



Order under Section 126 Residential Tenancies Act, 2006

Citation: Kondakos v Timmins, 2026 ONLTB 36436

File Number: LTB-L-006345-23

In the matter of: 89 Walter Street, Kitchener, Ontario, N2G 1S3

Between: Paul Kondakos Landlord

And

Refer to attached Schedule 2 Tenants

Paul Kondakos (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 written hearing. The Board received submissions from the following Tenant: Jennifer Lowe. A reply to the Tenant submissions was received from the Landlord.

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 31, 2021 to January 31, 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 Landlord's evidence justifies a rent increase above the guideline of 9.00%, 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, 3.00% in the second year, and 3.00% in the third year. These increases are in addition to the annual guideline rent increase.
11. The Landlord's application is for the following capital expenditures:
 - a. Installation of New Roof;
 - b. Installation of New Windows; and
 - c. Installation of Vinyl Siding, Aluminium Soffits, Fascia, Eavestrough.

Capital Expenditure #1: Installation of New Roof

12. The Landlord submits that the installation of the new roof was necessary as the "roof was at end of life. [The] building envelope was exposed to the elements and water was leaking into the building". By way of background, the Landlord submits that "there are 2 roofs at 89 Walter Street. A shingled roof and a flat roof. The shingled roof was the one that was replaced". Accordingly, the scope of work involved replacing the shingled section of roof. 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 \$21,470.00.

Routine Maintenance or Capital Expenditure

13. The Tenant, Jennifer Lowe, submits that the work "should be considered 'general maintenance'".
14. The Landlord did not directly address this submission.
15. Subsection 18(1)(c) of O.Reg 516/06 applies to the Board in making a finding regarding whether work is an eligible capital expenditure or routine maintenance. Subsection 18(1)(c) states that an eligible capital expenditure 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.

16. Therefore, the issue for the Board to consider is whether the roof replacement is considered “routine or ordinary work undertaken on a regular basis”, such as janitorial services or general building maintenance. While I understand the Tenant’s position, having considered the infrequency, nature, scope, and cost of the work, I find that the project does not qualify as either routine maintenance or ordinary work.

Quality of the Workmanship

17. The Tenant, Jennifer Lowe, submits that “the roof has proceeded to leak, 4 times in the years since it has been replaced”. The Tenant submitted numerous photos of damaged ceilings and pooling water.
18. The Landlord, in its reply, submits that “the pictures you have shown relate to the flat roof. It has been repaired a couple of times after you had mentioned water was entering the building. However, the flat roof also appears to be at end of life and is scheduled to be replaced this spring as soon as the weather allows”.
19. Having reviewed the Tenant’s photographs, while I accept that the maintenance issues caused by the leaking roof constitute a breach of section 20(1) of the Act, these issues would not automatically disqualify the capital expenditure from being eligible. The issue for the Board to determine is whether the project was necessary to protect or restore the physical integrity of the complex. Given that neither party is contesting the necessity of the shingled roof replacement, I am satisfied that work was necessary. Regarding the damage raised by the Tenant, if it remains outstanding, the Tenant is entitled to file their own application(s) at the Board in respect of these issues.
20. Having regard for the work undertaken, I am satisfied the installation of the new shingled roof 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 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.
21. The cost of this capital expenditure is \$21,470.00.
22. The useful life of this capital expenditure is 15 years.

Capital Expenditure #2: Installation of New Windows

23. The Landlord submits that the installation of new windows was necessary as the “windows were at end of life and provided poor insulation. Old windows were drafty and often let in rain”. The scope of work involved replacing the windows in the complex. 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 \$48,590.00.

Routine Maintenance or Capital Expenditure

24. As above, the Tenant, Jennifer Lowe, submits that the work “should be considered ‘general maintenance’”.
25. Having considered the infrequency, nature, scope, and cost of the work, I find that the window replacement project is not routine maintenance or ordinary work.

26. Furthermore, pursuant to Section 18 of the Act:

“physical integrity” means the integrity of all parts of a structure, including the foundation, that support loads or that provide a weather envelope and includes, without restricting the generality of the foregoing, the integrity of,

(a) the roof, exterior walls, exterior doors and exterior windows
[emphasis added]

27. Given that the exterior windows are specifically included in the definition of physical integrity, and neither party is contesting the necessity of the work, I am satisfied that the work is eligible under subsection 126(7)(a) as it was necessary to protect or restore the physical integrity of the residential complex or part of it.
28. Accordingly, I am satisfied the installation of new windows 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 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.
29. The cost of this capital expenditure is \$48,590.00.
30. The useful life of this capital expenditure is 15 years.

Capital Expenditure #3: Installation of vinyl siding, aluminium soffits, fascia, eavestrough

31. The Landlord submits that the installation of vinyl siding, aluminium soffits, fascia, and eavestrough was necessary as the “building envelope was compromised and exposed to the elements. Old siding was falling apart and letting in wind and rain. New soffits fascia and eavestrough were required as the existing ones were compromised and in places completely gone”. The scope of work involved vinyl siding, soffit, fascia, eavestrough and downspouts. 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 \$42,375.00.

32. Given the uncontested evidence, I am satisfied the installation of vinyl siding, soffits, fascia, and eavestrough 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 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.

33. The cost of this capital expenditure is \$42,375.00.

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

Written Submissions

Lawful Rent

35. The Tenant, Jennifer Lowe, submits that the date of their rent increase in January 2023 is inconsistent with the dates set out in the application.

36. While I appreciate the issue raised by the Tenant, the lawful rent of a unit is not an issue the Board is entitled to consider in determining an above guideline increase application. However, for the benefit of the Tenant, I note that the dates the Landlord may take the increase is set out in the "General" section below. Furthermore, if the Tenant wishes to challenge the legality of any rent increase, they are entitled to file their own application(s) at the Board in respect of these issues.

37. The weighted useful life for the capital expenditures is 19 years.

General

38. The Certificate of Service filed by the Landlord on December 5, 2025, indicates that some rental units listed in the application were not served with the application and notice of hearing. The LTB 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: A and 1.

39. The first effective date of the rent increase above the guideline is May 1, 2023.

It is ordered that:

1. The Landlord may increase the rents charged by 9.00% 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 May 1, 2023, to April 30, 2024;
 - b. The Landlord may increase the rents charged by 3.00% within the time period of May 1, 2024, to April 30, 2025; and
 - c. The Landlord may increase the rents charged by 3.00% within the time period of May 1, 2025, to April 30, 2026.
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 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.

May 12, 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. Any part of the ordered increase that is not taken within the time period specified cannot be added to subsequent rent increases in subsequent time periods.
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 2.5%, for 2024 is 2.5%, for 2025 is 2.5% and for 2026 is 2.1%.

Schedule 1 - Units affected by this Order:

B
C
2
4
6

Schedule 2 - Tenants who are Affected by this Order:

Case, Bruce
Jacques, Shirley
Korroch, Christoper
Lowe, Jennifer
Morgan, Wilma

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 the 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 the 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.