

Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

All increases in rent are subject to the rules set out in the *Residential Tenancies Act, 2006* (the "RTA"). Subsection 126(1) of the RTA provides for applications to the Board by landlords for rent increases that are in addition to the yearly guideline increase a landlord may take. A landlord's application may include some or all of the rental units or a portion of the rental units in the residential complex.

Applications for above the guideline increases ("AGIs") in rent can be made in any or all of the following cases:

1. An extraordinary increase in the cost for municipal taxes and charges, an extraordinary increase in the cost of utilities or an extraordinary increase in the cost for both municipal taxes and utilities, for the residential complex or any building in which the rental units are located.
2. Eligible capital expenditures incurred respecting the residential complex or one or more of the rental units in it.
3. Operating costs related to security services provided in respect of the residential complex or any building in which the rental units are located by persons not employed by the landlord.

This guideline is intended to assist parties in understanding the law and procedures applicable to the various kinds of AGIs.

THE NATURE OF THE APPLICATION

Section 120 of the RTA requires the Minister to set the guideline for rent increases every year. The Board does not set the guideline and has no jurisdiction to increase or decrease the guideline.

The purpose of section 126 of the *RTA* is to allow landlords to apply for an increase in rent above the guideline in three specific circumstances where they have incurred expenses that are not taken into account in calculating the guideline.

Maintenance Issues:

Despite the fact that an AGI application is filed by the landlord a tenant may raise issues concerning breaches of maintenance. However, the Board is limited to considering only existing serious breaches of the landlord's maintenance obligations as set out in subsection 126(12). Further the Board is limited to the remedies that it may order if it finds that there is a serious breach. Pursuant to subsection 126 (13) of the *RTA*, if the Board finds a serious breach in maintenance it shall dismiss the AGI application with respect to the affected rental unit or make an order as provided for in paragraph (b) of subsection 126 (13), that the rent not be increased for the rental unit until the landlord makes the appropriate motion with notice to the tenant and the Board permits the increase, where the landlord has not:

- completed items on work orders related to a serious breach of health, safety, housing or maintenance standards;
- completed work, repairs or replacements ordered by the Board under paragraph 4 of subsection 30 (1) of the *RTA* and was found by the Board to be related to serious breaches of subsection 20 (1) or section 161 of the *RTA*; or
- is in serious breach of subsection 20 (1) or section 161 of the *RTA*.

The Board cannot award a rent abatement to a tenant on an AGI order.

If the tenant believes that the landlord has breached the maintenance obligations set out in the *RTA*, the tenant may file their own application about maintenance whether or not the maintenance issues are raised at the AGI hearing. For further information on tenant applications for breaches of maintenance obligation see Interpretation Guideline 5: *Breach of Maintenance Obligations* which discusses both the landlord's maintenance obligations and the types of remedies that may be awarded on the tenant's application.

3% limitation:

Subsection 126(11) of the *RTA* provides that the maximum annual increase that may be allowed in an application based on capital expenditures or security services or both is 3% above the guideline. Where an application justifies more than 3%, the rent is increased by 3% in the first year and any remaining increase may be taken in subsequent years, to a maximum of two additional years at 3% per year, according to the prescribed rules in section 33 of O. Reg. 516/06.

The 3% limitation does not apply where the application is based on an increase in the cost of municipal taxes and charges, or utilities. Where an increase is justified by these categories, the landlord may take the entire increase in the first year.

Exception for Mobile Home Parks & Land Lease Communities:

Section 167 of the *RTA* contains an exception to subsection 126(11) where a landlord incurs a capital expenditure with regard to a mobile home park or a land lease community for “infrastructure work” as defined in subsection 167(2) and section 51 of *O. Reg. 516/06*, required to be carried out by the Government of Canada or Ontario or a municipality, or an agency of any of them. In these circumstances, the Board has the jurisdiction to set the number of years over which the justified rent increase may be taken.

Charging the approved rent increase:

Where a landlord has applied for an increase above the guideline, all rules regarding notices of rent increase still apply. Where a landlord has filed an AGI and gives a tenant a notice of rent increase before the Board orders such an increase, the tenant may choose to pay only the amount that the landlord could lawfully charge, without the order. If the tenant chooses to pay a higher amount and the application is unsuccessful, or the Board orders a lesser amount, the landlord owes that tenant any amount overpaid. If the AGI is successful and the tenant has not paid the amount required by the order, the tenant owes the landlord the difference between the amount paid and the amount required by the order, provided the landlord has served a proper notice of rent increase for that amount. If the Board makes the order for an above the guideline rent increase three months or more after the FED of a rent increase, s.205 of the *RTA* allows the Board to order that any money owing by the tenant as a result of the ordered rent increase can be paid by the tenant in monthly installments over a period of no more than 12 months.

Subsection 33(2) of *O. Reg. 516/06* provides that where a landlord does not take an increase in the 12-month time period for which it is ordered, the landlord may not take the increase at a later date. The right to take that increase is therefore lost.

First Effective Date (FED) in an AGI Application:

All AGI applications must be filed at least 90 days before the effective date of the first intended rent increase that is being claimed in the application.

FILING THE APPLICATION

Because of the nature of an application to increase the rent above the guideline, much of the evidence to support the application is documentary. Section 22 of O. Reg. 516/06 provides for timely disclosure of supporting material by requiring that:

- 1) if the application is based on an extraordinary increase in the cost for municipal taxes and charges or utilities or both, the landlord must file with the application,
 - i) Evidence of the costs claimed and proof of payment of the costs, and
 - ii) Any information that effectively reduces the landlord's costs, including, but not limited to, grants, financial assistance, rebates and refunds. If the information is not available when the application is filed, the landlord continues to have an obligation to file the information, if it becomes available at any time before the hearing is completed; and
- 2) if the application is based on capital expenditures, the landlord must file with the application documentation,
 - i) on a Board approved form, details about each invoice and payment for each capital expenditure item, and
 - ii) on a Board approved form, details about the rents for all rental units in the residential complex that are affected by any of the capital expenditures,
 - iii) evidence of the costs claimed and proof of payment of the costs, including any information that effectively reduces the landlord's costs, including grants and assistance from any level of government and insurance, resale, salvage and trade-in proceeds, rebates and refunds. If that information is not available when the application is filed, the landlord continues to have an obligation to file the information, if it becomes available at any time before the hearing is completed;
 - iv) two additional photocopies of the application and the material that accompanies the application and, a compact disc containing the material that accompanies the application in portable document format (PDF). See following for exception:

Exception to iv): a landlord does not have to provide a compact disc where the residential complex contains six or fewer residential units and the residential complex is located in a rural or remote area and the landlord cannot reasonably provide the compact disc.

A Member may refuse to allow the landlord to rely on documents that were not filed in a timely manner. The result of such a refusal will often be that the landlord is unable to prove that the claimed expense was incurred.

Where an application only relates to operating costs, a landlord must also be prepared to comply with the disclosure requirements of Rule 19.2 of the Board's Rules of Practice. That rule provides that a landlord who files an AGI must be prepared to disclose at the hearing, the rent for each unit in the complex, the date the rent was established for a new tenant and the date the rent was last increased for existing tenants.

Also, subsection 126(4) of the *RTA* provides that where an application includes a claim for capital expenditures, the landlord must make information that accompanies the application available to the tenants of the residential complex in accordance with the prescribed rules. Section 23 of *O. Reg. 516/06* sets out the following rules related to the material referred to under subsections 22(1) and (2):

1. On the request of a tenant subject to the application, the landlord shall provide the tenant with a compact disc containing the material provided to the Board in PDF for a charge of not more than five dollars;
2. Instead of option one, the landlord and the tenant may agree that the landlord will provide the tenant with either a photocopy of the material for no more than the landlord's reasonable out-of-pocket costs for the photocopying or an email of the material in PDF, at no charge to the tenant;
3. Despite option one, if a landlord has not provided the Board with a compact disc, the landlord must, on the tenant's request, provide the tenant with a photocopy of the material provided for a charge of not more than five dollars;
4. If the landlord has an office in or close to the residential complex, the landlord must, during normal business hours and at no charge, make a photocopy of the material provided available for viewing by tenants subject to the application; and
5. The landlord must, in the application, inform every tenant subject to the application of the ways in which a tenant may obtain access under this section to the material.

WRITTEN OR ORAL HEARING

Pursuant to section 184 of the *RTA*, the Board generally schedules AGI applications for an oral hearing. However, section 5.1 of the *Statutory Powers Procedure Act* (the "*SPPA*") provides authority for tribunals to hold written hearings where the tribunal has made rules regarding written hearings. Rule 22 of the Board's Rules of Practice sets out the Board's procedure for written hearings.

ADJOURNMENTS

Section 21 of the *SPPA* gives the Board the jurisdiction to adjourn hearings, where it is shown that an adjournment is required to permit an adequate hearing to be held. Further guidance with respect to adjournments is pertained in Guideline #1.

As with all other applications, it is expected that applicants will be ready to proceed with the hearing on the date that is set for the AGI hearing and that respondents, properly served, will also be prepared to proceed.

The most common reasons given by parties requesting adjournments in AGI applications are that the landlord requires additional time to file documents or that the tenants require additional time to prepare for the hearing. Since section 22 of O. Reg. 516/06 requires the applicant to file all documentary evidence with the application, a hearing will not normally be adjourned in order to allow these documents to be filed. Instead, the hearing will proceed but the landlord will not be permitted to rely on the documents that were not properly filed.

Similarly, since landlords are required by Rule 10.4 to serve the notice of hearing in an AGI application at least 30 days before the date of the hearing, it is expected that tenants will have ample time to prepare for the hearing and to retain a representative. Hearings will therefore not be adjourned where tenants have not made reasonable efforts to take advantage of the time that they have had.

The Board reserves a substantial amount of hearing time for AGI applications. This resource of the Board cannot be recovered if the hearing is adjourned. Often, AGI applications involve a large number of tenants who may be inconvenienced if required to attend more than once. These factors will be considered when parties request adjournments.

In addition, a landlord seeking to file documents that should have been filed with the application, must seek leave to extend the time requirement for filing. The Member will consider the factors set out in Rule 15.6 in making that decision. Leave will not be granted where the reason for failure to file on time is purely neglect on the part of the applicant.

MEDIATION AND CONSENT ORDERS

As with all other applications, the Board encourages parties to AGI applications to settle the application with the assistance of one of the Board's mediators. The outcome of mediation can be 1) a mediated agreement, or 2) a consent order.

Where an AGI application is resolved by a mediated agreement and the application is with regard to a rental unit that is not a mobile home or a land lease home or a site for either, subsection 194(3) of the *RTA* limits the increase to an amount equal to the sum of the guideline plus 3% of the previous year's lawful rent.

It is clear that if all of the parties are in attendance and they negotiate a settlement that results in a consent order, in the absence of circumstances that render the agreement invalid, such as fraud, duress or misrepresentation, they are bound by the order. This applies even though the order is not the one that would have been made, had there been a hearing¹.

Where all of the tenants are not in attendance at the hearing, the approach of the Board is to presume that the tenants not in attendance admit the facts supported in the application. Therefore, where the application is properly filed, the tenants in attendance at the hearing and the landlord may agree to a consent order for an increase that is not greater than the evidence filed with the application would support.

An order issued on consent permitting a rent increase must specify the percentage increase that is attributed to an extraordinary increase or a capital expenditure. In the case of a rent increase due to capital expenditures the Board order must also include a date on which the rent decrease will take effect if the tenant continues to occupy the rental unit. In the case of an extraordinary increase in the costs for utilities the order must set out the adjusted base year utilities costs pursuant to subsection 29(4) of O.Reg. 516/06. These requirements flow from sections 128 and 129 of the *RTA*, which require that the landlord decrease the rent due to decreases in the costs of utilities and/or the elapse of the amortization period for capital expenditures, by the percentage increase allowed in the Board order.

¹ See the decisions of the Divisional Court in *Torgis v. Brajovic* (January 14, 2002) Brampton Divisional Court File No. 01-BN-2696, *Carlson v. Kaneff Properties* (January 14, 2002) Toronto Divisional Court File No. 176/01 [2002] O.J. No. 361, and *Berbatovci v. Crescent Village* (July 25, 2002) Toronto Divisional Court File No. 428/02.

ISSUES AT THE HEARING

(a) Taxes and Utilities

Paragraph 1 of subsection 126(1) of the *RTA* allows landlords to apply for an increase above the guideline if they experienced an extraordinary increase in the cost for municipal taxes and charges or utilities, or both, for the whole residential complex or any building in which the rental units are located.

Subsection 126(2) of the *RTA* provides that “extraordinary increase” means an extraordinary increase as defined by or determined in accordance with the regulations. Section 28 of O. Reg. 516/06 provides that an increase in the cost of municipal taxes and charges or utilities is extraordinary if it is greater than the guideline plus 50 per cent of the guideline. The Board will use the guideline for the calendar year in which the FED for the application falls. If the guideline is less than zero, any increase in the cost of municipal taxes and charges or utilities is deemed to be extraordinary.

A landlord may choose to apply for either municipal taxes and charges or utilities, or both. If the application is for only one category, the costs for the other category are not relevant. The allowance to be included in the total justified rent increase will be determined according to the rules set out in section 29 of O. Reg. 516/06.

Section 29 of O. Reg. 516/06 allows landlords to apply for an AGI based on an increase in municipal taxes and charges as a result of an appeal of a tax assessment.

Municipal taxes and charges are defined under section 2 of the *RTA* and section 41 of O. Reg. 516/06. Municipal taxes and charges include:

- taxes charged to a landlord by the municipality (which include education taxes levied under Division B of Part IX of the *Education Act*);
- charges levied on a landlord by the municipality; and
- taxes levied on a landlord’s property in unorganized territory.

However, municipal taxes and charges do not include the following:

- charges for inspections done by a municipality related to an alleged breach of a health, safety, housing or maintenance standard;
- charges for emergency repairs carried out by a municipality;
- charges for work in the nature of a capital expenditure carried out by a municipality;
- charges for services, work or non-emergency repairs performed by a municipality related to the landlord’s non-compliance with a by-law;
- penalties, interest, late payment fees and fines;

- any amount spent by a municipality to arrange for vital service for a rental unit in accordance with a vital service by-law plus an administrative fee of 10 per cent of that amount; or
- any other prescribed charges under section 41 of O. Reg. 516/06.

Utilities are defined in section 1 of the *RTA*. They are heat, electricity and water. A landlord making a claim for an AGI based on an increase in the cost of utilities must provide the cost for each of these three utility sub-categories. As a result, a decrease in cost in one sub-category will offset an increase in another sub-category. Where the landlord fails to prove the costs in all categories, the application with regard to utilities will be dismissed.

Tenants have argued that, where a landlord experiences a temporary increase in the cost of utilities, and then there is a decrease in the following year, an order based on the increase should be denied because the result is a windfall to the landlord, since the increase, once granted, is never removed from the rent. It was argued that the Ontario Rental Housing Tribunal had the jurisdiction to take this approach based on the “real substance” of the transaction, as is required by section 188 of the *Tenant Protection Act, 1997*.

The Divisional Court addressed this position in its decision in *Scott Burton et al v. Leadway Apartments Ltd²*, in which they examined section 188 of the *Tenant Protection Act, 1997* that contained similar wording to section 202 of the *RTA*. The Court ruled that the Ontario Rental Housing Tribunal did not have the jurisdiction to depart from the regulations in deciding this issue. The Court of Appeal subsequently denied a motion for leave to appeal that Divisional Court decision.

However, the *RTA* addresses situations where the cost of a utility decreases in the years following the increase order under section 126. For information on rent decreases due to decreases in utility costs see section 128 and sections 35 -37 of O. Reg. 516/06 which address rent reductions due to utility cost decreases. Such a decrease has sometimes been referred to as “costs no longer borne”.

(b) Security Services

Paragraph 3 of subsection 126(1) of the *RTA* allows landlords to apply for an AGI based on operating costs related to security services provided in respect of the residential complex or any building in which the rental units are located. Eligible costs, however, only include services provided by persons who are not the landlord’s employees. The allowance will be determined according to the rules set out in section 30 of O. Reg. 516/06.

² (August 26, 2002, Toronto Divisional Court File No. 86/02)

For the application to be allowed the landlord must prove either an increase from the Reference Year to the Base Year (see subsection (c) below) or costs incurred in this category for a new service. The service must also have been provided by persons not employed by the landlord. For example, if the superintendent provides this service in addition to his/her regular duties and responsibilities, any increases in costs will not be allowed.

(c) Accounting Periods for AGI Applications based on Utilities and Security Services

When landlords file AGI application based on operating costs for utilities or security services, they are required to provide the costs for the prescribed accounting periods. Section 19 of O. Reg. 516/06 sets out the accounting periods to be used for calculating an allowance for operating costs for utilities or security services. The accounting periods include a Base Year (BY) and a Reference Year (RY). The BY for operating costs for utilities or security services is the most recently completed 12-month period chosen by the landlord that ends 90 days before the effective date of the first intended rent increase (FED) applied for. The RY is the 12-month period immediately preceding the BY. If the landlord claims an extraordinary increase in the cost of utilities and security services, the accounting periods chosen for utilities must be the same as those chosen for operating costs for security services.

Where there is a prior *RTA* order that allowed an AGI due to an extraordinary increase in the cost of utilities or operating costs for security services, subsection 19(2) of O. Reg. 516/06 requires that the BY for a subsequent AGI application start and end on the same days as the BY in the prior order. This rule applies even if a new landlord has purchased the residential complex, or the landlord has switched the FED in the subsequent application to a different month of the year.

(d) Capital Expenditures

Paragraph 2 of subsection 126(1) of the *RTA* allows landlords to apply for an AGI if they incurred eligible capital expenditures respecting the residential complex or one of the rental units in it. The amount of a capital expenditure item and the allowance will be determined according to the rules set out in sections 16 and 27 of O. Reg. 516/06.

What May be Allowed as a Capital Expenditure in an AGI Application:

In order for a capital expenditure to be allowed in an AGI application,

- it must be eligible,
- it must meet the definition set out in the regulations

- it must have been incurred by the landlord at the time the application is filed, and
- it must have been completed within the prescribed time.

Non-Arms Length Transactions:

If a landlord incurs costs that arise from a transaction that involves related persons this would be considered by the Board as a non- arm's length transaction. In such a situation, the Board will only consider that part of the landlord's cost that is less than or equal to the cost that would arise from a similar market transaction. Section 25 of O. Reg. 516/06 defines what constitutes non- arm's length transactions.

Definition of Capital Expenditure:

Section 18 of O. Reg. 516/06 provides that 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, 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.

The Board will consider all of the circumstances, including the size of the complex, the nature of the work, its effect on and importance to the unit or complex, and the amount of the expenditure when determining if the expenditure is extraordinary or significant.

The period of the expected benefit is determined as of the time that the expenditure is incurred. Therefore, if a landlord incurs an expenditure on an item that is expected to last

more than five years but the item does not, the landlord is not disqualified from recovery of the expenditure, for this reason alone.

Subsection 126(7) of the *RTA* provides that subject to subsection 126(8) and (9), a capital expenditure is an eligible capital expenditure for the purposes of this section if,

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

These terms set out in subsection 126(7) of the *RTA* are not defined in the Act or the regulations, with the exception of “physical integrity”. According to subsection 18(1) of O. Reg. 516/06, 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:

- the roof, exterior walls, exterior doors and exterior windows;
- elements adjacent to the structure that contribute to the weather envelope of the structure; and
- columns, walls and floors that support loads.

Subsection 126(8) provides that 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,

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

Subsection 126(9) provides that a capital expenditure is not an eligible capital expenditure with respect to a rental unit for the purposes of this section if a new tenant entered into a new tenancy agreement in respect of the rental unit and the new tenancy agreement took effect after the capital expenditure was completed.

Work Undertaken by a Municipality, Local Board or Public Utility:

According to paragraph (b) of subsection 18(1) of O. Reg. 516/06, if a landlord is obligated to pay for capital work undertaken by a municipality, local board or a public utility, the expenditure also qualifies as a capital expenditure (unless the work is undertaken because of the landlord's failure to do it).

For example, a municipality may upgrade the sewer system and require a landlord to pay for the service improvement by a special levy on the municipal tax bill. The landlord can claim the upgraded sewer system as a capital expenditure. The special levy charged by the municipality will be the costs incurred by the landlord.

If a municipality charges a landlord the costs for certain capital work because the landlord failed to do it, the work does not qualify as a capital expenditure. For example, a municipality issued a work order requiring a landlord to make repairs to the balconies of an apartment building because they were unsafe. The landlord failed to do the repairs. The municipality did them and charged the landlord the costs in the municipal tax bill. This work cannot be considered as a capital expenditure.

Had the landlord done the work as a result of a work order, the fact that a work order had been issued does not remove the work from the definition of a capital expenditure.

Leased Assets:

According to subsection 18(2) of O. Reg. 516/06, an expenditure on an item that is leased also qualifies as a capital expenditure if substantially all the risks and benefits associated with the leased asset are passed to the lessee and, at the commencement of the lease, any one or more of the following four conditions are met:

1. The lease provides that the ownership of the asset will pass to the lessee at or before the expiry of the lease;
2. The lease provides that the lessee has an option to purchase the asset when the term expires, at a price that is less than what the market value of the asset will be at that time;
3. The term of the lease is at least 75% of the useful life of the asset as determined in accordance with section 27 O. Reg. 516/06, but without regard to any part of section 27 that prevents the useful life from being determined to be less than 10 years; or

4. The net present value of the minimum lease payments is at least 90% of the asset's fair market value at the commencement of the lease.

According to paragraph 4 of subsection of section 18(2) of O. Reg. 516/06, the net present value is determined using the interest rate fixed by section 20 of O. Reg. 516/06. The rate is the chartered bank administered conventional five-year mortgage interest rate on the last Wednesday of the month before the month in which the application is filed, as reported by the Bank of Canada.

Capital Expenditures that are “Incurred” and “Completed”:

In addition to meeting the definition of capital expenditures, the items claimed must have been incurred by the landlord at the time the application is filed **and** they must have been completed during the specific time period required by the regulations.

Subsection 126(1), paragraph 2 of the *RTA* allows a landlord to apply for a capital expenditure that they (and/or the previous landlord) have incurred.

“Incurred” is defined in section 18 of O. Reg. 516/06. It means that payment in full of the amount of the capital expenditure, other than any hold back that is required under the *Construction Lien Act*, must have been made by the time the application is filed. If a capital expenditure relates to a lease, “incurred” means the assumption of the obligations under the lease. If an expenditure relates to work undertaken by a municipality, local board or public utility, “incurred” means that the work is completed.

In order for a capital expenditure item to be allowed, paragraph 2 of subsection 26 of O. Reg. 516/06 requires that the work must have been completed during the 18 month period that ends 90 days before the FED.

There are instances in which a project takes more than 18 months to complete. Since a landlord cannot apply before the project is completed and it would be unreasonable to conclude that the intention of the regulation was to exclude recovery for such projects, the Board will allow recovery, provided that the project was completed within the prescribed period. However, this approach does not allow a landlord who has undertaken several projects with regard to similar work, over an extended period, to recover for all of the projects in one application. For example, a landlord who repairs one part of a roof five years ago, does another repair three years ago and another within the last six months, will not be able to recover all that was spent in one application, on the theory that the work of repairing the roof was completed six months ago.

The Amount of a Capital Expenditure:

If an item qualifies as a capital expenditure, the Member must determine the amount to be allowed when calculating the allowance. Subsections 26(5) of O. Reg. 516/06 specify that the amount for a capital expenditure is calculated by totaling:

- A. the purchase price, cost of leased assets, and the installation, renovation and construction costs, and
- B. the value of the landlord's own labour,

less:
- C. any grant or other assistance from a federal, provincial or municipal government of insurance, salvage, resale or trade-in proceeds.

Landlord's Own Labour:

The value of the landlord's own labour in carrying out the work related to a capital expenditure may be recognized when determining the amount of the capital expenditure item. Subsections 26(3) of O. Reg. 516/06 provides that the value of the landlord's own labour should be calculated by multiplying the amount of time the landlord spent by a reasonable rate of pay based on their experience and skill in the type of work done.

If the amount of time they spent is more than what is reasonable based on their experience and skill, the Board will allow the reasonable amount of time. The Board will only allow the value of the landlord's own labour that does not exceed what a skilled tradesperson would charge. The value of the landlord's own labour does not include any amount relating to the management and administration of the capital work.

This type of cost will normally only be recovered by landlords who are individuals and not by corporations whose employees or agents do work at the complex.

Government Loans and Grants:

If a landlord received financial assistance from the federal, provincial or municipal government, the appropriate amount of the grant or forgivable loan must be subtracted from the purchase price, installation, renovation and, construction costs of each affected capital expenditure item.

Revenue from Insurance, Salvage, Resale or Trade-in:

In addition to government assistance, the landlord must also provide information regarding any revenue received from insurance, salvage, resale or trade-in proceeds. The amount of a capital expenditure must be reduced by the amount reported under these categories.

Useful Life:

According to subsection 27(1) of O. Reg. 516/06, the useful life of a capital expenditure item is determined from the prescribed Schedule subject to the following rules:

1. where the useful life set out in Column 2 of the Schedule is less than 10 years, the useful life of work done or a thing purchased shall be deemed to be 10 years;
2. where a thing is purchased and has previously been used, the useful life of the thing shall be determined taking in to account the length of time of that previous use;
3. 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; and
4. despite paragraphs 2 and 3 above, 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.

Subsection 27(2) further states that if the useful life of work done or a thing purchased cannot be determined under subsection 27(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.

Section 129 of the *RTA* provides that if the tenant continues to occupy the rental unit, the landlord will reduce the rent on the date and by the percentage increase that is attributed to the capital expenditure in the Board order. Section 38 of O. Reg. 516/06 provides the rules for calculating the date for the time the rent decrease can take place. The landlord will reduce the rent on the date and by the percentage increase that is attributed to the capital expenditure in the Board order.

ALLOCATION OF COSTS

If the amount of a capital expenditure or operating cost involves non-residential components or other residential complexes and/or the AGI application covers only some of the units in the complex, the Member will allocate the amount so that only the portion of the amount that is applicable to the units covered by the application is allowed.

Section 24 of O. Reg. 516/06 prescribes the rules for allocating operating costs and/or capital expenditures to the residential complex, if the costs also relate to non-residential components in the complex or other residential complexes. According to subsection 24(2) of O. Reg. 516/06, costs can be allocated based on one or more of these factors:

- the area (i.e. square footage) of the complex;
- the market value of the complex; or
- the revenue generated in the complex.

The usual approach is to allocate based on square footage. This is because, in the usual case, an expenditure will benefit all parts of a complex equally. If the allocation of costs would be unreasonable using any of these methods, the costs should be allocated in reasonable proportions according to how much of the costs and expenditures are attributable to the residential components in the complex or the residential complex. This is set out in subsection 24(3) of O. Reg. 516/06.

The decision on allocation is made with regard to each expenditure. It is therefore possible that different methods may be chosen when allocating different cost categories. Landlords are required to indicate in the application form which method(s) they have chosen to allocate the costs between residential and non-residential (or other residential) components. However, the Board may choose a different method found to be more reasonable.

A cost category may affect some or all of the units covered by the application. The Member will allocate the cost and allowance for a cost category if:

- the AGI application covers only some of the units in the complex; and
- the cost category affects units not covered by the application.

In this case, the Board must adjust the cost and allowance so that only the part of the cost and allowance that is applicable to the units covered by the application will be passed on to those units. Landlords are required to provide information in the application about which cost categories affect which units, and information about which units are covered by the application. However, the Board is not bound by this information and will allocate the cost based on a finding as to which units benefit from the expenditure.

The applicable costs and allowances are calculated by multiplying the total costs or allowances by an allocation factor. If an operating cost category affects units not covered by the application, the allocation factor is set out in subsection 21(1) of O. Reg. 516/06.

The formula is:

$$\text{Allocation Factor} = \frac{\text{Total rents for rental units subject to the application \& affected by the operating cost category}}{\text{Total rents for rental units affected by the application}}$$

For the purpose of subsection 21(1) of O. Reg. 516/06, the rent for the rental unit that is vacant or not rented is deemed to be the average rent charged for the rental units in the residential complex.

The allowances for capital expenditure are calculated on a unit by unit basis. The method for calculating the allowance is determined under subsection 26(6) of O. Reg. 516/06 and the allowance for the unit for each capital expenditure takes into account the fact that the capital expenditure may not affect all rental units in the complex.