Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This Decision is in response to the landlord's Application for Dispute Resolution (application) pursuant to the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditures pursuant to section 43(3) of the Act and section 23.1 of the Regulation.

As indicated in my Interim Decision, although 49 units are listed in the original application, I have removed 7 units as per counsel who indicated 7 units had vacated since this application was filed on September 29, 2021. I have amended the application to 42 units pursuant to section 64(3)(c) of the Act.

Pursuant to my Interim Decision dated March 28, 2022 (Interim Decision), I will only be considering the relevant evidence contained in the initial submissions of the parties and the rebuttal evidence. I will not be considering any responses to rebuttal evidence as that was not permitted or provided for in my Interim Decision pursuant to section 62(2) of the Act.

I have reviewed the two Affidavits of Service submitted by the landlord and find that the tenants have been sufficiently served in accordance with my Interim Decision. I have not reviewed the submissions from KB of unit 44 and HC of unit 3 as there is no proof of service documents or other service information to support that the applicant landlord was served with their documentary evidence. Therefore, due to a service issue, I have excluded documentary evidence from KB, unit 44 and HC, unit 3 pursuant to section 62(2) of the Act and Rule 3.15 of the RTB Rules of Procedure. This is consistent with the landlord's submissions which do not make reference of Unit 44 or Unit 3 in terms of submissions.

Issue to be Decided

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

Background and Evidence

The rental property is a 4-storey structure (Building) consisting of 49 rental units. The Building was constructed in 1992.

The landlord has confirmed that the following capital expenses related to the major systems or major components of the Building. The landlord has also confirmed that the capital expenses were incurred, or ought to be considered incurred, within the 18-month period preceding the date on which the Landlord filed the ARI-C application, which was September 29, 2021.

Summary of Landlord's written submissions

The landlord has identified two items of capital expenditures, (a) Staircase and Membrane (Staircase) and (b) Fire Panel (Fire Panel). In support of these two items of the Building, the landlord submits in part the following, which has been included as written:

Staircase and Membrane

12. The Rental Property consists of three (3) exterior stairwells (the "**Staircases**") which can be used by any and all of the Tenants, should they choose to do so.

13. The Staircases were installed before 2007. In 2007, and again in 2011, the Staircases were repainted and waterproofed. In 2015, the Staircases were also repaired, albeit to a lesser degree than in 2007 and 2011 (**see Exhibit C**).

14. The Staircases have required frequent repairs to address issues pertaining waterproofing, leakage issues and rusting. For example, metal-framed canvas canopies had been installed atop of the Staircases to reduce the amount of precipitation falling on them; however, the Staircases are still exposed to wind-driven rain.

15. Due to the condition and age of the Staircases, well over 10 years old at the material time, the Landlord followed recommendations and decided to restore the Staircases by way of metal and concrete repairs, the removal and replacement of all sealants, and the supply and installation of a new waterproof membrane (**see Exhibit C**).

16. The Landlord retained The Restorers Group Inc. to remediate the Staircases.

17. Between December 31, 2019 and October 30, 2020, The Restorers Group Inc. remediate the Staircases.

18. The Restorers Group Inc. issued the Landlord three invoices for its services, Invoice #'s 009377, 009437, 009935, totaling $116,235.00 (**see Exhibit C**).

19. Between March 24, 2020 and December 7, 2020, the Landlord issued three (3) payments to The Restorers Group Inc. for the Staircases' remediation (**see Exhibit C**).

20. Although the first payment was issued on March 24, 2020, the payment was not incurred until March 30, 2020 which is within 18 months of September 29, 2021.

21. Replacement of the Staircases is not expected to recur for at least five (5) years (**see Exhibit C**).

Fire Panel

22. The Rental Property is sprinklered throughout and is equipped with a fire alarm panel system (the "**Fire Panel**") (**see Exhibit C**).

23. The Fire Panel monitors heat detectors, pull stations, and sprinkler flow valves.

24. The fire suppression system, including the Fire Panel, was tested and serviced annually by Elite Fire Protection Ltd.

25. In February 2017, it was determined that, as the Fire Panel was (then) 25 years old, a replacement was necessary.

26. Pursuant to the advice of its professionals, the Landlord decided to replace the Fire Panel.

27. In or about February 2021, Fire-Pro Fire Protection Ltd. attended the Rental Property to address the Fire Panel. In doings so, Fire-Pro Fire Protection Ltd. issued one (1) invoice for its work, Invoice # 75372, amounting to $10,929.03 (**see Exhibit C**).

28. The Landlord issued one (1) payment to Fire-Pro Fire Protection Ltd. on March 16, 2021 (**see Exhibit C**).

29. March 16, 2021 is within 18 months of September 29, 2021.

30. Replacement of the Fire Panel is not expected to recur for at least five (5) years (**see Exhibit C**).

The landlord submitted the following as their argument:

F. ARGUMENT

(a) Payments Incurred for Long Term Projects

46. Pursuant to the applicable legislation and Guideline #37, (i) payment for a capital expenditure is considered "incurred" when payment for it is made and (ii) an ARI can only be granted for a capital expenditure that was incurred in the 18-month period preceding the date on which a landlord makes the ARI application. Guideline #37 also prohibits landlords from imposing more than one ARI for a capital expenditure at a time.

47. If construed narrowly, this suggests that, for large scale capital expenditure projects spanning several years, a landlord would be prohibited from obtaining an ARI for payments made outside of the 18-month limitation period despite the final payment for same being made within the limitation period. The Landlord submits that such a narrow interpretation would erode the purpose giving rise to ARIs which is to encourage Landlords to re-invest in their rental properties and offset some of the costs arising from large-scale capital upgrades and improvements benefitting residents.

48. Respectfully, the Landlord submits that, for the reasons that follow, the applicable legislation and Guideline #37 should be broadly construed in order to give purpose and effect to the legislative intent underpinning ARIs; indeed, ARIs are permitted to ensure that needed repairs are completed to maintain and improve rental housing, including improvements to large scale rental complexes consisting of numerous rental units.

49. Pursuant to s. 21.1 of the *Regulation*, "eligible capital expenditures" means capital expenditures described in section 23.1 (4) of the *Regulation*.

50. Pursuant to s. 23.1(4) of the *Regulation*, the Director must grant an ARI for a capital expenditure if, subject to other requirements, a major system or major component is installed, repaired or replaced. In other words, the installation, repair, or replacement of a major system or major component crystallizes only when the entirety of the installation, repair, or replacement is complete. The installation, repair, or replacement or a major system or major component is not finalized unless and until the entirety of the remediation has been carried out.

51. Further, the applicable legislation and Guideline #37 require the capital expenditure not to recur for at least five (5) years. An interim payment for a major system or component is unlikely to meet this requirement as, at the time of interim payment, the repair, installation or replacement of the major system or major component is incomplete, but in progress. In other words, forcing a landlord to bring an ARI application for an incomplete project will likely cause for the ARI application to fail. This would, no doubt, be absurd and undermine the purpose of the ARI and the noted legislative amendments.

52. In addition, s. 23.1(2) of the *Regulation*, states that, if the landlord made a previous application for an ARI and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an ARI for eligible capital expenditures until at least 18 months after the month in which the last application was made. Moreover, section 23.1(3) of the *Regulation* requires a landlord to make a single application to increase the rent for all rental units on which the landlord intends to impose the ARI if approved. Respectfully, narrowly construing the applicable legislation and Guideline #37, may lead to multiple and unnecessary ARI applications which will be burdensome to both landlords and tenants. Further, and perhaps more importantly, requiring landlords to bring multiple applications will result in a misuse of the Residential Tenancy Branch's scares resources. If the intent of the *Regulation* is to encourage one (1) ARI application, then the interim invoices should not be viewed in isolation or severed from the totality of all invoices related to a major system or major component.

53. In summary, interim invoices paid during the course of a large-scale projects ought not be viewed in isolation or severed from the totality of all invoices related to a major system or major component; indeed, interim payments paid towards a capital expenditure are meant to promote business efficacy by ensuring the ongoing nature of the remediation until completion as vendors, generally, cannot wait until the end of a project to be paid for labour and supplies. If a vendor is able to wait until completion for payment from a landlord by securing a loan or line of credit, any increased costs arising from such credit will surely be passed along to a landlord which will invariably increase the amount sought against a tenant during the ARI process. The Landlord therefore respectfully submits that the fair and intended interpretation of the 18-month limitation period is intended to start from the date that the last invoice for the capital expenditure in question was incurred, thereby ensuring that Landlords can seek full recovery for the totality of the project expenses incurred. Any interpretation to the contrary would be patently unreasonable.

The landlord submitted the following regarding when payment has been made via cheque:

(b) <u>Payment Incurred On Date Cheque is Deposited, Not Issued</u>

54. Pursuant to the applicable legislation and Guideline #37, a capital expenditure is considered "incurred" when payment for it is made. If construed narrowly, this suggests that a payment is made when a landlord issues a cheque to a contractor for services provided.

55. Respectfully, the Landlord submits that, for the reasons that follow, the applicable legislation and Guideline #37 should be broadly construed in order to give purpose and effect to the legislative intent underpinning ARIs. To that end, the Landlord submits that a payment is not incurred or made when it issues a cheque to a contractor; rather, a payment is incurred or made once the bank approves the contractor's deposit of the cheque as the deposit date crystalizes when money changes hands from one party to another. Put differently, payment is made or incurred once it leaves the hands of the landlord and is placed in the hands of the contractor.

56. For greater clarity, when a cheque is issued, money does not actually change hands between the parties; rather, cheques signify a landlord's intention to pay money to a contractor upon the deposit of same. In other words, a cheque does not, in and of itself, have any inherent monetary value beyond the numbers written on it which purport to show the amount of money that will be received upon deposit at a future time. For example, a landlord could issue a cheque for $100,000.00, but a contractor will not actually receive the particularized amount unless (i) the value of the written amount is contained within the landlord's bank account, (ii) the contractor deposits the cheque and (iii) the bank approves the debit of money from the landlord's account to the contractor. In short, once a landlord issues a cheque to a contractor, payment will only be incurred or made upon the debit of money from the landlord's bank account to the contractor, not by the landlord's mere act of issuing the cheque.

57. As a result of the foregoing, and when determining when a payment was incurred or made, one should look to the debit date of a cheque, not the date on which the cheque was issued.

The landlord clarified the two items further as follows:

Staircases

58. The Landlord has not made a prior ARI Application for this capital expenditure.

59. The Landlord submits that Staircases constitute a major system or component as it forms part of the Rental Property's structure and is utilized by the Tenants move throughout the Rental Property.

60. The Landlord incurred the capital expenditure pertaining to the Staircases in and outside of the 18 months of filing the subject ARI Application. To the extent payments were made over 18 months prior to the filing of this ARI Application, the Landlord relies and refers you to its submissions found between paragraphs 46 and 57.

61. It is understood that further remediation to the Staircases is not expected to recur for at least five (5) years; indeed, Guideline #40 suggests that stairs have a useful life of 10 years.

62. At the material time of its remediation, the Staircases had exceeded its useful life. Pursuant to Guideline #37, the installation, repair or replacement of major systems or major component will qualify for an ARI if the system or component is close to the end of its useful life. The Landlord submits that, as the Staircases were being used long past its useful life, it must qualify for an ARI.

Fire Panel

63. The Landlord has not made a prior ARI Application for this capital expenditure.

64. The Landlord incurred this capital expenditure pertaining to Fire Panel within 18 months of filing the subject ARI Application.

65. Pursuant to the Guideline #37, the list of security measures that can qualify for an ARI is not an exhaustive one. If the installation, repair or replacement of a major system or major component better protects persons and property, it will qualify for an ARI.

66. By addressing the Fire Panel, the Landlord engaged in the installation, repair or replacement to a major system or major component that better protects the Tenants and the Rental Property; indeed, these efforts secure and protect the Tenants and the Rental Property against the threat of fire.

67. Pursuant to Guideline #37, the Landlord is not requirement to establish additional or better security was necessary in order for the Director to approve an ARI. All the Landlord must evidence is that an installation, repair or replacement better protects persons and property at the Rental Property or that, security of the Rental Property has been improved. Respectfully, the Landlord submits that security has been enhanced at the Rental Property as the Fire Panel has been upgraded; this, in and of itself, warrants the approval of an ARI.

68. In addition, or in the alternative, the Landlord notes that, at the material time of its remediation, the Fire Panel had met or exceeded its useful life; indeed, Guideline #40 indicates that fire alarms and associated panel/wiring have a useful life of 15 years. Pursuant to Guideline #37, the installation, repair or replacement of major systems or major component will qualify for an ARI if the system or component is close to the end of its useful life. The Landlord submits that, as the Fire Panel was being used long past its useful life, it must qualify for an ARI.

69. It is understood that further remediation to the Fire Panel is not expected to recur for at least five (5) years; indeed, Guideline #40 suggests that fire alarms and associated panel/wiring have a useful life of 15 years.

In their conclusion the landlord submits that it has met its burden and seeks the approval of an ARI for the capital expenditures listed above. The landlord also seeks that the approval for the ARI be combined with the next annual rent increase to be circulated to the Rental Property in 2023.

The landlords also have submitted the following documents in support of their application:

1. Residential Tenancy Branch (RTB) Policy Guideline 37 – Rent Increases
2. RTB Policy Guideline 40 – Useful Life of Building Elements
3. Interim Decision
4. BC Assessment of Rental Property
5. Title Search of Rental Property
6. Property Condition Assessment dated July 6, 2022
7. Invoice 009377 dated January 31, 2020 for 3 exterior staircases (partial draw 78% complete), which totals **$80,999.10,** including GST. 78% of work completed December 31, 2019.
8. Invoice 009437 dated March 31, 2020 for 3 exterior staircases (100% of work completed March 31, 2020) less amount listed in 7 above for a total remaining balance of **$22,845.90**, including GST.

9. Cheque related to 7 above, dated March 24, 2020, showing deposit date of March 30, 2020.
10. Cheque related to 8 above, dated May 13, 2020, showing deposit date of May 21, 2020.
11. Invoice 00935 dated October 30, 2020 for staircase membrane application, which totals **$12,390**, including GST for work completed on October 30, 2020.
12. Purchase order dated September 22, 2020 related to 11 above.
13. CIBC Account Statement, December 1 to December 31, 2020.
14. EFT Payable Creation Report dated September 27, 2021.
15. Review Payment document
16. Letter dated July 15, 2022 from engineering company who completed the steel staircases. Letter confirms that work was completed in 2020 and that the next cycle of repairs are not anticipated until "~2025".
17. Fire panel (alarm system upgrade) invoice dated March 8, 2021 in the total amount of **$10,929.03**, including GST and PST.
18. CIBC Account Statement, March 1 to March 31, 2021.
19. EFT Payable Creation Report dated September 27, 2021 for $12,254.13 ($10,929.03 plus $1,325.10*****)
20. Second Review Payment document
21. Letter dated July 14, 2022 from fire protection company who completed the fire alarm panel replacement. Letter confirms that the life expectancy of the fire alarm panel to be greater than 5 years.

[* landlord not claiming for $1,325.10 portion of this document]

Summary of Tenants' written submissions

The following was submitted by the tenants, in part. I have redacted all personal information to protect privacy. I have left in the unit numbers to ensure that all tenants who responded are included in these submissions. I have also not included submissions that are not relevant or permitted, as set out in my Interim Decision.

> We oppose this application in full primarily (but not exclusively) on the basis that the repairs done for the "stairwell project" result from prolonged maintenance neglect and are of insufficient quality. We do not believe any special rent increase provisions should be allowed for work that is necessary to simply maintain the building.
>
> We acknowledge that the east and centre stairwells needed repairs due to rust and water ingress over time. But we submit that this damage was allowed to increase in severity because they never fixed the problem by properly draining the stairwell despite the manager being told repeatedly it was the best solution. We do not feel that this is a "special capital project" deserving of approval under the legislation.

During our initial hearing with the RTB it was noted that the tenants are up against a large law firm. We cannot afford to hire a law firm in response. We are all busy and have been impacted by all the streses of the times as much as anyone. The expectation that we would have been gathering evidence over the period covered by the landlord's submission is unreasonable. That was noted by the arbitrator.

The following pages feature selected submissions from affected tenants followed by photos submitted to support our position. Tenants in support of this position include (but are not limited to):

[redacted]#113 - [redacted]#202 - [redacted]#206
[redacted]#207 - [redacted]#211 - [redacted]#212
[redacted]#307 - [redacted]#308 - [redacted]#309
[redacted]#313 - [redacted]#401
[redacted]#402 - [redacted]#409 - [redacted]#412

Submission #1

I've been a resident here for 10 years and have found this whole process to be very adversarial. Instead of the company reaching out to the residents to explain what was happening we were served legal papers that only a legal professional would understand. Most residents have neither the time nor money to get legal advice in these situations. Upon reading the info that has been made available to me I believe that ARI is not applicable to the work that was done on the stairs. My reasoning is laid out below.

Invoice #009377 Should not be covered because it falls outside of the 18 month window. The spirit ARI guideline is to help landlords better plan for work that needs to be done and make sure buildings are in good repair. It is not meant for retroactively including work that falls outside the 18 month window. The $80,999.10 should not be included in any calculation for a rent increase.

Invoice #009437 Should not be included because it states that the work was 100% completed, but months later more work was required to the stairs. At the time it was very apparent that the initial work was not of the best workmanship. Rust started to form right away and The Restorers Group Inc and to come back months later to fix the issue. For a capital expense to be eligible for ARI it must last at least 5 years, which it did not. Even now it can be seen, only a few years after the work rust is already showing up and will most likely require more work within the next 5 years. The $22,845.90 should not be included in any calculation for a rent increase.

Invoice #00935 Should not be included since this is not a capital expense. The main staircase repair was 100% completed, so this is a separate project and because it is only repairing the work that was not completed correctly prior. This repair is a direct result of poor workmanship or incomplete work and not maintenance that would have been required if the work was done properly in the first place. Because the initial work was done during the pandemic and I was working from home I was able to see that not all the rust was properly removed before the membrane was painted on. It is my understanding that if you don't completely remove the rust it will return and the work will not last the intended lifespan of at least 5 years. The $12,390.00 should not be included in any calculation for a rent increase.

To the best of my knowledge and understanding I stand by the above statements.

[redacted] #207

Submission #2

I have lived at 3550 West Broadway since 2011. I've managed rental suites and been a Block Watch Captain so I am mindful and concerned for security, property and maintenance. My minimal in-suite repair and maintenance requirements have always been met well at Dunway Court. But general building issues have always been done as cheaply as possible and often in need of revisiting.

With the first rainy season of 2011 I noticed that the central and east staircases suffered from extensive flooding and were awash with water and rivuets of rust. It would also freeze on occasion. It concerned me immediately. The building manager was obviously aware of the situation as she lived here and the office was mere metres from the flooding staircases.

She said at that time that management was aware of the situation. First it was Realstar, then Bentall Kennedy and now Quadreal. Obviously the stairs were exposed to wind and rain but the solution was clearly to create adequate drainage and I frequently said so.

Each year the stairs flooded, the rust increased. I always worried about water incursion. Then it would get painted over and the rust would quickly return. As I live by the west staircase ,which remained largely unaffected, I let go of my concern and stuck to only using that staircase during the rainy season.

When the recent work started on the west staircase it was unclear to me why it was being done. The workers explained they were doing all three stairwells. The schedule stretched on during which the project was left and fumes from adhesives were thick in the air. Thankfully it was an open space.

In 2021 we finally saw a drainage system installed but on only the centre and east staircases where it was needed. It is now, finally, effective. It consists merely of drill holes on each deck and plastic piping that carries water away from the building.

During the most severe downpours we've ever had, earlier this year, the staircases were finally dry and I've started using them again. Why was this not done at least a decade ago? These staircases are needed in the event of power failure, issues with the elevator, or fire alarms all of which have occurred recently. It's basic stuff.

The technical report makes the case for the necessity of the work. I don't dispute that. But I do not accept it as a "capital" expense as the maintenance solution was there all along and not properly done. In 2015 the landlord claims to have done some repairs, essentially painting over the problem only for it to come back with the next rains. It wasn't even a decent band aid. Again, drainage was always the solution.

You can also see from the photos submitted that the repairwork to the central and east staircases is likely to need even further work in the near future. Signs of rust and water incursion over time remain visible.

The west stairwell, strangely enough, is the best finished…except that it wasn't the one in most need of fixing. In fact, I don't recall water gathering on it…ever.

[redacted] #308

Submission #3

My roommate and I have been living at Dunway Court (3550 West Broadway) since the end 2020. Our suite is located on the west side of the building and at the time of our move we never noticed any rusting, damage or flooding to the west side staircase. Since we moved during the peak rainy season, a flooded or rusted staircase would have drawn our attention prior to the move. However, during our first summer living here the "stairwell project" started. The west side stairwell is located very close to the front door of our apartment and as soon as the "stairwell project" started my roommate and I began to get fumes and dust and dirt from all the drilling into our apartment.

Our experience with our landlord so far hasn't been pleasant, with barely any communication from their side. Most times, we can never reach them for any concerns we might have.

This rent increase hidden behind the guise of the "stairwell project" will have a great impact on my roommate and I, who are new graduates, hoping to head back to school soon. It is disappointing to see that something as simple as the maintenance of a stairwell (which can be considered to be a part of general maintenance of a building) is being used to inflate the rental cost of this apartment.

[redacted] #309

Submission #4

I read and reviewed the statements to justify the special rent increase according to the landlord. The repair of the stairs has been going on ever since I remember and I moved into the building in 2010. Much less was done during these years and we do not know yet if the issue has been resolved, especially in the east side which was the most affected area.

There are many things that we would like to work better in the building but still are not being fixed and we do not get a discount on our rent because those issues are not being taken care of or addressed properly. This is not a strata building and extra expenses should not be allocated to be paid by tenants.

[redacted] #206

Submission #5

My wife and I have lived in the apartment complex for several years now. Long enough to witness a serious lack of competency when it comes to the maintenance and restoration of the building. Since moving in several years ago, the stairwell by the elevator has been a focal point in our displeasure regarding the buildings maintenance.

From leaking and flooding, rusting and damage to the structure, its feels to us like the culmination of years of neglect and mismanagement. When it was announced that the building would undergo construction to address the tenants concerns, we were looking forward to some progress and care from management.

What we witnessed, however, was the opposite. A focus was placed on the west stairwell, an area in the complex that required the least attention. A repaint of the stairs and handrails was done and we remember a distinct odor from the work wafting into our apartment. This was a clear sign to us that corners were cut and focus was being placed on arbitrary jobs that were not addressing the central concern.

When the work was finally completed, it left the stairwell by the elevator in arguably worse shape than before. Although the drainage was addressed to some extent, there was still visible rusting and missing components from previous “repairs”. This was far from the care we would expect from a building management team. To us, the work reflects a level of apathy from management that makes us feel like our concerns are not taken into serious consideration.

It was a long repair process, with several re-repairs required to address incompetence with prior crews. Although we have not been in the building as long as other tenants, we feel this work reflects a management team only interested in sourcing cheap labour to protect a bottom line and save face. This is not the level of care we pay for as renters and expect in the place we choose to call our home. What we saw was bare minimum maintenance to address years of neglect.

[redacted] #211

Submission #6

My name is [redacted] and I have been a tenant of unit 412 at 3550 West Broadway, Vancouver B.C. since March 01, 2019. In that time, I have been able to witness the upkeep of the building facilities, including the repeated flooding of the stairwells and their degradation during the beginning of my tenancy to date.

1. **Type of repair – corrective and cosmetic**

The Landlords current API under dispute does not satisfy Section 32 (1) of The Act as the Landlord has failed to uphold their original obligation to maintain the major building systems in a state of decoration and repair throughout the tenancy.

Additionally, as per the Rent Increase Policy Guideline, Guideline #37 (1)(d) the repair costs incurred under the current application should be considered ineligible for the additional rent increase under dispute as the state of the stairwells is a direct result of years of neglect and poor maintenance practices.

Despite numerous complaints regarding the flooding and degradation of the stairways, as attested by other tenants, the Landlord has failed to act in a timely manner. They had time to address the ongoing issues, and numerous opportunities to implement preventative maintenance options at their disposal that ought to have been exercised and would have rendered the current expenditures under dispute unnecessary. As a result of the Landlords failure to act, the current application should be considered to have been allowed to progress to a point necessitating more costly and extensive repairs. To further support this position, the following figures and arguments laid out in this document show that, despite the repairs currently under dispute, the Landlord continues to neglect maintenance of the stairwells which has already require rework less than 18 months following the original completion of work, and will only continue to degrade (Supporting evidence (1) – photos used in this document were taken in March 2022, with supporting pictures taken in July 2022).

2. **Quality of repair**

In addition, the repairs under dispute should not qualify as a capital expenditure undertaken to repair a major building system under Guideline #37(1)(b) as the work completed has both failed to repair or correct the problem identified with the stairs and is of such low quality as to exacerbate the corrosion of the stairwells. This will undoubtably require additional and frequent maintenance to keep the staircase and landing corrosion in check. Activities that, despite ample evidence laid out here, have yet to be undertaken less than 2 years following the completion of the restorative maintenance under dispute.

As I was personally able to witness during my tenancy, the rework of the staircases in the building mostly consisted of the acts of grinding away the surface rust present, cosmetic repainting surfaces, the addition of sealant in some, but not all corners of stairwells and landings, the addition of drain-holes to the landings of the central stairwell, and the replacement of railings. This effectively amounts to a minor, incomplete, and cosmetic correction of system, and not a substantive repair of the underlaying system as laid out in Guideline #37. Failure to remove any rusted metal surfaces and weld in new steel ensures that corrosion will continue to accelerate.

Figure 1 – Incomplete repair allowing accelerated corrosion in need of repair (Central stairs – left, East Stairs – right)

Figure 1, taken from the central and east stairwells, shows typical examples of the current state of the repair. As can be seen, old railings were cut away and the old foundations left untreated and exposed to the elements. Corners of the stair surfaces were ignored and left both untreated and unsealed. This presents an avenue for continued, accelerated corrosion of the stairwells. Not only should the corrective repair be considered insufficient to address the underlaying problem, it should also be considered incomplete and in need of further maintenance.

Figure 2 - Stair deck surface left unrepaired and exposed. Accelerated corrosion in need of immediate repair

As in **Figure 1**, **Figure 2** show the typical state of the stairwells showing that the corrective work currently under dispute has not fully been completed as stated. Many surfaces remain untreated, unpainted, and unsealed, allowing the problem to persist. This allows further water and corrosion damage to accumulate on the stairwells as these systems are ignored and not maintained.

Not only will the stairs require maintenance before the 5-year limit of the original work date in contradiction of Guideline #37(1)(b), they have required immediate maintenance almost from the date of work completion up until to the day of writing this position.

Following the completion of maintenance work on or about ~October 2020, the root cause of the stairwell corrosion persists, and stairwells continue to corrode and require maintenance (**Figure 3**).

Figure 3 - Accelerate rust caused by new, untreated drain holes

Figure 3 shows a typical landing of the central stairwell from the top (left) and reverse side (right) illustrating that water continues to pool and steel continues to corrode. The large amount of surface rust displayed on the landing in **Figure 3** is typical for the central and east stairwells. This is a direct result of continued flooding and corrosion of the landings and staircases. Additionally, rust streaking can be seen on the drainage pipes on each subsequent landing as the steel surfaces contained below the membrane continue to be exposed to water and corrode. This is a direct result of the poorly installed, clogged drainage system holes that are not being maintained or kept in a state of good repair (**Figure 4**).

Figure 4 - Unprotected drain holes clogged with debris continue to flood landings

Indeed, the drainage-holes created in the landings are simple through holes from the landing surface to the underside of the stairwell below the landing. In **Figure 4** (July 2022) it can be seen that they are both completely unprotected from debris entry as well

as untreated with any coating to prevent corrosion. This has resulted in clogging and water pooling, and accelerated crevice, surface, and subsurface corrosion respectively due to the exposed metal in the drain-holes and the material beneath the surface membrane. Evidence of this is seen all over the landing surfaces and their surrounding steel borders.

As laid out in Guideline #37 (1)(b), this capital expenditure should be considered ineligible for an additional rent increase as it will require repair within 5 years. At the time of writing *less than 2 years have passed since the completion of the work under dispute*. As seen in **Figure 5** and others, landings continue to be unsealed and untreated, allowing further water ingress and resulting in accelerated corrosion that is currently in need of corrective maintenance. If allowed to progress past October of 2025, this will require major restoration and additional costs that should not be the responsibility of the tenants.

Figure 5 - Raised deck surface membrane lifting, rusting, lack of sealing - East Staircase

As further evidence that repairs should not be eligible under Guideline #27(1)(d), **Figure 6, Figure 7,** and **Figure 8** show examples of rust bubbles and corrosion typical of the stairways as viewed from their underside. As unaddressed corrosion continues to build beneath the paint surface to this day, rust bubbles form and water carries rust from the unsealed surfaces above. Left unaddressed this will lead to more expensive repairs in less than 5 years.

Figure 6 - Rust bubbles broken through, evidence of repair/repainting since restoration

Figure 7 - Rust bubbles and corrosion streaks

Figure 8 - Rust streaks from subsurface corrosion continue to this day

Figure 9 shows mis-matched paint colours on the underside of a stairwell as evidence that corrective maintenance has already been conducted less than 2 years following the completion of the restorative maintenance under dispute. This is further proof that the repairs will need to be conducted again, less than 5 years in contradiction to section (1)(b) of Guideline #37.

Figure 1 - Mismatched paint showing repairs have already been completed since restorative maintenance concluded

Supporting Evidence:

1) Example picture EXIF data showing photographs used in this submission were taken on 25-03-2022 and 27-07-2022

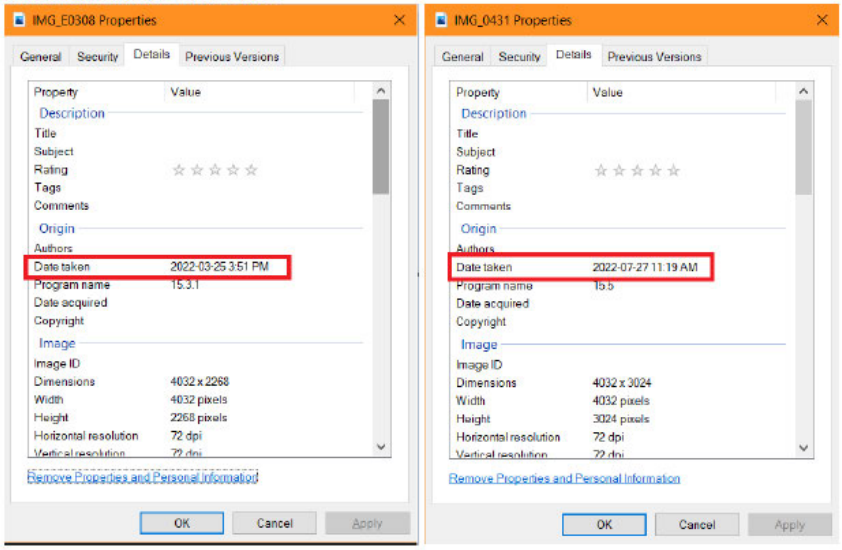

Figure 2 - Example EXIF data from pictures used as evidence

The following is the submission from DM of unit 111. As the landlord has included their response to this submission. I have not included the photos submitted by DM as DM already confirms in their submission that they reside on the first floor of the rental building and do not require the use of stairs as a result.

My response to the rent increase application comes in two points.

1. Both dates of capital expenditure occurred prior to the beginning of my residence at Dunway Court. If the landlord believed rent increases were required to recoup their expenditures, they could have added them to the initial rent they were asking for my unit. To wait for my residency to begin and then have me pay for improvements that were done to the property prior to my residence there is nothing more than false advertising of rental price and a bait and switch.

   Units which have become vacant since the beginning of this application have been removed from the application, which demonstrates the point that the landlord is capable of simply raising the rent on those units without an application needed. They could have done the same with my unit, however chose to advertise at a lower price to entice more applicants, of which I was one.

2. Captial Expenditure 02 is related to stairs which are completely unrelated to my residence on the first floor of the building. No stairs are required to access my suite, the common areas, the mail room, or the garbage room. To claim that this expense is related to my unit is a stretch. I have never once used any set of stairs on this property, nor are they related to any health, safety, or otherwise use of my rental unit.

Attached to this response is my residential tenancy agreement signed and dated showing that my tenancy began on August 1st, 2021, with the agreement being signed on June 19th, 2021 almost 3 months after the date for expenditure 01, and more than SIX months after the last dated installment for expenditure 02. The gap between these dates demonstrates that the landlord had sufficient time to decide if a rent increase was necessary to pay for the improvements to the property but decided against implementing one on my unit.

Additionally attached are some pictures showing my units location on the first floor of the building, with all amenities accessible without the use of stairs. I hope this evidence is sufficient to convince that this rent increase is unwarranted, unreasonable, and unrelated to my personal residence and tenancy at Dunway Court.

Landlord reply to tenant submissions

B. REPLY

4. In support of its Reply submissions, the Landlord refers to and relies upon a letter from [redacted] AScT, Leed AP, dated August 26, 2022, regarding Sense Engineering's confirmation of recommendations related to the Staircases' remediation (**see Exhibit A**). Indeed, Mr. [redacted] states:

    a. the Landlord's historical efforts to repair and maintain the Staircases were reasonable;

    b. the Landlord incurred a capital expense by carrying out Sense Engineering's recommended repairs to the Staircases;

    c. the Landlord's repairs to the Staircases were substantive in nature, not cosmetic or corrective;

    d. the repairs undertaken to the Staircases are unlikely to reoccur within five (5) years and not until after 2025;

    e. the issues raised by the tenants:

        i. having no bearing on the efficacy or completeness of the repairs undertaken by the Landlord;

        ii. will not serve to accelerate the need for repairs to the Staircases within the five (5) year period between 2020 and 2025; and

        iii. can be addressed by interim maintenance.

(a) Payments Incurred

5. To the extent that the below tenant respondents take issue with the date of payments incurred by the Landlord, the Landlord relies on and refers you to paragraphs 31 to 57 its ARI submissions filed on July 26, 2022.

6. The Landlord submits that, as payment for the Staircases was first incurred on March 30, 2020, its capital expenditure for the Staircases qualifies for an ARI.

(b) Compliance with Section 32(1)(a) of the *Act*

7. The Landlord submits that, at all material times, it complied with section 32(1)(a) of the *Act*.

8. The Landlord denies that it breached section 32(1)(a) of the *Act*.

9. The Landlord submits that it never delayed any repairs to the Staircases as alleged or at all. Regardless, the tenant respondents' allegations of delay, which are expressly denied, do not equate to a breach of 32(1)(a) of the *Act*. The tenant respondent do not identify what health, safety or housing standards were breached; indeed, no standards were beached.

(c) Submission from Unit #111 – [redacted] ("DM")

10. The Landlord submits that, pursuant to Guideline #37, a landlord may apply for an ARI in relation to a specific rental unit, even if a tenant moved into that rental unit after an eligible capital expenditure was incurred. As a result, DM's opposition to the ARI based on the fact that the noted capital expenditures were incurred before he become a tenant at the Rental Property is not relevant when considering whether an ARI is warranted in the circumstances.

11. The Landlord submits that, pursuant to the *Residential Tenancy Regulation*, major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. The Landlord submits that the Rental Property's Staircases allow one, including DM, to move throughout the Rental Property. DM's alleged non-use of the Staircases is not relevant as he has an ability to use same. Moreover, the Landlord submits that the Stairs constitute a major system or major component which the Landlord is required to provide and maintain in a state of decoration and repair that complies with the health, safety and housing standards required by law.

12. DM takes no issue with the Landlord's ARI Application for the Fire Panel.

(d) Combined Submissions

i. Submission #1 – [redacted] ("CW") of Unit #207

13. To the extent that CW argues that some expenditures have been incurred outside of the 18-month limitation period, the Landlord relies on and refers specifically to its previously submitted ARI submissions wherein it explains how the applicable law

ought to be purposively interpreted with respect to long term projects in which payments have been incurred within and outside of the 18-month limitation period.

14. The Landlord submits that, to the extent that rust has been observed on the Staircases, CW has provided no opinion that the Staircases will need to be remediated within the 5-year period since they were repaired. The Landlord submits that the issues raised by CW can be addressed by interim maintenance measures. The need for any maintenance in the next 5-year period is not the test for whether a capital expenditure should be granted; it is whether the capital expenditure itself is expected to be incurred again within that period. In this case, it is not.

15. CW takes no issue with the Landlord's ARI Application for the Fire Panel.

ii. Submission #2 – [redacted] ("MM") of Unit #308

16. The Landlord submits that MM has misconstrued the basis for its ARI request as it pertains to the Staircases. For clarity, the Landlord undertook remediation as the Staircases were being used at or near the end the of its useful life. Therefore, interim maintenance measures, or an alleged lack thereof, are not determinative or relevant to whether an ARI for a capital expenditure is warranted. Indeed, Guideline #37 provides that a capital expenditure will qualify for an ARI if the system or component is close to the end of its useful life; in this case, the Staircases had reached or were close to the end of their useful life.

17. The Landlord submits that, to the extent that rust has been observed on the Staircases, CW has provided no opinion that the Stairs will need to be remediated within the 5-year period since they were repaired. The Landlord submits that the issues raised by MM can be addressed by interim maintenance measures. The need for any maintenance in the next 5-year period is not the test for whether a capital expenditure should be granted; it is whether the capital expenditure itself is expected to be incurred again within that period. In this case, it is not.

18. MM takes no issue with the Landlord's ARI Application for the Fire Panel.

iii. Submission #3 - [redacted] ("BR") of Unit #309

19. The Landlord submits that BR's collective submissions are not relevant to this ARI Application; indeed, their personal circumstances have no bearing on whether an ARI is warranted.

20. The Landlord submits that, to the extent that BR argues that the Staircases could have been addresses as part of a general maintenance program, Guideline #37 provides that a capital expenditure will qualify for an ARI if the system or component is close to the end of its useful life; in this case, the Stairs had reached or were close to the end of their useful life. Regardless, Sense Engineering has confirmed that the Landlord's historical repair and maintenance efforts were reasonable in the circumstance.

21. BR takes no issue with the Landlord's ARI Application for the Fire Panel.

iv. Submission #4 – [redacted] ("MS") of Unit #206

22. The Landlord submits that MS's submissions are, generally, not relevant to this ARI Application.

23. The Landlord submits that, to the extent that MS questions the completeness of the Staircases' remediation, MS has provided no opinion that the Staircases have been improperly repaired nor has MS provided an opinion that the Staircases will need to be remediated within the 5-year period since they were repaired. To the contrary, Sense Engineering confirms that the Staircases were adequately and completely remediated, and that the repairs undertaken to the Staircases are unlikely to reoccur with the five (5) year period between 2020 and 2025.

24. MS takes no issue with the Landlord's ARI Application for the Fire Panel.

v. Submission #5 – [redacted] ("AJ") of Unit #211

25. The Landlord submits that AJ's allegations of alleged neglect for the Staircases, which are denied, are unsupported and are not relevant to this ARI Application. Again, Guideline #37 provides that a capital expenditure will qualify for an ARI if the system or component is close to the end of its useful life; in this case, the Staircases had reached or were close to the end of their useful life.

26. AJ takes no issue with the Landlord's ARI Application for the Fire Panel.

vi. Submission #6 – [redacted] ("JV") of Unit #412

27. The Landlord submits that JV's allegations of alleged neglect for the Staircases, which are denied, are unsupported and not relevant to this ARI Application. Again, Guideline #37 provides that a capital expenditure will qualify for an ARI if the system or component is close to the end of its useful life; in this case, the Staircases had reached or were close to the end of their useful life.

28. The Landlord submits that, to the extent that JV argues that the Staircases are currently being repaired, these repairs are the result of interim maintenance.

29. To the extent that JV argues against the quality of the Staircases' remediation, the Landlord submits it followed recommendations from its professional to restore the Staircases by way of metal and concrete repairs, the removal and replacement of all sealants, and the supply and installation of a new waterproof membrane. The Landlord submits that JV has provided no evidence, other than his unsupported assertions, to suggest that these specific issues were not addressed. To the contrary, Sense Engineering confirms the quality and completeness of the Staircases' remediation.

30. The Landlord submits that much of JV's submissions are unsupported opinion; hence they invite the RTB to speculate which falls below their burden on a balance of probabilities. For example, JV opines that the Landlord will be required to undertake another capital expenditure to remediate the Staircases within the 5-year period since they were remediated. That said, JV provides no opinion from a qualified individual to counter the July 15, 2022 opinion from the Landlord's engineers, Sense Engineering, who opine that the Stairs will not require further remediation until after 2025; indeed, this opinion was recently affirmed on August 22, 2022.

31. JV takes no issue with the Landlord's ARI Application for the Fire Panel.

C. CONCLUSION

25. The Landlord submits that a vast majority of the Rental Property's tenants do not oppose the Landlord's ARI Application.

26. The Landlord submits that the above noted tenants have failed to prove, on a balance of probabilities, that any of the aforementioned capital expenditure are ineligible for an ARI.

27. The Landlord submits that it has met its burden and seeks the approval of an ARI for the capital expenditures listed under Section D of its July 26, 2022 ARI submission. The Landlord asks that this ARI be combined with the next annual rent increase to be circulated to the Rental Property in 2023.

Analysis

Based on the documentary evidence provided by way of written submissions that were properly served on the other party and during the timelines ordered in my Interim Decision, and on the balance of probabilities, I find the following.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application. Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

Sections 21 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the Work was an eligible capital expenditure, specifically that:
    - the Work was to repair, replace, or install a major system or a component of a major system
    - the Work was undertaken for one of the following reasons:
        - to comply with health, safety, and housing standards;
        - because the system or component was
            - close to the end of its useful life; or

        - because it had failed, was malfunctioning, or was inoperative
      - to achieve a reduction in energy use or greenhouse gas emissions; or
      - to improve the security of the residential property;
    - the capital expenditure was incurred less than 18 months prior to the making of the application;
    - the capital expenditure is not expected to be incurred again within five years.

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, or**
- **for which the landlord has been paid, or is entitled to be paid, from another source.**

[emphasis added]

If a landlord submitted sufficient and required evidence to support their application 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.

In this case, there was no evidence that the landlord had made a prior application for an additional rent increase for the work done within the prior 18 months. The landlord's undisputed evidence is that there are 49 rental units in the residential property. Based on the evidence before me, all units are eligible given the wording of the Act and Regulation.

Firstly, I agree with the landlord's counsel that a capital expenditure is considered "incurred" when payment for it is made. In addition, Section 23.1(1) of the Regulation applies, which states:

> 23.1(1) Subject to subsection (2), a landlord may apply under section 43 (3) [additional rent increase] of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit **for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.** [emphasis added]

Given the above and considering that the ARI-C application was filed by the landlord on September 29, 2021, I find the 18-month deadline dates back to **March 29, 2020**.
I will now address each of the two items of the case before me individually.

Staircase and Membrane:

Regarding the Staircase and Membrane, I have carefully reviewed all of the invoices, photos, and submissions from both parties. According to the landlord, the Staircases were installed before 2007 and that in 2007 and 2011 the Staircases were repainted and waterproofed. The landlord also submits that in 2015, the Staircases were also repaired, albeit to a lesser degree than in 2007 and 2011.

The landlord submits that the Staircases have required frequent repairs to address issues pertaining to waterproofing, leakage issues and rusting. One such example was metal-framed canvas canopies installed atop of the Staircases to reduce the amount of rain falling on them. The landlord confirms that the Staircases are still exposed to wind-driven rain. The landlord also submits that that due to the age of the Staircases, being well over 10 years at the “material time” the landlord indicates that they followed recommendations and decided to restore Staircases with metal and concrete repairs, removal and replacement of all sealants, and the supply and installation of a new waterproof membrane.

The Staircase and Membrane remediation work occurred between December 31, 2019 and October 30, 2020. The three invoices submitted support the total claimed of **$116,235.** Regarding invoice 009377, the date completed states December 31, 2019 however the cheque was issued March 24, 2020 and a result, I find the expense occurred when the project was paid for, and the cheque was cashed, which was March 30, 2020 in the amount of **$80,999.10**. I agree with counsel that the date of payment is the date cashed by the other party as a cheque can be cancelled once the cheque is given or the account could have insufficient funds to be cashed. Further support of my finding is based on a stale-date of a cheque, which can no longer be cashed after 6 months of the cheque issue date. In other words, the payment was not made but it is due to the inaction of the recipient by failing to deposit the cheque within 6 months. In that case, the recipient would have to request a new cheque.

Regarding the next invoice, 009437, in the amount of **$22,845.90** although the work completed date shows March 31, 2020 the cheque was actually cashed on May 21, 2020. Regarding the next invoice, 009935, in the amount of **$12,390** although the work

completed date shows October 30, 2020, the cheque was actually cashed on December 4, 2020, according to the documentary evidence provided by the landlord.
Given the above, I find that the capital expenditures were incurred in the 18-month period preceding the date the landlord made the application before me. I find that the capital expenditures are not expected to be incurred for at least 15 years. I base this finding on the useful life of "Metals – Balcony railings, steel", which is 15 years and which I find is the closest comparison in RTB Policy Guideline 40 – Useful Life of Building Elements (Policy Guideline 40) to an outdoor steel staircase. For clarity, Policy Guideline 40 does not list "Outdoor steel staircase" specifically.

I disagree with the submission from the tenants that the Staircase work is for cosmetic purposes only. I find that the Staircase and Membrane meet the definition of a capital expenditure given what I find is:

- The expense was incurred within the 18-month period this application,
- The work is not expected to recur for at least 5 years,
- The work is to repair what I find to be a major component in a state of repair that complies with section 32(1)(a) of the Act, and
- The Staircase and Membrane has exceeded its useful life of 15 years.

As the invoices match the amount claim and given my finding that the remediation work is not for cosmetic purposes and that the Staircases and Membrane have exceeded their useful life of 15 years given that the Staircases were installed prior to 2007 and Building was built in 1992.

I find the landlord's responses to the tenants' submissions are reasonable and I agree with the landlord that the need for maintenance is not the test under the Regulation. Rather, the test is whether the capital expenditure itself is expected to be incurred again within 5 years. Based on the correspondence from the professional companies retained, I am satisfied that the same capital expenditure is not expected within 5 years. Given that the Staircase and membrane are outside where they are exposed to the elements, I find that it is reasonable to expect maintenance and I find that none of the photo evidence shows serious issues with the project that cannot be addressed by ongoing maintenance. I also find that the ongoing routine maintenance costs are not part of the application before me.
In addition to the above, the Act and Regulation provide a legal remedy to the landlord, and I afford more weight to reports from professional companies which support that this project will last longer than 5 years. While I appreciate the time and effort the tenants

have taken to submit their concerns, I find they do not outweigh the evidence of the landlords before me.

I have considered the submissions by the tenants that the landlord has not complied with section 32(1)(a) of the Act, however, I agree with the landlord that the tenants have not explained what health, safety or housing standards were breached. The landlord denies any breach of section 32(1)(a) of the Act and I find there is insufficient evidence to support that the landlord has done so.

In addition, residing on the first floor does not exclude those tenants as I agree with the landlord that non-use is not relevant as major systems and major components are typically things that support, enclose or protect a Building or support a critical function of the Building. I find the Staircases are a critical safety egress which all tenants must have access to.

The tenants bear the onus to prove the following:

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

I have reviewed all submissions that were properly served and find that the tenants have failed to provide sufficient evidence to support their assertion that the landlord has performed inadequate repair or maintenance regarding the Staircases. In support of my finding is that the Staircases were installed prior to 2007 and have already exceeded their useful life of 10 years, according to Policy Guideline 40.

I therefore find the landlord has submitted sufficient evidence to support their claim of $116,235 for this item.

Fire Panel:

Having carefully reviewed the documents before and considering that none of the tenants have dispute the Fire Panel as a capital expenditure, I find the following. I find the Fire Panel is a major component of the Building as it is a critical part of the safety systems in the Building. There is no dispute that the Fire Panel monitors heat detectors, pull stations, and sprinkler flow valves.

There is also no dispute that the Fire Panel as tested in 2017 was then 25 years old and required replacement. The landlord followed the advice of its professionals and made the decision to replace the Fire Panel. In or about February 2021, the contractor issued an invoice in the amount of **$10,929.03** and the landlord paid the contractor on March 16, 2021. There is a supporting document that indicates that replacement of the Fire Panel is not expected for at least 5 years.

Policy Guideline 40 indicates that the useful life of "Electrical – Fire alarms" is 15 years. I find the Fire Panel has long exceeded its useful life and that the Fire Panel replacement is a major component to improve the security of the residential property. The Oxford Dictionary defines "security" in terms of a noun as follows:

> "the state of being free from danger or threat."

Upon a review of the landlord's evidence, I find that the Fire Panel capital expenditure were incurred in the 18-month period preceding the date the landlord made their application. Based upon the evidence before me, I find that this capital expenditure is not expected to be incurred for at least 15 years. I base this finding on the useful life of a fire alarm is 15 years under Policy Guideline 40.

I find the landlord's documentary evidence supports that the amount of $10,929.03, which was part of a larger amount of $12,254.13, the latter amount of which is not being claimed by the landlord, was withdrawn from the landlord's bank account on March 18, 2021.

I therefore find the landlord has submitted sufficient evidence to support their claim of $10,929.03

For all of the reasons listed above, I grant the landlord's application for the additional rent increase, in full, based on eligible capital expenditures of $116,235 and $10,929.03, or a total of **$127,164.03** pursuant to section 43(1(b) of the Act and 23.1(4) of the Regulations referred to above.

Section 23.2 provides the formula for calculating the additional rent increase as the number of specific dwelling units divided by the amount of the eligible capital expenditure divided by 120. In this case, I have found that there are 49 specified dwelling units and that the amount of the eligible capital expenditure is **$127,164.03** in total. I find the landlord has established the basis for an additional rent increase for capital expenditures of **$21.63** per affected tenancy (**$127,164.03 ÷ 49 units ÷ 120**).

This amount **may not exceed 3% of a tenant's monthly rent,** and if so**,** the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The landlord is directed to RTB Policy Guideline 37 (Policy Guideline 37), page 11 to properly calculate the rent increase in accordance with the Regulations, **as this is the landlord's responsibility.** In addition to Policy Guideline 37, the parties are also directed to section 42 of the Act to learn about annual rent increases, for which the landlord is still entitled to apply, and the RTB website for further information on the additional rent increase calculator and how this increase may be imposed.

Conclusion

The landlord's application for an additional rent increase for eligible capital expenditures is granted, in full.

The landlord is directed to serve this Decision on each affected tenant, individually, within two weeks of this Decision.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 22, 2022

Residential Tenancy Branch