired an individual whose sole responsibility is to clean this property. This person works five days a week, Monday to Friday and they do a general check of the laundry room daily to ensure no serious problem exists. They submit that the condition of the laundry machines flows from the use of the machines by other Tenants who leave the machines in a dirty condition after their use. They submit that the Landlord would have to have the cleaner clean the machines after every use to address the expectations of the Tenant, Laura Ann Gibson – Unit 501. Further, they submit that the cleanliness of the laundry room is also a responsibility of the Tenants not to cause undue damage by willful or negligent conduct per s. 34 of the Act.

65. The Landlord submits that the Tenant, Laura Ann Gibson – Unit 501, submitted ten Work Orders in the past six years, but noted that three of these Work Orders were submitted the same day with a notation from the Tenant that it was their intent to file a T6 Application with the Board (See Schedule E n the Landlord’s submission). They submit that the Work Orders related to broken washing machines or dryers, and issues with the exhaust vents and that the Tenant had contacted Coinomatic to address the problems with the machines. The Landlord submits, that notwithstanding that Coinomatic is responsible for maintaining the machines in good condition, that the Landlord assisted the Tenant by following up on the Tenants’ behalf to request that the repairs be completed.

66. The Landlord submits that in response to the Work Orders pertaining to the blocked vents, they retained a cleaning service to clear the vents which were blocked. They submit that they subsequently retained Capitol Carpet & Cleaning Services Inc. to provide regular quarterly visits to the building to clear the vents to ensure that the buildup would not recur (See Schedule F in the Landlord’s submission).

67. In reply to the Landlord, the Tenants submit that the Landlord is ultimately responsible for providing and maintaining the laundry facilities as an amenity provided by the Landlord and that the Landlord is in serious breach of their responsibility to maintain the laundry facilities. They submit that the Laundry room, being open from Monday to Sunday, should be kept reasonably clean with machines in proper working order during operating hours and that it is unfair to suggest that Tenants should avoid doing laundry on the weekends to compensate for the Landlord's failure to maintain the laundry room. The Tenants submit that there is no evidence that there is any routine cleaning of the interior of the machines in the laundry room even if there is a cleaner who comes by and empties the laundry room garbage. They submit that the state of the interior of the laundry machines is not caused by individual Tenants, but the insufficient cleanings and irregular maintenance.

68. The Tenants submit, in Exhibit 3 to their reply, that the Tenant, Laura Ann Gibson – Unit 501, submitted a request to the Landlord on December 22, 2025 regarding mold and rust in the washing machines. They submit that Exhibit 3 shows visible rust and mold which can cause adverse health reactions. They submit that this presents a clear health and safety risk to all Tenants and the Landlord must ensure that the laundry room is free from harmful mold.

69. In reply, the Tenants submit that the blocked dryer vent is a "longstanding" and dangerous issue and that the Tenant, Laura Ann Gibson – Unit 501, submitted a Work Order on April 24, 2024 concerning the blocked vent and pooling of water behind the machines which was later marked "closed" on April 29, 2024. They submit that the vent cleaning was not done until September 10, 2024, five months later. The Tenants submit that both Tenants, Vesna Plazacic - Unit 208 and Laura Ann Gibson – Unit 501 made later reports to the Landlord concerning the water pooling and venting issues (See Tenant's Exhibits 5-8) but that despite the Landlord's efforts to clean, poor ventilation remains in the laundry room. They submit that on December 29, 2025 the Tenant, Laura Ann Gibson – Unit 501, inspected a dryer issue discovered by another Tenant in the Laundry room which was reported to the Landlord and found that the venting hose from one of the dryers was disconnected which was also reported to the Landlord. The Tenants submit that the ongoing cleanliness, mold, water pooling, and venting issues in the laundry room amount to a serious breach of the Landlord's maintenance obligations.

70. In reply, the Landlord submits that they agree that the cleanliness of the laundry room and machines are the responsibility of the Landlord, but that the operation

and repair of the machines is the responsibility of Coinomatic. The Landlord submits that the weekly cleaning, excluding weekends, and random checks by the property manager to ensure the cleaning is done are reasonable actions taken by the Landlord. The Landlord submits their own photographs showing the cleaned laundry machines in contrast to the submissions of the Tenants including their photographs of dirty machines. They argue that the photographs are evidence supporting a snapshot in time that show the condition of the machines in the moment. Further, they submit that dirty laundry machines do not rise to the level of a serious breach. They submit that the T6 Application filed by the Tenant is more appropriate concerning these issues notwithstanding that they disagree that the Landlord has failed to maintain.

71. In reply, the Landlord submits that there is no evidence to support that the dirt in the machines is in fact mold and a health risk. They submit that they advised Coinomatic that the machines are old and have requested their replacement.

72. In reply, the Landlord submits that the Tenant's submission that the April 24, 2024 Tenant report of blocked venting in the laundry room was not addressed until September 10, 2024 is not correct. They submit that they forwarded the Tenant's email to Capitol Cleaning on April 25, 2024 asking that they look into the issue and a Capitol Cleaning representative attended the building on the same day and determined that the vent had clogged again after a cleaning on March 4th and cleared the line. They submit that this is why the Work Order was closed on April 29 and enclosed email correspondence between the Landlord and Capitol Cleaning on April 25, 2024.

73. In reply to the Tenant's submission about an instance of smoke billowing out of one of the dryers on December 29, 2025, the Landlord submits that they reached out to Capitol Cleaning who attended the building on January 2, 2026 and confirmed that the bracket that secures the hose was in their opinion, was likely tampered with since in order for the bracket to come loose, the dryer vent had to have been moved as the vent is secured behind the machine. They submit, with email correspondence between the Landlord and Capitol Cleaning, that Capitol Cleaning secured the bracket and added tape for additional security which should be sufficient as long as the machines are not moved.

V. Concluding Arguments

74. The Landlord relies on the decision of the Court of Appeal, *Stephos Management Services v. McGregor*, 1993 CarwellOnt 3655. They submit that the Court in that case acknowledged that apartment complexes in Ontario commonly experience

cockroaches since they provide hiding places, warmth, food and water to survive. The Landlord submits, that the decision also sets out that most other apartment complexes, have contracts with pest control companies to keep cockroaches and other pests under control and that the residential complex in this case is no different. The Landlord submits that the Court in the decision noted that the tenant is also responsible for ordinary cleanliness of the rented premises and confirms that while it is the Landlord's responsibility for providing and maintaining the rented premises in a good state of repair and fit for habitation, if the Landlord takes all necessary and reasonable steps to address the concerns, they have fulfilled their obligation as set out in paragraph 15 of that decision. Finally, the Landlord submits that the findings of the Ontario Court of Justice were adopted in a decision of the Board, TST-98508-18, where the Member confirmed at paragraph 11 that "The mere presence of pests in a rental unit, although problematic, will not automatically give rise to a finding that the landlord has breached its maintenance obligations under s. 20.".

75. The Landlord submits that the tests set out in *Puterbough v. Canada (Public Works and Government Services), 2007 CarswellOnt 2222,* support that the issues raised by the Tenants in this case do not meet the test of a serious breach with respect to the severity of the health and safety risk and that the Landlord has demonstrated that they acted to deal with the deficiency in a reasonable period of time. They submit that when asked at the hearing, the Tenants all stated that the matter was ongoing and recurring, but that no evidence was provided that these issues were current at the time of the hearing.

76. The Landlord submits that they reviewed all of their records and could not find one Work Order submitted by the Tenants that had not been addressed at the time of the hearing.

77. The Landlord relies on *Puterbough v. Canada (Public Works and Government Services)*, cited above, where the court found that the threshold test is not whether there was a breach, but whether the breach was serious. They submit that the decision confirmed that consideration should be given to the fact that the term "serious breach" means more than the rental premises is in poor condition and in need of significant work. While the finding in that decision was made in the context of s. 24-46 of the *Tenant Protection* Act, the Landlord submits that the findings are equally relevant in the context of s. 126(12) of the Act since in both cases, the sections are intended to provide relief from the intended purpose of the application.

78. The Landlord submits that in deciding whether a sought Order should be delayed or dismissed, the bar should be high and not limited to whether the Landlord breached their obligation to maintain, even if they remedied the issue. They argue that the acceptance of a low bar would render the Landlord's ability to recover eligible capital expenditures incurred impossible. The Landlord submits that the decision established additional tests such as the length of time during which a deficiency existed, the absence of any effort on the part of the Landlord to deal with the deficiency and the severity of the health and safety risks produced by the deficiency.

79. The Tenants submit that the Landlord has focused their submissions narrowly on the isolated work orders and response times. They instead argue that the Landlord has failed to address a broader pattern of recurring maintenance deficiencies including pest and common area issues. They submit that this broader pattern, taken together, demonstrates the Landlord's ongoing failure to maintain the residential complex in a good state of repair.

VI. Findings

80. In deciding whether the testimony, evidence, and submissions of the Tenants support a finding under s. 126(12) of the Act warranting a denial or dismissal of the Landlord's application, two questions must be answered, which are as follows:
    1. Are the maintenance issues raised, *a serious breach* [emphasis added] of the Landlord's maintenance obligations under the Act?, and
    2. Are the maintenance issues raised, *ongoing at the time of the hearing* [emphasis added] of the application?

81. The testimony, written submissions, and evidence of the Landlord and Tenants supports that there have been pest issues within the residential complex, that those issues have been reported to the Landlord, during their ownership of the complex, that the Landlord contracted Epic Pest Control to carry out pest control treatments, and that after each reported pest issue testified to, the Landlord engaged their pest control company to carry out treatments to the unit(s). The evidence supports that in most cases, after treatment was conducted, the Tenant(s) did not report a pest issue to the Landlord until some time after the treatment was done, in which case the Landlord would re-engage with their pest control company to carry out further treatment. In other cases, the evidence supports that the pest control company identified that further follow-up treatment would be required for some units and/or a block of neighbouring units.

82. I agree with the argument of the Landlord that the acceptance of a low bar, meaning a “breach” of the Landlord’s maintenance obligations, would render the Landlord’s right under s. 126(1) to recover eligible capital expenditures incurred impossible. Similarly, the Tenant’s argument that the Landlord’s application should be dismissed because there is a “broad pattern” of maintenance deficiencies would render the Landlord’s right under s. 126(1) to apply to the Board for eligible capital expenditures meaningless. This is because in enacting s. 126(13) of the Act, permitting delay or dismissal of the Landlord’s application for an above guideline rent increase, the Legislature specifically chose the word “serious” to describe the breach meaning that the test to be met is higher than a “breach” of s. 20(1) alone, and “ongoing” to describe the status of the breach at the time of the hearing. If it were sufficient that a Tenant establish a “broad pattern” of maintenance deficiencies to support dismissal of the Landlord’s application, that would also represent a lower bar than the Legislature intended, given the words chosen in s. 126(13).

83. While a pest issue, such as the presence of cockroaches in a rental unit or a residential complex, is a maintenance issue and could be considered a breach, I am not satisfied that the issue, rises to the level of a serious breach of the Landlord’s maintenance obligations such that it would trigger the dismissal of the Landlord’s application. There was insufficient evidence put forward to support that the pest issue, was “serious”. It is not unusual for cockroaches to move between units in multi-unit buildings and to reside in areas favourable to their survival, such as units where pest sightings are not reported to the Landlord and/or where treatment is not carried out at the request of a Tenant. The testimony and written submissions of the parties supports that some Tenants residing in the complex refuse access to their unit for treatment because of a number of reasons including the concern for chemicals used and the presence of pets in the rental unit. The evidence supports that each time a pest issue was reported to the Landlord, the Landlord acted reasonably, promptly engaging their pest control company to carry out treatment and any follow up treatment as needed, including considering the request from at least one Tenant to delay treatment so that they could be present at the time of treatment.

84. Likewise, while laundry room cleanliness and venting can be considered a maintenance issue, I am not satisfied that these issues rise to the level of serious breaches of the landlord’s maintenance obligations. While there were claims of mold in the washing machines, there was no evidence before me to support that the images tendered into evidence were in fact mold and not dirt or some other staining in the machines. The Landlord acknowledged the venting issues

identified and the steps they have taken to address the issues each time including the most recent incident.

85. Subsection 126(12) of the *Act* refers to serious, ongoing breaches of the Landlord’s maintenance obligations. As set out above, I am not satisfied that maintenance issues raised by Tenants, even if they remain outstanding, would rise to the level of a serious breach of the Landlord’s maintenance obligations. A disrepair problem that is not “serious” as that term is used under the Act is not relevant to these proceedings. However, the Tenant(s) is entitled to file their own applications at the Board in respect of these issues.

VII. Reconciliation Period

86. The Landlord requested a reconciliation period of 4 months from the date of issuance of the decision. The Tenants requested a reconciliation period of 6 months from the date of issuance of the decision.

87. Pursuant to subsection 205(2) of the Act, given that this order will issue more than three months after the first effective date of the above guideline rent increase herein, I am permitting the Tenants, to pay any amounts owing to the date of the order in 5 monthly installments starting 30 days from the issuance date of this Order.

88. As always, if the Landlord is amenable to a longer repayment plan for those Tenants facing financial hardship that remains within the Landlord’s discretion.

89. The weighted useful life for the capital expenditures is 12 years.

90. The first effective date of the rent increase above the guideline is February 1, 2023.

It is ordered that:

1. The Landlord may increase the rents charged by 4.38% for the units set out in Schedule 1.
2. The percentage increase set out in paragraph 1 is to be taken as follows:
    a. The Landlord may increase the rents charged by 3.00% within the time period of February 1, 2023 to January 31, 2024; and
    b. The Landlord may increase the rents charged by 1.38% within the time period of February 1, 2024 to January 31, 2025.

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. The Landlord shall pay to the Tenants any sum of money that is owed as a result of this order within 60 days of the date of this order.
5. The Tenants shall pay any amount owing to the Landlord as a result of this order in 5 monthly installments, beginning 30 days from the issuance date of this Order.

April 9, 2026
Date Issued

Luciella Longo
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 3 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 - Units affected by this Order:

77 Spencer Avenue, Toronto, Ontario, M6K 2K4

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Schedule 2 - Tenants who are Affected by this Order:

Adeokun, Damilola
Brazda, Thomas
Canadian Mental Health Association
Carr, Laura
Celestino, Teodoro
Chowdhury, Sinthea
Coskun, Sevim
Cote, Braden M
Draycott, Chantalle
Fielder, Simon
Gibson, Laura Anne (Annie)
Hamidya, Talayeh
Hardy, Jake
Hua, Men
Hutchinson, Eirik
Huus, Kristin
Irwin, Steven
Keen, Brandon
Khaladzhi, Anzhelina
Klebuc, Irena
Lukezich, Joseph
Moreno, Tomasa Mercedes
Morgan, Icilda
Nemeth, Zoltan
Nguyen, Leduy
Noukeu, Kevin
Oh, Shelley
Plazacic, Vesna
Prince, Kira
Rintala, Raila
Schroeder-Camara, Leticia
Sinanan, Samantha
Therriault, Michael
To, Lynn
Vicente-Policarpo, Sandra
Walsh, Kathryn

Schedule 3 - 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.