



**Order under Section 126
Residential Tenancies Act, 2006**

Citation: 7869908 Canada Inc v SHERK, 2026 ONLTB 29237

Date: 2026-04-16

File Number: LTB-L-008638-23

In the matter of: 780 Elm Street, Port Colborne, Ontario, L3K 4R4

Between: 7869908 Canada Inc

Landlord

And

Refer to attached Schedule 2

Tenants

7869908 Canada Inc (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.

This application was resolved by a written hearing. No submissions were received from the Tenants.

The Certificate of Service filed by the Landlord on December 7, 2025, 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: 102, 106, 212, 317, 319, and 321.

Preliminary Matters

Request to Amend First Effective Date

In response to a deficiency letter issued by the Board on January 17, 2025, the Landlord requested to amend the first effective date from April 1, 2022 to April 1, 2023.

In accordance with Rule 15 of the Board's Rules of Procedure, in determining whether to grant the request to amend, the Board must consider whether the amendment was requested as soon as the need was known, any prejudice a party may experience, and whether the amendment was necessary. Having regard for all the circumstances, I find it appropriate to grant the Landlord's amendment request.

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 July 1, 2021 to January 1, 2023.
- 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.

Capital Expenditure

- 9. The Landlord justified a rent increase above the guideline because of capital expenditures.
- 10. The rent increase above the guideline because of capital expenditure is not the same for all of the affected units. The maximum rent increase above the guideline is 4.44%, but the increase is lower for Tenants who have moved into their units more recently or who are not affected by some of the capital expenditures. See Schedule 3 for the unit specific increases.
- 11. The Landlord's application is for the following capital expenditures:
 - a. Fire and New Handicap Doors
 - b. Balcony Repairs
 - c. New Boilers and Storage Tanks
 - d. Floor Repairs Main Corridors
 - e. Replace Walk Out Doors - All Units
 - f. Repairs To Railings and Painting
 - g. Completion And Painting of Balconies

Capital Expenditure #1: Fire and New Handicap Doors

- 12. The Landlord submits that the fire and new handicap doors project was necessary "to automatically open and close doors and replace defective fire doors". The scope of the work involved replacing the original doors. The Landlord submits that this item is "eligible" under subsection 126(7)(b) as the work was necessary to comply with subsection 20(1), and subsection 126(7)(d) as it provides access for persons with disabilities. The cost claimed in this capital expenditure is \$9,169.57.

Units Affected

13. The Landlord has indicated that the capital expenditure should not apply to units 101, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items. The Board requested additional information from the Landlord to determine why certain units were not included.
14. In their response, the Landlord submits that “the units that are ‘not covered’ have been listed as such for one of 2 reasons:
 1. The tenants occupied the unit after the capital expenditures were incurred, so, their rent would have already reflected the cost of the improvements; or
 2. The unit was vacant at the time of filing”.
15. While I appreciate the Landlord’s clarification, the key consideration for the Board is whether a unit is “affected” by a capital expenditure. All affected units are included in calculating the overall above guideline increase, however the apportioned increase applies only to the units covered in the application. The rules set out in section 26 of the O. Reg. 516/06 apply to the Board in making findings relating to capital expenditures. Subsection 26(6)(1) states:

For each rental unit that is subject to the application, the percentage rent increase that is justified by capital expenditures shall be determined in accordance with the following rules.

 1. Determine which capital expenditures affect the unit. [Emphasis added].
16. As the installation of automatic door openers and new fire doors improves accessibility for persons with disabilities throughout the entire complex, and as these upgrades are necessary to ensure compliance with applicable housing standards for the complex as a whole, I find that in keeping with the scheme of the Residential Tenancies Act, 2006 (the ‘Act’), it is appropriate to include all the units in calculating the above guideline increase. The apportioned increase granted will only apply to those units covered by the application.
17. Given the uncontested evidence, I am satisfied the fire and new handicap doors meet the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant repair and replacement, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsection 126(7)(b) as the work was necessary to comply with subsection 20(1), and subsection 126(7)(d) as it provides access for persons with disabilities.

18. The cost of this capital expenditure is \$9,169.57.

19. The useful life of this capital expenditure is 20 years.

Capital Expenditure #2: Balcony Repairs

20. The Landlord submits that the balcony repairs were necessary as the “balconies are old and part of original building (over 30 years old) required repairs”. The scope of work involved repairing concrete patios and balcony restoration. The Landlord submits that these items are “eligible” under subsection 126(7)(a) as it is necessary to protect or restore the physical integrity of the residential complex or part of it. The cost claimed in this capital expenditure is \$35,369.00.

Units Affected

21. As above, the Landlord has indicated that the capital expenditure should not apply to units 101, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items.

22. Balcony repairs, much like roof repairs, might not directly involve a Tenant's specific unit, however, the overall work contributes to protecting or restoring the physical integrity of the entire complex, thus benefiting all units. Therefore, it's reasonable to distribute the costs among all units. The apportioned increase granted will only apply to those units covered by the application.

23. Given the uncontested evidence, I am satisfied the balcony repairs meet the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant repair, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsection 126(7)(a) of the Act because it was to protect or restore the physical integrity of the residential complex or part of it.

24. The cost of this capital expenditure is \$35,369.00.

25. The useful life of this capital expenditure is 10 years.

Capital Expenditure #3: New Boilers and Storage Tanks

26. The Landlord submits that the new boilers and storage tanks were necessary “to replace obsolete heating equipment”. The scope of work involved replacing the boilers and storage tanks. The Landlord submits that this item is “eligible” under subsection 126(7)(c) because it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system. The cost claimed in this capital expenditure is \$42,382.53.

Units Affected

27. As above, the Landlord has indicated that the capital expenditure should not apply to units 101, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items.
28. As the boilers and storage tanks serve the entire complex, and in the absence of any evidence to the contrary, I find it appropriate to distribute the costs among all units. The apportioned increase granted will only apply to those units covered by the application.
29. Given the uncontested evidence, I am satisfied that the new boilers and storage tanks meet the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant replacement, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsection 126(7)(c) because it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system.
30. The cost of this capital expenditure is \$42,382.53.
31. The useful life of this capital expenditure is 15 years.

Capital Expenditure #4: Floor Repairs Main Corridors

32. The Landlord submits that the floor repairs in the main corridors were necessary as the floors were “damaged during installation of [Capital Expenditure #1: Fire and New Handicap Doors]”. The scope of work involved the supply and installation of vinyl flooring. The Landlord submits that this item is “eligible” under subsection 126(7)(b) as the work was necessary to comply with subsection 20(1). The cost claimed in this capital expenditure is \$8,171.08.

Units Affected

33. As above, the Landlord has indicated that the capital expenditure should not apply to units 101, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items.
34. As the floors in the common areas are used by all units, I find that it is appropriate distribute the costs among all units. The apportioned increase granted will only apply to those units covered by the application.

35. Given the uncontested evidence, I am satisfied the floor repairs in the main corridors meets the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant repair, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsections 126(7)(b) as the work was necessary to comply with subsection 20(1).
36. The cost of this this capital expenditure is \$8,171.08.
37. The useful life of this capital expenditure is 10 years.

Capital Expenditure #5: Replace Walk Out Doors - All Units

38. The Landlord submits that replacing the walk out doors in all units were necessary as the “old patio doors (over 20 years old) leaked and did not have locks and therefore required replacement”. The scope of work involved replacing the balcony doors in all units. The Landlord submits that this item is “eligible” under subsection 126(7)(b) as the work was necessary to comply with subsection 20(1), and 126(7)(f) because it maintains or improves the security of the residential complex or part of it. The cost claimed in this capital expenditure is \$47,799.00.

Units Affected

39. The Landlord has indicated that the capital expenditure should not apply to units 101, 102, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items.
40. Given the Landlord's submission that the walk out doors in all units were replaced, I am satisfied that all units benefit. Accordingly, I find it appropriate that the costs be distributed across all units. The apportioned increase granted will only apply to those units covered by the application.
41. Based on the uncontested evidence, I am satisfied that replacing the walk out doors in all units meets the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant replacement, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsections 126(7)(b) as the work was necessary to comply with subsection 20(1), and 126(7)(f) because it maintains or improves the security of the residential complex or part of it.
42. The cost of this capital expenditure is \$47,799.00.
43. The useful life of this capital expenditure is 20 years.

Capital Expenditure #6: Repairs To Railings and Painting

44. The Landlord submits that the railing repairs were necessary as a “major repair to stairwells to fix defective railings and cracked painting”. The scope of work involved “patching and sanding on all walls, doors, and railings of 3 entrances and hallways”. The Landlord submits that these items are “eligible” under subsection 126(7)(b) because the work was necessary to comply with subsection 20(1). The cost claimed in this capital expenditure is \$10,240.06.

Units Affected

45. The Landlord has indicated that the capital expenditure should not apply to units 101, 102, 104, 214, 215, 216, 317, 322, 323, and 325. This means that the remaining units covered on the application would bear all the cost for the items.

46. As the stairwells and entrances are used by all units, I find it appropriate distribute the costs among all units. The apportioned increase granted will only apply to those units covered by the application.

47. I am satisfied that the railing repairs meets the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant repair, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsections 126(7)(b) as the work was necessary to comply with subsection 20(1).

48. The cost of this capital expenditure is \$10,240.06.

49. The useful life of this capital expenditure is 10 years.

Capital Expenditure #7: Completion And Painting of Balconies

50. The Landlord submits that the completion and painting of balconies was necessary as “part of repairs to balconies to extend life”. The scope of work involved “painting all balcony railings and ceilings”. The Landlord submits that these items are “eligible” under subsection 126(7)(b) because the work was necessary to comply with subsection 20(1). The cost claimed in this capital expenditure is \$12,430.00.

Units Affected

51. The Landlord has indicated that the capital expenditure should not apply to units 101, 102, 104, 214, 215, 216, 322, and 325. This means that the remaining units covered on the application would bear all the cost for the items.

52. As the condition of the balconies affect all units, I find it appropriate distribute the costs across all units. The apportioned increase granted will only apply to those units covered by the application.

53. I am satisfied that the completion and painting of balconies meets the definition of capital expenditure contained in subsection 18(1) of the O.Reg 516/06 as it was a significant repair, the expected benefit of which extends for at least five years. It also meets the test for eligibility under subsections 126(7)(b) as the work was necessary to comply with subsection 20(1).

54. The cost of this capital expenditure is \$12,430.00

Useful Life

55. The Landlord has assigned a useful life for this capital expenditure of 5 years. The Landlord did not provide specifics as how they arrived at that number; however, I believe they based it of Table 8: Item 18 – Exterior Painting – 5 years.

56. As set out above, if the expenditure meets the requirements set out in the Act and O. Reg. 516/06, then the Board must establish the useful life of the work done in order to calculate the allowable increase. As per Section 27(1)(1) of O. Reg. 516/06:

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.

57. Therefore, since the useful life for exterior painting is 5 years, the appropriate useful life is 10 years.

58. Accordingly, I find the useful life of this capital expenditure to be 10 years.

It is ordered that:

1. The Landlord may increase the rents charged by the percentage increases and within the time periods set out in Schedule 3.
2. The percentage increase set out in Schedule 3 may be taken in addition to the annual guideline in effect on the increase date for the unit.
3. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order within 120 days of the date of this order.

April 16, 2026
Date Issued

Andrew Laurich
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 4 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:

780 Elm Street, Port Colborne, Ontario, L3K 4R4

103

105

107

208

209

210

211

213

318

320

323

324

Schedule 2 - Tenants who are Affected by this Order:

Ann, Cindy
Cleave, Kathleen
Dayboll, Lorie
Farkas, Dennis
Fraser, Michael
Grant, Daniel
Jade, George
Mercuri, Nino
Mulkins, Andrew
Ohara, Crystal
Ohara, Mike
Sherk, Cheryl
Sherk, Gordon
Young, Michael

Schedule 3 - Ordered Rent Increase Above the Guideline**First Effective Date of Rent Increase in this Order is April 1, 2023**

The Landlord may increase the rent charged for the units affected by this order by the total percentages set out below and within the time periods set out below. These percentage increases may be taken in addition to the annual guideline in effect on the increase date for the unit.

Rental Unit Address Name	Period of April 1, 2023 to March 31, 2024		Period of April 1, 2024 to March 31, 2025			
	% inc for Cap Exp (Max 3%)	Total Increase (Excludes Guideline)	% inc for Cap Exp (Max 3%)	Total Increase (Excludes Guideline)	Weighted Useful Life	Total % for Cap Exp
103, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
105, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
107, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
208, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
209, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
210, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
211, 780 ELM STREET	3.00%	3.00%	1.16%	1.16%	15	4.16%
213, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
318, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
320, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%
323, 780 ELM STREET	3.00%	3.00%	1.16%	1.16%	15	4.16%
324, 780 ELM STREET	3.00%	3.00%	1.44%	1.44%	15	4.44%

Schedule 4 - 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 Schedule 3).

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 Schedule 3).

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.