Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC Realty Corporation c/o AHBL LLP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-C

Introduction

In this application, the applicant landlord seeks an additional rent increase for eligible capital expenditures in the amount of $569,912.48 pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act* (the "Act") and section 23.1 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 (the "Regulation").

The landlord filed their application on November 26, 2021 and a preliminary hearing (held by teleconference) was convened on January 25, 2022. An Interim Decision was issued on that same date and this matter was adjourned to a written submission hearing scheduled on October 11, 2022.

Parties were requested to provide written submissions, along with any relevant documentary evidence, prior to specific dates as set out in the Interim Decision. Submissions and evidence were then reviewed and considered on October 11, 2022.

Preliminary Issue: Written Submissions and Evidence

As per the Interim Decision, the format of the hearing was in writing pursuant to subsection 74(2)(b) of the Act. Both parties were given an opportunity to provide written submissions and documentary evidence. The landlord provided written submissions and supporting documentary evidence.

One of the respondent tenants provided a written request to remove their name from the proceedings, as they had vacated on October 31, 2021. (Those parties' names have been removed from the style of cause.)

One respondent submitted copies of nine complaints, but without any written submission or additional context as to how they relate to whether the landlord's application might be granted or denied. As such, I shall not address those complaints.

Last, another supposed respondent provided an eight-page written submission (or "letter") along with ten documentary exhibits, which contained copies of email correspondence. Regarding this submission and the exhibits, however, it must be noted that they were provided by an individual who chose to remain anonymous. Further, the communication (such as the email correspondence contained within one of the exhibits) was redacted.

It is trite law that submissions are not evidence. They are simply submissions and nothing more (*Mwanri v. Mwanri,* 2015 ONCA 843). Further, without there being any means by which I can ascertain the identity of the individual who supposedly provided copies of documentation upon which they intend to support claims or arguments set out in a written submission, I am not prepared to accept the documentary evidence. Indeed, I would accept the landlord's position on this submission from an anonymous individual, namely, that there is "no way to verify that the person making these submissions is a current tenant or otherwise eligible to participate in these proceedings. There is also no basis to facilitate a request for anonymization in a rent increase matter, and no explanation from the author as to why their anonymization is warranted in the circumstances of this application."

For these reasons, the anonymous submissions and documentary exhibits will not be considered in determining the landlord's application.

Issue

Is the landlord entitled to a rent increase pursuant to subsections 43(1)(b) and 43(3) of the Act and section 23.1 of the Regulation?

Background, Submissions of Parties, and Evidence

The landlord's submission is reproduced as follows (formatted for brevity)

1. This Application for an Additional Rental Increase for Capital Expenditures ("ARI") concerns Arbour Place, a rental property consisting of two (2) towers. The Landlord, bcIMC Realty Corporation (the "Landlord"), seeks the approval of an ARI for the capital expenditures listed under Section D. The Landlord asks that this ARI be combined with the next annual rent increase to be circulated to the Rental Property in 2023.

2. On November 26, 2021, the Landlord filed the subject ARI Application. 9. The Rental Property, formerly known as Parkview Towers, consists of two (2) towers. Tower 1 was constructed in 1970 and Tower 2 was constructed in 1976. Despite consisting of two civic addresses, the two (2) towers that make up the Rental Property are a part of the same parcel (see Exhibit C).

3. The Rental Property consists of studio, 1 bedroom, 2 bedroom, and 3-bedroom apartments for rent in the Metrotown area of Burnaby, British Columbia.
4. The Landlord brings this ARI Application for all tenants residing in the Rental Property (the "Tenants"), save and except for those Tenants who have moved away since this ARI Application was filed.

5. The Landlord incurred the following capital expenses related to major systems or major components at the Rental Property. 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 subject ARI Application.

6. **Garage Door/Operator**. In or around April 2021, the Landlord was advised that the parkade gate for Tower 1 required replacement; indeed, this opinion was received after a service provider, Versatile Door Service Ltd., conducted scheduled maintenance for same.

7. For clarity, the primary purpose of the parkade gate and operator is to provide security and secured parking by preventing unauthorized entry into the Rental Property's parkade area (see Exhibit C). According to Versatile Door Service Ltd., the parkade gate's metal was fatigued and failing in multiple spots. Versatile Door Service Ltd. also recommended replacing the parkade gate's operator (see Exhibit C).

8. The Landlord carried out regular maintenance to the prior parkade gate/operator (see Exhibit C).

9. On April 16, 2021, Versatile Door Service Ltd. provided the Landlord with its recommendations and a quote for the parkade gate/operator's replacement (see Exhibit C).

10. On July 21, 2021, Versatile Door Service Ltd. carried out its recommendations to replace the parkade gate/operator. On the same date, Versatile Door Service Ltd. issued the Landlord an invoice for its services, Invoice #38853, in the

amount of $13,440.00 (see Exhibit C). On September 10, 2021, the Landlord issued payment to Versatile Door Service Ltd. for the parkade gate/operator's replacement (see Exhibit C).

11. September 10, 2021 is within 18 months of November 26, 2021.

12. Replacement of the new the parkade gate/operator is not expected to recur for at least five (5) years.

13. **Elevator Replacement.** Tower 1 contains an elevator (the "Elevator") that was part of the original construction of same. Again, Tower 1 was built in 1970. The Landlord regularly maintained the Elevator; in fact, it was covered under the terms of a full maintenance contract with Schindler Elevator Corporation. In 2005, the Elevator was modernized, but not replaced (see Exhibit C).

14. On August 17, 2017, the Landlord received a "Vertical Transportation Due Diligence Report" from Solucore Inc. (the "Elevator Report"). The Elevator Report was authored by [name redacted] and reviewed by [name redacted], P. Eng (see Exhibit C).

15. Pursuant to the Elevator Report, and although the Elevator was modernized, Solucore Inc. opined that a major modernization was anticipated. Indeed, this was prompted by various factors including, but not limited to, the scarcity of parts and expertise to repair the Elevator going forward.

16. On October 10, 2020, Schindler Elevator Corporation provided the Landlord with a quote, Estimate # JLAC-BQ8M98, to upgrade the Elevator. 27. In early December 2020, the Landlord agreed to remediate the Elevator. 28. Between December 16, 2020 and June 29, 2021, Schindler Elevator Corporation remediated the Elevator; in doing so, Schindler Elevator Corporation issued five (5) invoices for its work, Invoice #'s 7300043572, 7300043573, 7300044603, 7300045188. In total, the Elevator's remediation cost $75,825.75 (Exhibit C).

17. The Landlord issued three (3) payments to Schindler Elevator Corporation for the Elevator remediation between January 8 and October 1, 2021 (see Exhibit C). 30. January 8, 2021 is within 18 months of November 26, 2021.

18. Replacement of the Elevator is not expected to recur for at least five years.

19. **Fire and Life Safety.** On April 14, 2020, Fire-Pro Fire Protection Ltd. conducted its annual fire alarm inspection (the "Inspection"). Pursuant to the Inspection, several deficiencies were identified (see Exhibit C). Between August 21, 2020 and February 16, 2021, Fire-Pro Fire Protection Ltd. and Mircom Technologies Limited attended the Rental Property to address the deficiencies. In doing so, Fire-Pro Fire Protection Ltd. issued two (2) invoices for its services, Invoice #'s 72026 and 74212, amounting to $8,244.39. Mircom Technologies Limited issued one (1) invoice, Invoice # 058414, amounting to $1,018.51.

20. In total, the Landlord was invoiced $9,262.90 to address the Fire and Life Safety deficiencies (see Exhibit C).

21. The Landlord issued three (3) payments — two (2) to Fire-Pro Fire Protection Ltd. and one (1) to Mircom Technologies Limited — between September 8, 2020 and April 26, 2021 (see Exhibit C).

22. September 8, 2020 is within 18 months of November 26, 2021 [the date of the landlord’s application]. Replacement of the Fire and Life Safety deficiencies is not expected to recur for at least five (5) years.

23. **Boiler and Coil.** Central heating for the entire Rental Property, which is propelled by three (3) boilers, is located in Tower 1 (the "Boiler"). The Boiler supplies heated water to finned tube radiators throughout the Rental Property. As a result, the Boiler services both Tower 1 and Tower 2 (see Exhibit C).

24. In 2019, combustion leakage around the Boiler's heat exchanger was detected; this leakage was subsequently patched. However, the patch repairs did not hold thereby giving rise to further leakage issues. As a result, the Landlord had to shut down the Boiler (see Exhibit C).

25. On or about July 12, 2019, Jade West Engineering Co. Ltd. provided the Landlord with a report related to the Boiler and remediation recommendations for same (the "Boiler Report"). Effectively, Jade West Engineering Co. Ltd. determined that the Boiler failed due to the length of the Boiler's flue vents which caused back pressure and overheating in the Boiler. Regardless of what was done to restore the reliability of the Boiler or to remedy the back-pressure issue, additional booster fans would need to be added, one in each flue vent.

26. Jade West Engineering Co. Ltd. provided the Landlord with three options on how best to proceed with the Boiler situation. Based on timing, budget and the need to restore the heating system to a fully reliable and operating system, the Landlord decided to replace the Boiler (see Exhibit C).

27. The Landlord retained LPI Mechanical (West) Inc. and Slopeside Mechanical Systems to carry out the Boiler's remediation. 42. Slopeside Mechanical Systems issued eight (8) invoices for its work, amounting to $394,275.01. LPI Mechanical (West) Inc. issued two (2) invoices, Invoice #'s W11393 and 11705, amounting to $6,459.55. In total, the Landlord was invoiced $400,734.56 to address the Boiler (see Exhibit C).

28. The Landlord issued nine (9) payments — three (3) to LPI Mechanical (West) Inc. and six (6) to Slopeside Mechanical Systems — between February 25, 2020 and August 8, 2021 (see Exhibit C).

29. All payments made to address the Boiler ought to be considered to have been made within 18 months of November 26, 2021.

30. Replacement of the new the Boiler is not expected to recur for at least five years.

31. **Energy Savings Additive**. EndoTherm is an additive for hydronic based heating systems. It improves the thermal properties of water, producing natural gas savings of up to 15%. EndoTherm reduces the surface tension of system water by 60% which increases heat transfer; this increase in heat transfer improves system efficiency (see Exhibit C).

32. In October 2020, the Landlord received an EndoTherm Proposal from Pace Solutions Corp. Pursuant to EndoTherm's Proposal, the Landlord could expect a 10% savings on space heating which equate to $9,765/year (see Exhibit C).

33. On November 2, 2020, the Landlord approved EndoTherm's Proposal. Pace Solutions Corp. issued one (1) invoice for its work, Invoice # 1121513, which amounted to $19,137.11 (see Exhibit C). The Landlord issued one (1) payment to Pace Solutions Corp. on January 8, 2021 (see Exhibit C).

34. On May 31, 2021, the Landlord received a rebate from Fortis BC and it related to the Rental Property, and other rental properties managed by the Landlord.

35. The Landlord received a total rebate for all buildings, including the Rental Property, in the amount of $12,600.00. The Rental Property accounted for 40% of the total amount received from Fortis BC, which is otherwise $5,040.00 (see Exhibit C).

36. January 8, 2021 is within 18 months of November 26, 2021.

37. Taking Fortis BC's rebate into account, the Landlord incurred $14,097.11 in expenses for the EndoTherm. Replacement of the EndoTherm is not expected to recur for at least five (5) years.

38. **Domestic Water Line.** In 2021, during a landscape and civil works project at the Rental Property, the Landlord determined that the main water line from the City of Burnaby into Tower 1 was in very poor condition (the "Water Line") (see Exhibit C).

39. The Water Line is original to the Rental Property and provides water to Tower 1. Given the condition and age of the Water Line, the Landlord decided to replace same. The Landlord retained LPI Mechanical (West) Inc. and Slopeside Mechanical Systems to carry out the Water Line's remediation. Slopeside Mechanical Systems issued one (1) invoice for its work, Invoice # 5313, amounting to $4,892.16.

40. LPI Mechanical (West) Inc. issued two (2) invoices, Invoice #'s W12803 and W12922, amounting to $51,660.00. In total, the Landlord was invoiced $56,552.16 to address Water Line (see Exhibit C). 59.

41. The Landlord issued three (3) payments — two (2) to LPI Mechanical (West) Inc. and one (1) to Slopeside Mechanical Systems — between July 6, 2021 and September 9, 2021 (see Exhibit C). July 6, 2021 is within 18 months of November 26, 2021.

42. Replacement of the new Water Line is not expected to recur for at least five (5) years.

Submitted into documentary evidence by the landlord were copies of reports, invoices, copies of Residential Tenancy policy guidelines, sworn affidavits, copies of documentation showing payments made, and additional material.

Analysis

The landlord must establish on a balance of probabilities that the capital expenditures meet the requirements to be eligible for an additional rent increase.

Subsection 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount "ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that

> In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Section 23.1 of the Regulation sets out the criteria by which this application is considered. I have also considered *Residential Tenancy Policy Guideline 37: Rent Increases* in reviewing this application. Section 23.1 of the Regulation, in its entirety, reads as follows:

(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.

(2) If the landlord made a previous application for an additional rent increase under subsection (1) 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 additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

(3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.

(4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:

(a) the capital expenditures were incurred for one of the following:

(i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) *[landlord and tenant obligations to repair and maintain]* of the Act;

(ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;

(iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A) a reduction in energy use or greenhouse gas emissions;
(B) an improvement in the security of the residential property;

(b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
(c) the capital expenditures are not expected to be incurred again for at least 5 years.

(5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred

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

In this application, based on the evidence before me, it is my finding on a balance of probabilities that the capital expenditures were incurred for:

1. the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law (the garage door/operator, the elevator replacement, the boilers and coil),
2. for the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life (the garage door/operator, the elevator replacement, and the domestic water line expenditures), and
3. for the installation, repair or replacement of a major system or major component that achieves a reduction in energy use or greenhouse gas emissions (the energy savings additive expenditure) and for an improvement in the security of the residential property (the garage door/operator, the fire and life safety expenditures);

It is my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application. In respect of *when* some of the payments were made, I agree with the landlord's argument that

> 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.

I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes.

Further, based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years (in most cases, well beyond this period).

As noted in the Preliminary Issue section of this Decision, one of the respondent tenants submitted copies of complaints, but did not provide any submission or argument as to how subsection 23.1(5) of the Regulation might apply to decline the landlord's application.

As further explained above, the submissions of supporting documentation from an anonymous party will not be considered. Given this, I need not consider the application of section 23.1(5), as the onus to establish subsection 23.1(5)(a) or (b) falls upon a tenant.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of $569,912.48 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act is hereby granted.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

> (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.
>
> (2) The director must
>
> (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
> (b) divide the amount calculated under paragraph (a) by 120.
>
> (3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43(1)(a) of the Act in that year by 3%.
>
> (4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application there are 243 specified dwelling units. The calculation is thus: (569,912.48 ÷ 243 units) ÷ 120 = $19.54. From there, the landlord must then apply subsections 23.2(3) and (4) of the Regulation.

It is the landlord's responsibility to make the required calculations. The landlord must refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, section 42 of the Act, and the additional rent increase calculator on the Residential Tenancy Branch website for guidance on how this rent increase made be imposed.

Conclusion

The landlord's application is granted.

A copy of this Decision must be served by the landlord upon each tenant within two weeks of the landlord receiving this Decision from the Residential Tenancy Branch.

This decision is made under delegated authority by the Director of the Residential Tenancy Branch pursuant to section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: October 12, 2022

Residential Tenancy Branch