Order under Section 126
Residential Tenancies Act, 2006

Citation: Koronkiewcz v Cruz, 2026 ONLTB 40293
Date: 2026-05-22
File Number: LTB-L-005375-23

In the matter of:	135 Woodward Avenue, York, Ontario, M9N 2J4	
Between:	Brigida Koronkiewcz	Landlord
	And	
	Refer to attached Schedule 2	Tenants

Brigida Koronkiewcz (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. The Board received submissions from the following Tenants: Ana Cruz, Milton Macias on behalf of Ana Cruz, and Sydney Gurklys. A reply to the Tenant submissions was received from the Landlord.

Preliminary Matters:

Request to Extend Time to Shorten Time

1. The Board received a request from the Landlord to shorten the deadline for filing the application. The request was approved on May 27, 2025, by Vice Chair Sangmuah.

Request to Remove Capital Expenditure

2. Prior to the commencement of the written hearing, the Landlord requested the Board's permission to amend the application to withdraw Capital Expenditure #3: Chimney Repair Masonry etc., Capital Expenditure #4: Exterior Window Repair etc., and Capital Expenditure #5: Driveway Repair etc.
3. I have granted this request.

Landlord's Submissions

4. The Tenant, Ana Cruz, submits that "the landlord has produced partial, incomplete evidence of the capital repairs, the invoices and the items included. The landlord's failure to produce meaningful documentation has prejudiced the tenants' ability to respond effectively".

5. I understand the Tenant’s position to be that incomplete documentation prejudiced their ability to respond. I do not accept this. As the applicant, the Landlord bears the onus of establishing whether the work was necessary, meets the definition of capital expenditure, and is eligible. An application is heard on its merits, and any deficiencies in the Landlord’s evidence would impact the strength of their application rather than the Tenants’ ability to respond. In this case, the Landlord presented the evidence they intended to rely on, and the Tenants were given the opportunity to provide evidence and make submissions to challenge the Landlord’s application. The Tenants did so, submitting multiple files. Accordingly, the application was heard on its merits.

It is determined that:

6. 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

7. 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

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

9. 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

10. 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 June 1, 2021 to December 1, 2022.

11. 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

12. 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.

13. 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>

14. The Landlord justified a rent increase above the guideline because of capital expenditures.

15. The maximum rent increase above the guideline because of capital expenditures is 1.22%.

16. The Landlord's application is for the following capital expenditures:

    a. Capital Expenditure #1 - Roofing Replacement; and
    b. Capital Expenditure #2 - Chimney Flashing Kit Replacement.

Capital Expenditure #1 - Roofing Replacement

17. The Landlord submits that the roofing replacement was necessary as the “roof was severely damaged, in a dilapidated state, and leaking”. The scope of work involved replacement of the shingled roof. The Landlord submits that this item is “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 $14,725.70.

Necessity of the Work

18. The Tenants submit that "the Landlord has failed to meet its statutory burden of proof", adding that "the Landlord's application is entirely devoid of any documentation or testimony establishing that the alleged capital repairs were necessary" and "the landlord has provided nothing more than one-line statements, no photographic evidence, no analysis by a qualified expert, and no assessment made by multiple contractors on the need for this repair".

19. The Landlord, in its reply, submitted new evidence in the form of photographs of the damaged roof, adding that "there were 2 large pine trees that sat on the roof which blocked the worst of the roof damage. There was a leak from the roof that happened on the top floor stairway plaster ceiling which was repaired". The photographs submitted by the Landlord show sections of damaged, curled, and ageing shingles.

20. As this evidence was not available to the Tenants at the time they made their submissions, the Tenants had not had the opportunity to challenge the Landlord's full evidence. In the interest of procedural fairness and natural justice, the Board issued a member endorsement form requiring the Landlord to provide the photographs to all Tenants for them to review and make submissions.

21. The Tenants, in their reply to the additional evidence, submit that "the photographs lack a reliable date or authenticity marker" adding that "the timing, location and relevance of the photographs cannot be verified". Furthermore, the Tenants, submit that "the photographs do not clearly demonstrate, beyond doubt, that there was a problem requiring repair of the roof in parts or in its entirety". The Tenant, Sydney Gurklys, adds that "it is my position that the roof replacement and chimney flashing kit replacement represent a premature capital improvement undertaken at the landlord's discretion".

22. Given the submissions above, I understand the Tenants' position to be that: the photographs relied upon by the Landlord lack a reliable date or authenticity marker; the photographs do not clearly demonstrate, beyond doubt, that there was a problem requiring repair or replacement of the roof; and that the work was premature.

23. I agree with the Tenants that the photographs themselves do not contain visible date stamps. However, the Landlord's evidence indicates that the photographs were taken on or about May 2020 and May 2022. Furthermore, while the Board cannot determine the precise date the photographs were taken, I accept the Landlord's proposition that they depict the condition the roof before it was replaced.

24. With respect to the Tenants' submission that the work was undertaken prematurely, I note that a landlord is not required to wait until a roof is actively leaking or causing damage before taking steps to address its condition. A landlord has a positive obligation to take proactive steps to ensure that the residential complex meets the requirements set out in subsection 20(1) of the

Act, which requires the landlord to maintain the residential complex in a good state of repair, fit for habitation, and in compliance with health, safety, housing, and maintenance standards.

25. In the context of an above guideline increase application, the issue for the Board to determine is whether the Landlord led sufficient evidence to establish that, prior to the roof replacement, the condition of the roof was such that it would support a finding of a breach of subsection 20(1), and that work was therefore required to maintain the residential complex in a good state of repair and fit for habitation.

26. The photographs submitted by the Landlord depict an aging roof with visible deterioration. I say this because the shingles in several areas exhibit “cupping”, meaning they are no longer lying flat but are curling at the edges. The cupping is more pronounced in certain sections, particularly along roof valleys and corners. Additionally, the aggregate surface layer of the shingles, which serves as a protective barrier, is significantly deteriorated or deteriorating in multiple sections of roof. The spacing between shingles also appears uneven and increased, which is consistent with age-related wear. Furthermore, while the Tenant characterizes the black residue revealed after the removal of two pine trees as “surface staining”, I disagree. The photographs show wear well beyond staining, including cupping, loss of aggregate, and widening gaps between shingles.

27. Having considered the totality of the evidence, I am satisfied that the Landlord led sufficient evidence to establish that the shingles on the building were not in a good state of repair and that the condition of the roof would constitute a breach of subsection 20(1) of the Act. Accordingly, I am satisfied that the work was necessary to protect or restore the physical integrity of the residential complex.

Affected Units

28. The Landlord’s application indicates that the capital expenditure should not be applied to units 1A, 3, and 6. This means that the remaining units covered on the application would bear all the cost for the items. However, the Landlord later clarified that “these units were within their first year of fixed-term tenancies at the time of the application filing. As per section 120(2) of the Residential Tenancies Act (“Act”) the rent for these units could not be increased within the first 12 months of the tenancy… while these units have utilized and continue to benefit from the capital expenditures listed in the Application, they were excluded from the application because their rent increases were not eligible for consideration under the Act”.

29. 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]

30. As a roof replacement contributes to the physical integrity of the entire complex, 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.

Lack of Preventative Maintenance

31. The Tenant, Sydney Gurklys, questions “whether the deterioration was due to prolonged neglect, either by previous owners or by the current landlord’s delay in addressing the issue. Under the RTA, capital expenditures resulting from neglect or failure to maintain the building are not eligible for an AGI”. The Tenants add that “it is impossible to determine whether the work was truly a capital improvement or simply a deferred maintenance project necessitated by the landlord’s failure to properly care for the property over time”.

32. While I appreciate the Tenants’ position, even if preventative maintenance could have extended the useful life of the roof, there is a no fault component in above guideline increase applications nor does the Board have the discretion to consider the cause of the disrepair that needs to be addressed. Furthermore, I disagree with the Tenant that “capital expenditures resulting from neglect or failure to maintain the building are not eligible for an AGI”. Section 126(7)(a) of the Act specifically provides that a landlord may apply for an above guideline increase for work that is necessary to maintain the physical integrity of the complex. Members do not have the discretion to deviate from the legal tests set out above.

Proof of Payment

33. Prior to the commencement of the written hearing, the Board identified deficiencies in the Landlord’s application relating to proof of payment and issued a deficiency letter on September 22, 2025, requesting evidence of costs incurred for each claimed capital expenditure.

34. The Tenants submit that “the landlord has failed to provide adequate proof of complete payment on all items” adding that it is their position that “that this is a bad-faith application and that the landlord is rushing to show compliance with the Board rules when in fact they have not met the threshold needed for a complete AGI application”.

35. Section 22(2) of O.Reg 516/06. applies to the Board in making a finding regarding proof of payment and states that: if a landlord’s application is based on capital expenditures incurred, they must provide:

i. evidence of all costs and payments for the amounts claimed for capital work, including any information regarding grants and assistance from any level of government and insurance, resale, salvage and trade-in proceeds,

ii. details about each invoice and payment for each capital expenditure item, in the form approved by the Board.

36. Therefore, the Landlord must lead evidence to justify the cost of each capital expenditure and provide invoice and payment details in a form approved by the Board. In this case, the claimed amounts are $14,725.70 for Capital Expenditure #1 – Roofing Replacement, and $150.00 for Capital Expenditure #2 – Chimney Flashing Kit Replacement.

37. The Landlord's supporting evidence consists of:

- An invoice from BRENO Roofing showing a total project cost of $16,809.54, comprised of $14,725.70 plus HST for the roofing replacement and $150.00 plus HST for a chimney flashing kit. This invoice reflects a "Payments/Credit" of $3,991.73, and a "Balance Due" of $12,817.81.
- A credit memo dated April 1, 2022, for a 25% deposit on the roof replacement, indicating a "Balance Credit" of $3,991.73, which the Landlord states was paid through two e-transfers of $2,500.00 and $1,491.73.
- A bank statement covering May 13, 2022 – June 14, 2022, showing that $12,817.81 was paid on May 20, 2022.

38. The Tenants submit that "these pieces of evidence are contradictory and lack sufficient consistency with the initial evidence presented as proof of payment. And the tenants sustain that the landlord's evidence is false, altered to fit the needed guidelines. It should be entirely dismissed as evidence".

39. I disagree. Bank statements are routinely accepted as proof of payment in AGI applications. The Landlord's bank statement reflects that $12,817.81 was paid on May 20, 2022, one day after the invoice was issued. While the Tenants are correct at the statement does not identify the payee, the amount matches the remaining balance on the invoice, and given the timing, I find on a balance of probabilities that this payment was made to the contractor. Regarding the credit memo, it reflects a deposit of $3,991.73, which is consistent with the "Payments/Credit" noted on the final invoice. Furthermore, because the credit memo originates from the contractor, I accept it as sufficient proof, on a balance of probabilities, that the deposit was paid toward the roofing project.

40. Accordingly, based on the evidence submitted, I am satisfied that Landlord has met their obligation to provide the appropriate accompanying material and has adequately supported the amount claimed for both Capital Expenditure #1 – Roofing Replacement and Capital Expenditure #2 – Chimney Flashing Kit Replacement.

Proof of Completion

41. The Tenants submit that "the Landlord has not proven that the work was completed", however add that "the landlord has presented one proof of evidence

on this subject, a warranty by BRENO Roofing, but there is no evidence of the work done, the specifics needed, nor the quality of the work done".

42. I disagree. The Warranty Certificate is quite clear regarding the work undertaken, including a bulleted list detailing each component of the project. Furthermore, a Warranty Certificate is typically issued after the final inspection with confirmation that no outstanding issues remain. The date on the warranty certificate, May 19, 2022, also aligns with the dates of the final invoice and payment, further supporting the claim that the roofing work was completed.

43. Considering the totality of the evidence before me, I am satisfied the roof repairs 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)(a) of the Act because it was to protect or restore the physical integrity of the residential complex or part of it.

44. The cost of this capital expenditure is $14,725.70.

45. The useful life of this capital expenditure is 15 years.

Capital Expenditure #2 - Chimney Flashing Kit Replacement

46. The Landlord submits that the chimney flashing kit replacement was necessary as part of the roof repair. The scope of work involved the chimney flashing kit included in the overall roof replacement. The Landlord submits that this item is "eligible" 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 $150.00.

47. I am satisfied that the chimney flashing kit is a related piece of the roof replacement and therefore 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 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 and 126(7)(c) because it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system.

48. The cost of this capital expenditure is $150.00.

49. The useful life of this capital expenditure is 15 years.

50. The weighted useful life for the capital expenditures is 15 years.

Written Submissions

Lawful Rent

51. The Tenant, Ana Cruz, submits that the "landlords' rent roll and N1 notices are chronologically inconsistent, mathematically incorrect. The spreadsheet appears

to recycle 2022 data while the rent notices themselves contain arithmetic errors and overlapping increases".

52. For the purpose of clarity, the relevant issue regarding lawful rent in an above guideline increase application is the rent in effect on the date the application was filed, in this case, December 7, 2022. Any subsequent rent increases, whether by way of an N1 notice or otherwise, are not issues the Board is entitled to consider in determining whether a landlord's above guideline increase application is successful. If the Tenants wish to challenge those subsequent rent increase, they may do so by filing their own application(s) at the Board in respect of these issues.

53. Furthermore, in the Tenants' response to the Member Endorsement, they add that "the rent roll submitted by the landlord continues to contain errors".

54. Notwithstanding the Tenants' assertions above, the Tenants did not provide further details as to the inaccuracies. As set out above, if the Tenants wish to challenge those subsequent rent increase, they may do so by filing their own application(s) at the Board in respect of these issues.

Financial Hardship

55. The Tenant, Sydney Gurklys, submits that "For tenants on fixed or modest incomes, (including seniors and families) even a marginal increase above the guideline can mean the difference between staying housed and facing displacement". The Tenant adds that "This AGI would exacerbate housing insecurity at a time when affordable rental options are increasingly scarce".

56. The Act does not provide the Board with the authority to consider the financial impact on the tenants of an AGI when determining whether a landlord's AGI application should be granted or denied. However pursuant to subsection 205(2) of the Act where the Board makes an order for a rent increase above the guideline and that order is made more than three months after the first effective date of a rent increase in the order, the Board may permit a tenant to pay the landlord the amount owing in monthly instalments.

57. Given the facts presented by the Tenants and the increase amount, I am not satisfied that an imposed installment plan would be appropriate in the circumstances. However, given the passage of time, I do find it appropriate to allow the parties 120 days to pay to the other any sum of money that is owed as a result of this order. 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 to do so.

Benefit to the Landlord

58. The Tenant, Sydney Gurklys, submits that the Landlord is benefiting from tax savings from the capital expenditures and through an increase in the value of the complex as a result of the roof replacement.

59. While I appreciate the issues raised by the Tenant, whether or not the value of the complex has increased as a result of the work undertaken by the Landlord, or any potential tax savings are not things the Board is entitled to consider in determining whether a landlord's AGI application is successful. The Board is a creature of statute charged with applying the law as written. Section 126 of the Act specifically provides that a landlord may apply for an AGI for eligible capital expenditures.

General

60. The first effective date of the rent increase above the guideline is March 1, 2023.

It is ordered that:

1. The Landlord may increase the rents charged by 1.22% for the units set out in Schedule 1.
2. The percentage increase set out in paragraph 1 is to be taken within the time period of March 1, 2023 to February 29, 2024.
3. The percentage increase set out in paragraph 1 may be taken in addition to the annual guideline in effect on the increase date for the unit.
4. 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 22, 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 and for 2024 is 2.50%.

Schedule 1 - Units affected by this Order:

1
2
4
5
7
8
9
10

Schedule 2 - Tenants who are Affected by this Order:

Cruz, Ana
Fuller, Wilford AKA Glen
Gospel, Natalia
Gurklys, Sydney
Lionel, Dayna
Melgarejo, Rocio
Rodgers, Thomas
Travoric, Drazena

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.