



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord was represented at the hearing by its property manager ("**DL**") and its building manager, who is also a tenant in the residential property ("**AB**"). Eight tenants were present at the hearing: AS (unit 102), FL (unit 304), DP (unit 311), JG (unit 505), AW (unit 601), LL (unit 601), AD (unit 612), and DW (unit 701). AD and DW were represented by an advocate ("**LH**").

This hearing was reconvened from a hearing on February 25, 2022 presided over by a different arbitrator, which itself was reconvened from a preliminary hearing held January 25, 2022. Interim decisions were issued following both hearings.

DL testified that the landlord served the tenants with the notice of dispute resolution proceeding form, supporting documentary evidence, and interim decisions by registered mail on March 13, 2022. All tenants in attendance confirmed receiving the required material in this manner. Accordingly, based on DL's testimony, corroborated by the tenants evidence, I find that the landlord has served the tenants in accordance with the Act.

I neglected to ask the tenants if they serve their documentary evidence on the landlord. However, I did advise the parties that I had reviewed the tenants' evidence prior to the hearing, and the landlord did not raise any objection regarding the evidence is admissibility at that point, or at any point during the hearing. Additionally, for the majority of the hearing, the parties referred to documents contained in the tenants' evidence packages. As such, I find that the landlord has been served with the tenants' evidence in accordance with the Act.

Preliminary Issue – Additional Evidence

As part of its evidence, the landlord submitted ledger entries of expenses incurred in the course of maintaining the residential property. During the hearing, DL testified that some of these entries related to the preventative maintenance of one of the major

components which was replaced (the boiler). At the hearing, out of a consideration of time, I ordered the landlord to provide me with a list of the charges contained in these ledgers which were incurred for the purpose of preventative maintenance by June 27, 2022.

LH requested that the tenants be permitted to provide a written response to this list of ledger entries, given that this list would be a substitution for the landlord's verbal submissions. I agreed and granted this request. I ordered that the tenant may submit a written response to the RTB and the landlord no later than July 4, 2022.

The landlord provided its documents to the RTB and the tenants within the required time frame, and LS provided written submissions within the time frame set out. I have reviewed these documents prior to writing this decision.

Issues to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The residential property is an 8-storey apartment building containing 91 dwelling units (the "**Building**").

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations on any of the tenants within the last 18 months.

The landlord seeks to impose an additional rent increase for a capital expenditure incurred to pay for the replacement of the Building's boiler (the "**Work**"). DL testified that in November 2020, the old boiler started "having issues". The landlord engaged a plumbing company ("**KC**") to try to fix it, but they were unsuccessful. KC recommended that the landlord replace the boiler, because there was nothing it could do to fix the issue.

The new boiler system is comprised of three separate boilers, all of which are "high efficiency". DL stated that the landlord selected this system, as it had the ability to be expanded (adding a fourth unit) in the future, if needed. She testified that the landlord had to re-pipe the boiler room to accommodate a different exhaust system. She testified that the new boiler system is made locally, so there would be a minimal wait time to get replacement parts, if needed and that the life expectancy of the new boiler is up to 20 years.

KC started to install the new boiler at the end of January 2021. She testified it took until the end of March 2021 to completely the install of the new boiler. She testified that the landlord was forced to bring in a temporary boiler (located in the Building's parking lot) to provide heat to the Building during the installation process.

DL testified that the landlord incurred a cost of \$196,209.57 to do the Work. The landlord provided four cheques and two invoices supporting this amount. However, on its application, the landlord stated that the amount of the capital expenditure was \$184,450.53. DL stated that the after making its application, it received another invoice related to the Work from an electrical company who assisted KC in completing the Work. Additionally, she testified that the landlord subsequently received a final invoice from KC, which showed total cost of the Work as \$192,952.89.

The differences between the amounts listed on the landlord's application and those on the cheques and invoices submitted into evidence are as follows:

Description	Amount on application	Amount on cheque/invoice
KC - Payment 1 of 4	\$ 105,000.00	\$ 105,000.00
Electrical Payment	\$ -	\$ 3,256.68
KC - Payment 2 of 4	\$ 25,000.00	\$ 25,000.00
KC - Payment 3 of 4	\$ 36,005.47	\$ 44,507.83
KC - Payment 4 of 4	\$ 18,445.06	\$ 18,445.06
Total	\$ 184,450.53	\$ 196,209.57

DL did not provide evidence as to the reason for the discrepancy between the amount listed for KC's third installment payment.

The landlord called a witness in support of its application.

HK is a "senior heating technician" with KC. He testified that in mid-winter 2020 the old boiler had "basically broken down" and that there was nothing he could do to fix it. He testified that the boiler had "a catastrophic failure" and that it could not be fixed. He testified it was approximately 17 years old and was well-maintained.

HK testified that KC had been inspecting the old boiler on a quarterly basis (every three months). He testified that KC did a "forensic audit" annually since 2010, which entails cleaning the heat exchanger, removing and cleaning the fans, flushing the system, flushing the pumps, inspecting the system for leaks, and replace any parts as needed.

HK testified that the model of the old boiler did not have a good reputation in the industry, and that this model of boiler was no longer on the market, but an updated version of it continues to be sold. He estimated the old boiler's life span as 20 years and

agreed that the heat exchanger had a warranty for 20 years against thermal shock. However, he testified a well-maintained boiler could last for much longer.

HK testified that he was unsure why the old boiler failed. He testified that he did not know if thermal shock caused the failure. He testified that multiple items on the boiler failed (which could have been caused by thermal shock), and that the heat exchanger failed “possibly” because of thermal shock. He testified that while it was “very possible” thermal shock to the boiler caused the failure, he “couldn’t prove it”.

HK testified that the new boiler brand is widely adopted in British Columbia. He estimated 90% of apartment buildings use this brand. He testified the life expectancy is 25 years.

On cross-examination, HK testified that sometimes companies other than KC undertook maintenance on the old boiler when KC was unavailable. He testified that he does not have access to their maintenance records, so he does not have a full view of what they did. However, he testified that he could see the work these companies did whenever he inspected the old boiler.

Advocate LH stated the old boiler’s manual specified that certain work needed to be done on the old boiler every 6 months. HK stated that the old boiler was inspected quarterly and that the igniter and relief valve gets replaced annually.

LH then referred HK to an invoice dated May 4, 2018 from KC. It listed a description of the work done by KC, which included:

Relief valve [-] installed in 1997, and is too old the valve should be replaced

Relief valve [-] also installed in 1997, and is too old. The unit requires replacement

Backflow device [-] last tested in 1986 this unit needs to be tested - hasn't been tested in over 20 years needs testing ASAP - not OK

HK testified that a backflow device is required by the municipality and has nothing to do with the boiler’s functionality. He testified that the relief valves in question were not part of the boiler, but were part of the domestic hot water system. He testified that the domestic hot water and the boiler system are not interconnected systems.

Other tenants cross-examined HK, but, for the purposes of this application, I do not find that the questions or HK’s answers are relevant.

Tenant DW testified that he has lived in the Building since 2006. He testified that it is his belief that the landlord has not met its obligations under the Act to maintain the Building since 2010, when the landlord restructured, created the property manager position, and hired DL. He noted that DL is the property manager for more than 15 buildings.

DW testified that the since 2010 the landlord does not do preventative maintenance in the Building. Prior to this time, preventative maintenance notices were regularly posted around the Building. After this date, they became a rare occurrence, and the Building is only repaired when problems arise. He cited the Building's water system as an example of this. He testified that there are ongoing leaks in the hallways and lobby since 2006 and have been getting worse since 2019 and that two washing machines cannot be started at the same time (lest they flood). Additionally, he testified that he has had leaks in his rental unit, and that his water had to be shut off to address them.

DW also testified that the Building has had heating issues since 2018. He testified that since the new boiler was installed many of these issues were resolved, but that during the past 15 months, heating shutdowns have continued in the Building.

LH stated that he did not dispute that the fact that the old boiler failed, that the new boiler has a lifespan of more than five years, that the cost of the new boiler is what the landlord listed on the application, or that the boiler is a major system or a major component thereof. He stated that his entire argument was that the cause of the failure was due to inadequate maintenance.

LH stated that the manual for the old boiler contained a number of requirements for maintenance, in particular:

- Heat exchanger services and vent piping should be checked every six months for deterioration and carbon deposits.
- [The relief valve] should be checked for proper operation at least once a year by a qualified service technician.
- Check the main burner every 6 months for proper flame characteristics.
- In order to maintain peak efficiency, it is recommended that the hot surface igniter be replaced after 4,000 hours of operation [roughly 6 months].

LH then referred to the landlord's records relating to the repair and maintenance of the old boiler (which were from a former service provide ("LA") and which the landlord had provided in advance of the hearing). They show that the old boiler was installed October 28, 2005 and that the first preventative maintenance was performed on the boiler November 11, 2007. The next visits occurred on the following dates July 31, 2008, November 28, 2008, May 22, 2009, June 26, 2009, June 30, 2009, September 28, 2009, September 30, 2009, April 30, 2010, May 28, 2010, September 30, 2010, November 12, 2010, February 18, 2011, and February 25, 2011.

LH noted that none of the descriptions of the work done on these subsequent visits referenced "preventative maintenance". Rather he stated that the work done on these visits amounted to repairing of problems that had already arisen. He stated that these records did not show that the flame igniter was ever replace during this time (which was supposed to have been replaced every 4000 hours). I note that the records referred to seem to indicate that it was replaced on November 11, 2007.

LH stated that the landlord apparently switched maintenance and repair providers to company KT. The first record of work done by KT is an invoice dated December 27, 2013 for work done to repair a noisy pump motor. The landlord provided additional invoices from this provider dated as follows:

- March 31, 2014 for “preventative maintenance”
- October 15, 2014 to “repair heating” in one of the units
- October 29, 2014 to address pipes banging against a wall
- November 19, 2014 to repair heat in one of the units and to “check the boiler room”
- November 16, 2015 for “preventative maintenance”
- November 30, 2015 to “check all pumps and boiler”
- May 30, 2016 for “preventative maintenance”

LH argued that these invoices showed that the landlord only conducted preventative maintenance once a year, and not quarterly (as HK testified) or even bi-annually as required by the old boiler’s manufacturer.

LH stated that the landlord then hired KC to supplement KT. The landlord provided invoices for work that was done between 2017 and 2020, as follows:

Date	Provider	Reason for visit	Cost
28-Feb-17	KC	due to “loud banging noise heard from the heating system	\$ 199.50
22-Apr-17	KC	due to “boiler not firing”. This invoice stated “the boiler requires cleaning/service as soon as possible”	\$ 294.00
28-Apr-17	KC	due to “pump on right hand side of boiler leaking” The invoice indicated that “flame rod is failing and circ pump motor needs to be replaced and that the boiler filter on air intake was replaced	\$2,113.74
19-Jun-17	KC	to “check boiler operation”. The invoice noted that “the burners need to be cleaned and serviced	\$ 196.82
30-Jun-17	KC	for “boiler servicing”. The invoice noted that the technician “found boiler in poor condition” and that the technician “clean heat exchanger, vacuumed out inside of boiler, and the outside. Remove and replace burner gaskets and burner.	\$1,981.06
27-Jun-17	KT	where the technician had to turn off heat in the boiler room in order to unclog a drain in a rental unit.	\$ 154.88

04-Jul-17	KT	to address the issue of no heat in one of the units. The invoice stated that technician "went down to the boiler room, found the boiler off and flame failure"	\$ 89.25
07-Jul-17	KC	due to "a strong smell" in the boiler room. Invoice indicated that there was a "small leak" on the "blower meter of the boiler". The technician replaced the igniter	\$ 596.03
13-Jul-17	KC	due to a "shut down heating boiler"	\$ 157.50
22-Sep-17	KT	due to "heat not working properly"	\$ 139.13
30-Sep-17	KT	due to the heat not working in one of the units	\$1,074.08
30-Sep-17	KT	due to a leak in the boiler room	\$ 497.03
10-Nov-17	KT	to "perform maintenance agreement"	\$ 222.60
31-Jan-18	KT	to replace copper pipe	\$ 938.77
27-Apr-18	KC	to address excessive temperature in building	\$ 152.25
04-May-18	KC	to perform maintenance testing	incomplete invoice provided
14-May-18	KC	to "repair the leaking expansion joint on the radiator"	\$1,184.45
29-May-18	KT	to install a "storage tank"	\$4,410.00
05-Jun-18	KT	to repair leak on boiler relief valve	\$ 222.60
07-Jul-18	KC	to replace heating lines	incomplete invoice provided
07-Jul-18	KC	to "refill system and test"	\$4,404.72
13-Jul-18	KT	to repair leak on boiler relief valve	\$ 183.75
01-Oct-18	UP	for a "service call as the heating is not working"	\$3,233.42
15-Nov-18	KC	for a service call due to "no heat"	\$ 215.25
27-Dec-18	KC	to "replace faulty zone valve".	\$ 545.75
07-Jan-19	KC	due to "too much heat"	\$ 181.13
29-Jan-19	KC	due to "problem with heat"	\$ 490.62
04-Mar-19	KC	due to "zone valve" leaking	\$ 181.13
06-Mar-19	KC	to "drain heating system and replace leaking inverted flares for zone valve"	\$ 313.15
13-Mar-19	KC	due to "not enough heat" in unit	\$ 181.13
18-Mar-19	KC	due to heat not turning off	\$ 380.37
05-Apr-19	KC	due to heat not turning off	\$ 404.00
07-May-19	KC	due to grey water backing up in sink of unit	\$ 354.38

13-May-19	KC	due to heat not turning off and to replace zone valve	\$1,223.00
09-Oct-19	KC	no heat in unit	\$ 201.73
30-Oct-19	KC	thermostat not functioning	\$ 188.20
20-Nov-19	KC	due to heat not turning off	\$ 380.37
05-Dec-19	KC	to "bleed the air from the radiator"	\$ 181.13
19-Dec-19	KC	no heat in unit	\$ 563.87
10-Jan-20	KC	no heat in unit	\$ 346.50
21-Feb-20	KC	no heat in unit	\$ 713.45
05-May-20	KC	constant heat on one side of unit	\$1,020.12
26-May-20	KC	to turn temperature down in lobby	\$ 280.72
23-Oct-20	KC	no heat in unit	\$ 191.63
28-Oct-20	KC	no heat in unit	\$ 556.25
04-Nov-20	KC	not enough heat in unit	\$ 246.75
10-Nov-20	KC	not enough heat in unit	\$ 501.12
24-Nov-20	KC	no heat in building and water on floor of boiler room (visit at which KC determined old boiler needed to be replaced)	\$2,270.94

LH argued that this showed that the landlord did perform adequate maintenance of the boiler system. He argued that the landlord did not live up to the requirements set out in the manual. He argued that, had the landlord properly maintained the old boiler according to the standards set out in the manual, the old boiler would not have failed catastrophically, and the purchase of the new boiler would not have been required.

DL testified that the invoices provided did not show all of the maintenance done on the boiler. She testified that the landlord had a maintenance contract in place since 2006. She testified that the landlord's ledger submitted into evidence showed all of the payments the landlord made for maintenance of the boiler. She testified that different accountants the landlord employed over the years labeled preventative maintenance differently in the ledgers.

DL stated that due to the effluxion of time, the landlord did not have full records for all the maintenance done to the old boiler, as the landlord only retains records for seven years. She asked to call tenant FL as a witness, as FL and her now-deceased husband were the on-site managers for the Building from 2001 to 2009.

FL testified that she and her husband kept records of maintenance. She testified that "whatever the needs of the boiler were, they were addressed". She testified that during her tenure, she or her husband checked the boiler every morning and evening and that, to the best of her ability everything that was needed to be done was done for the boiler.

FL testified that if there were any issues with the boiler, they would call technicians. To the best of her recollection, she “believed there was a contract” with LA to do either annual, bi-annual, or quarterly preventative maintenance of the old boiler. She stated that her husband was “meticulous” and the building was well taken care of and that she cannot recall time when there was an issue that was not addressed.

FL testified that she and her husband kept daily journals of the work done. Copies of these journals were not entered into evidence. She conceded that her husband was more involved with the Building maintenance than she was (whereas she dealt with the rent rolls). On cross-examination, FL stated that neither she nor her husband had any special expertise in maintaining boiler systems.

As stated above, the landlord was permitted to upload a list of the line items in its ledger which it claims were incurred for preventative maintenance. The landlord uploaded a spreadsheet and a copy of its ledger with underlined items. I have compiled these two documents into a single chart as follows:

Date	Invoice Issuer	Amount	Memo line
October 15, 2010	LA	\$ 465.43	-
November 22, 2010	LA	\$ 155.68	-
February 15, 2011	KC	\$ 6,707.00	KC
October 3, 2011	LA	\$ 2,621.98	LA
December 10, 2011	KC	\$ 1,405.60	Boiler
August 11, 2011	KC	\$ 772.64	Boiler
February 3, 2012	KC	\$ 2,866.86	KC
May 1, 2012	KC	\$ 614.32	boiler
June 4, 2012	KC	\$ 694.74	boiler
October 15, 2012	KC	\$ 378.00	KC [invoice #]
April 18, 2013	KT	\$ 969.92	boiler #2
December 17, 2013	KT	\$ 582.38	new pump
January 15, 2014	KT	\$ 932.17	boiler
May 14, 2014	KT	\$ 223.13	PPM
January 15, 2015	KT	\$ 223.13	preventative maintenance
April 8, 2015	KC	\$ 756.35	no heat - igniter
June 11, 2015	KT	\$ 223.13	preventative maintenance
September 18, 2015	KC	\$ 11,443.64	boilers 2
April 8, 2016	KT	\$ 496.13	boiler
May 30, 2016	KC	\$ 152.25	boiler
June 20, 2016	KC	\$ 2,061.36	boiler
April 7, 2017	KC	\$ 831.39	annual PM
May 30, 2017	KC	\$ 2,113.74	boiler pump is leaking

June 21, 2017	KC	\$ 294.00	boiler
August 31, 2017	KC	\$ 2,773.71	boiler
January 30, 2018	KC	\$ 1,428.35	boiler
July 11, 2018	KC	\$ 2,300.16	boiler, roof top
September 18, 2018	KC	\$ 2,656.88	3/4" heating line / pipe in lobby / boiler
December 14, 2018	KC	\$ 511.88	boiler
April 3, 2019	KC	\$ 927.97	annual PM
July 5, 2019	KC	\$ 1,505.65	AC
October 30, 2019	KC	\$ 393.00	boiler
November 19, 2019	KC	\$ 1,486.57	boiler room
May 6, 2020	KC	\$ 701.82	boiler Jan 2
June 10, 2020	KC	\$ 2,952.67	Replaced leaking pipe Boiler room
August 17, 2020	KC	\$ 1,987.75	No heat - boiler pump
November 22, 2017	?	\$ 222.60	maintenance agreement
July 27, 2018	?	\$ 183.75	boiler
December 16, 2019	?	\$ 246.75	PM

LH provided written submissions in response to the landlord's claim that each of these line items represent preventative maintenance as follows:

The landlord's argument that the different naming on the Ledger is merely due to clerical differences between different accountants and that all the things they underlined [in the ledger] is actually preventive maintenance is on its face illogical. The things are not just named something slightly different than maintenance they have entirely different names.

Additionally, the different naming convention only takes place in a relatively narrow window of time between May 2014-December 2019 (page 5 of the ledger submitted by the landlord), which happens to be closely around the period where some preventative maintenance is also shown to be happening in the full maintenance record as presented by the tenants doing the hearing. The fact that the times preventative maintenance happening in the ledger overlaps with the time it happens in the fuller maintenance records show that it is most likely not due to a clerical difference but because preventative maintenance only actually took place in this period.

Furthermore, all of the visit actually marked by the label preventative maintenance on the ledger all have a very similar price of around 220 dollars (see page 5 of the ledger). Whereas some of the items marked by the landlord as preventative maintenance go as high as 11,443.64 dollars (See September 18th, 2015 entry on page 2 of the landlords ledger) and many of them are in the number of several 1000s, which again indicates that they are not merely named different but is substantively different from the preventative maintenance marked as such.

The tenant has not been able to find a corresponding match for the majority of the landlords listing in the ledger but have been able to find corresponding matches for the following:

- a. 11/22/2010 page 1 of the landlord's ledger have a corresponding entry in the maintenance records located at page 27 of the tenant evidence. They are both for the amount of 155.68. The description for the entry is: *"to supply necessary labour and material to troubleshoot and repair excessive heat in the building. Arrived on site and gained access to the building, set internal switch to remove and reset tekmar control settings back to. Tested operation and found okay as per attached service report"* This is clearly not preventative maintenance; they were called to the building as a response to excessive heat and fixed a specific
- b. 1/15/2014, for 932.17 there are two maintenance invoices (page 3-4 of this document) that adds up to exactly 932.17 in the month preceding this invoice. The description for those two are "called in to replace a noisy pump motor and a leaking bearing assy" and "called in to check in noisy pump in the boiler room seems fine, unit 402 tighten a loose compression joint in the base heater". Again none of this is preventative maintenance, they were called to fix an issue of a noisy pump and fixed it by replacing a pump, this is exactly the sort of thing the tenant described at the hearing that the landlord will only do repairs or maintenance when something breaks.

To sum up the landlords claim that all of these points on the Ledger are illogical, because it does not make sense that they would name the same things differently in such a short time period and that also being the only. In which regular maintenance happen in the full maintenance records, the monetary amounts between what they say vary wildly with the most expensive one being more than 50 times as expensive as the things actually named preventative maintenance and in the instances where the tenant have been able to cross reference the Ledger with the maintenance records those full records revealed that it was not preventative maintenance.

Analysis

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. I will not reproduce the sections here but to summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
 - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
 - o the Work was undertaken for one of the following reasons:
 - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - because the system or component:
 - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The tenants may defeat an application for an additional rent increase for capital expenditure if they can prove on a balance of probabilities that the capital expenditures were incurred:

- for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed (for the reasons set out above), the landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

2. Tenants' Rebuttals

As the bulk of the submissions related to the maintenance regime of the old boiler system, I will address this issue first.

As stated above, the tenants may defeat an application for an additional rent increase if they can prove that the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord.

Based on the submissions of the parties, the testimony of the witnesses, and the documentary evidence provided, I find that the tenants have established that it is more likely than not that the landlord failed to adequately maintain the old boiler, and that this failure caused or contributed to the old boiler to malfunction or break down.

Based on the manual for the old boiler submitted into evidence, I find that the manufacturer recommended that the following maintenance:

- Check the heat exchanger services and vent piping every six months for deterioration and carbon deposits.
- Check the relief valve for proper operation at least once a year by a qualified service technician.
- Check the main burner every 6 months for proper flame characteristics.

I find that this maintenance is the minimum level which could be considered “adequate”. As such, I would expect that the landlord arrange for an inspection of the old boiler to occur every six months, at a minimum.

I do not find it necessary for the “hot surface igniter” to be replaced after 4,000 of operation, as the manual states that this is necessary “in order to maintain peak efficiency”. I do not find it necessary for the landlord to have maintained the old boiler at “peak efficiency” in order to be considered to have adequately maintained it.

FL testified that there was a preventative maintenance contract with LA when she was the onsite manager. The landlord obtained LA’s maintenance records which include entries from 2005 to 2011. Of the entries listed, only one is for “preventative maintenance”, which occurred 13 months after the old boiler was installed. The other entries relate to call outs LA received to address specific issues that arose.

The landlord has not suggested that any other service provider undertook preventative maintenance during this time frame. As such, I do not find that the landlord had a preventative maintenance contract in place with LA or any other service provider between 2005 and 2011. Rather, I find it more likely than not that the landlord had a service contract with LA, and would contact them whenever issues arose with the boiler. DL and FL’s testimony about preventative maintenance being undertaken by LA is not supported by the documentary evidence.

The landlord submitted a ledger and spreadsheet into evidence which purportedly shows all preventative maintenance undertaken by the landlord on the boiler from October 2010 to December 2019. Based on review of these documents evidence, I do not find that this is the case.

The memo lines for some of these ledger entries suggests that the nature of the expenses are reparative, rather than preventative:

Date	Issuer	Amount	Memo line
December 17, 2013	KO	\$ 582.38	new pump
April 8, 2015	KC	\$ 756.35	no heat - igniter
May 30, 2017	KC	\$ 2,113.74	boiler pump is leaking
June 10, 2020	KC	\$ 2,952.67	Replaced leaking pipe Boiler room
August 17, 2020	KC	\$ 1,987.75	No heat - boiler pump

I do not think it reasonable to conclude that the landlord's bookkeepers would have labelled these expresses as they did, if the expenses were for preventative maintenance.

Additionally, the memo lines in the landlord's ledgers which indicate an expense was incurred was for preventative maintenance all have a similar cost (roughly \$220 for preventative maintenance and between \$800 and \$900 for annual maintenance):

Date	Issuer	Amount	Memo line
May 14, 2014	KO	\$ 223.13	PPM
January 15, 2015	KO	\$ 223.13	preventative maintenance
June 11, 2015	KO	\$ 223.13	preventative maintenance
April 7, 2017	KC	\$ 831.39	annual PM
November 22, 2017	?	\$ 222.60	maintenance agreement
April 3, 2019	KC	\$ 927.97	annual PM
December 16, 2019	?	\$ 246.75	PM

However, many of the other items listed on the ledger which the landlord asserts are for preventative maintenance are well in excess of these amounts (some wildly so):

Date	Issuer	Amount	Memo line
February 15, 2011	KC	\$ 6,707.00	KC
October 3, 2011	LA	\$ 2,621.98	LA
December 10, 2011	KC	\$ 1,405.60	boiler
February 3, 2012	KC	\$ 2,866.86	KC
September 18, 2015	KC	\$ 11,443.64	boilers 2
June 20, 2016	KC	\$ 2,061.36	boiler
May 30, 2017	KC	\$ 2,113.74	boiler pump is leaking
August 31, 2017	KC	\$ 2,773.71	boiler
January 30, 2018	KC	\$ 1,428.35	boiler
July 11, 2018	KC	\$ 2,300.16	boiler, roof top
September 18, 2018	KC	\$ 2,656.88	3/4" heating line / pipe in lobby / boiler
July 5, 2019	KC	\$ 1,505.65	AC
November 19, 2019	KC	\$ 1,486.57	boiler room
June 10, 2020	KC	\$ 2,952.67	Replaced leaking pipe Boiler room

August 17, 2020	KC	\$	1,987.75	No heat - boiler pump
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The foregoing discrepancies in cost cause me to have little confidence in DL's testimony (and the landlord's representations) that all of the items listed on the spreadsheet and underlined in the ledger provided after the hearing represent costs incurred by the landlord for *preventative* maintenance. As such, I assign the DL's testimony that entries in the ledger labelled "boiler" or other similarly vague descriptions are for costs incurred to perform *preventative* maintenance.

I should note that I do not doubt that the landlord incurred the costs listed in the ledger. However, I find it more likely than not that most of them were incurred as a result of the landlord engaging a service provider to repair an existing issue, rather than as a result of the landlord being proactive and following the manufacture's preventative maintenance regime. It may also be that the landlord engaged in a more rigorous preventative maintenance routine since KC became the primary service provider in 2017 (which may accord with HK's testimony). However, I do not find that a recently enacted preventative maintenance routine is a substitute for keeping the old boiler adequately maintained throughout its life.

Accordingly, I find that the landlord failed to adequately maintain the old boiler over the course of the old boiler's life. Due to this failure, which was most pronounced from November 11, 2007 to March 31, 2014, when *no* preventive maintenance was undertaken, I find that it is more likely than not that the old boiler malfunctioned and needed to be replaced.

The neglect of the boiler for over six years, coupled with the sporadic maintenance thereafter likely amplified any defects or deficiencies in the old boiler (which HK testified was not a model of especially high quality) and was more likely than not contributed to the old boiler having a "catastrophic failure".

I find that the tenants have discharged their evidentiary burden to prove the replacement of the old boiler was due to the landlord's inadequate maintenance.

As such, I dismiss the landlord's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 5, 2022

Residential Tenancy Branch