



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Code: ARI-C

Introduction

The landlords seek a rent increase pursuant to [sections 43\(1\)\(b\) and 43\(3\)](#) of the *Residential Tenancy Act* (“Act”) and [section 23.1](#) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003. The landlord’s application was made on December 22, 2021 and a preliminary hearing was held on February 14, 2022. An interim decision was then issued on February 14, 2022.

The Hearing, Attendance, and Names of Respondents

On Thursday, November 24, 2022 the hearing was convened by teleconference. The hearing was scheduled to begin at 9:30 AM. However, for inexplicable technical reasons I was unable to dial into the hearing until approximately 9:37 AM. The hearing adjourned for a break at 10:39 AM, reconvened at 10:49 AM, and ended at 11:39 AM.

Attending the hearing were landlords’ counsel, three agents (two of whom were witnesses), and seven tenants. Only the names of those tenant respondents who spoke during the hearing are recorded on the cover page of this decision. One tenant did not speak English (Cantonese was his first language) and I was unable to assist him; he left the hearing shortly after it began.

The names of the respondents in the style of cause have been updated based on the landlord’s “Moveout Report” dated November 23, 2022. There were 37 names removed.

Service of Interim Decision, Notice of Dispute Resolution Proceeding, and Evidence

Landlord’s counsel confirmed that the Interim Decision was served upon the respondents, along with the landlord’s documentary evidence and written submission. The hearing was originally scheduled for October 3, 2022 but due to arbitrator unavailability the matter was adjourned by the Residential Tenancy Branch (the “Branch”) to November 24, 2022.

It is my understanding and finding that, based on counsel's remarks and internal Branch file notes, the Branch mailed copies of a new Notice of Dispute Resolution Proceeding document (for the November 24, 2022 hearing) shortly after October 3, 2022.

Based on the above I am satisfied that the respondents were served with the required documents and evidence in compliance with the Act.

Issue

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

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to decide the outcome of the application and to explain the decision, is reproduced below.

There are a total of 190 rental units in a multi-unit residential property. The property consists of three, four-story apartment buildings in Langley. They were built in 1975 (though the written submission notes that it was 1974). The landlord took over ownership and operation of the property on March 29, 2018.

The landlord applies for an additional rent increase in a single application to increase the rent for all 190 units in the property, in accordance with section 23.1(3) of the *Regulation*, as a result of the capital Expenditures. The landlord has never made a prior application for an additional rent increase with respect to the property.

The landlord seeks approval for the following capital expenditures. I have included excerpts from documentary evidence and submissions in the following table:

<p>1. Elevator Modernization</p>

<p>Scope of Work Completed: The controllers and associated electrical elements of the elevator were upgraded.</p>

<p>Reason for Work: The controllers were the original parts and out of date, and it was difficult to source replacement parts. This was causing operational issues with the elevators. The elevator consultant recommended the upgrade.</p>

Timing of Last Repair/Upgrade: N/A – the controllers were the original parts and had not been upgraded since installation.

Anticipated Useful Life of Repair/Upgrade: 20 years

Total Cost of Work Completed (Capital Expenditures): \$320,732.78

2. DHW Heaters Replaced

Scope of Work Completed: The DHW heaters were replaced.

Reason for Work: The DHW heaters were no longer operational, and there was a lack of hot water for residents.

Timing of Last Repair/Upgrade: The landlord is not sure, as the last repair occurred prior to its ownership and operation of the property but estimates it has been approximately 20 years since the last repair or upgrade.

Anticipated Useful Life of Repair/Upgrade: 10 years

Total Cost of Work Completed (Capital Expenditures): \$31,489.50

3. Security Camera and Security System Installation and Upgrade

Scope of Work Completed: Additional security cameras were installed, and existing security cameras and security system were upgraded.

Reason for Work: The additional and replacement cameras allowed for more areas to be monitored, so that trespassers could be identified on camera. The former security system was quite old and multiple break-ins were occurring causing damage to the property and leaving the residents feeling unsafe. The new security system, including additional door controls and exterior door cameras, was installed to deal with this issue.

Timing of Last Repair/Upgrade: At least 10 years ago.

Anticipated Useful Life of Repair/Upgrade: 5 years

Total Cost of Work Completed (Capital Expenditures): \$28,352.49

4. Additional Fencing

Scope of Work Completed: Overgrowth was cleared out and additional fencing was erected on the property. Mulch was also laid down to protect new growth.

Reason for Work: There is a stream running through the property that is a protected wildlife area. Since the area was not previously fenced, homeless persons were staying in the area and there was an accumulation of garbage. By fencing the area, this delineated the property and increased the safety and security of the property.

Timing of Last Repair/Upgrade: N/A – There was no pre-existing fence.

Anticipated Useful Life of Repair/Upgrade: 15-25 Years

Total Cost of Work Completed (Capital Expenditures): \$10,037.48

Note: the landlord abandoned a portion of this claim related to the mulch and landscaping.

5. New Parking Gate Installation

Scope of Work Completed: The old parking gate was removed, and a new aluminum gate was installed with proper supports and a man door.

Reason for Work: The old gate was unusable. The new gate was installed for increased security and safety.

Timing of Last Repair/Upgrade: The landlord is uncertain, as the last repair occurred prior to its ownership and operation of the property but estimates it has been several decades since the last repair or upgrade, given that the old gate appears to be the original gate installed at the time the property was constructed.

Anticipated Useful Life of Repair/Upgrade: 10 years

Total Cost of Work Completed (Capital Expenditures): \$13,660.52

6. Window Screen Installation

Scope of Work Completed: Window screens were installed on all windows and patio doors.

Reason for Work: There were no screens on the windows and patio doors prior to installation. Installing these screens allowed for the windows and patio doors to be open without insects coming in, which improved air flow and energy usage in the building. The residents were regularly requested screens.

Timing of Last Repair/Upgrade: N/A – There were no pre-existing screens.

Anticipated Useful Life of Repair/Upgrade: 10-20 Years

Total Cost of Work Completed (Capital Expenditures: \$67,132.80

7. Common Area Updates

Scope of Work Completed: The finishings in the common areas were updated. The baseboards and lights were replaced in common areas, including the lobby, and carpet in the lobby was replaced. (The claim for fitness equipment repairs was abandoned.)

Reason for Work: The finishings were old and in need of replacing and the computerized fitness equipment required repair.

Timing of Last Repair/Upgrade: The landlord is not sure, as the last upgrade and repair occurred prior to its ownership and operation of the property but estimates it has been several years since the last repair or upgrade.

Anticipated Useful Life of Repair/Upgrade: 5-10 Years

Total Cost of Work Completed (Capital Expenditures): \$18,867.92

Note: two invoices for painting (\$1,811.25) and for baseboard painting (\$1,528.80) were abandoned. The revised amount sought is thus less.

8. Water and Electrical Repairs

Scope of Work Completed: The broken and non-functioning zone valves, in-suite water shutoffs, and electrical outlets were replaced, and the wall pack lighting replacement zone valves were also replaced.

Reason for Work: The electrical outlets needed replacing as they were creating a fire hazard and the water valves were also old and in need of replacing, as they had either exceeded their expected useful life or were no longer functioning.

Timing of Last Repair/Upgrade: The Landlord is not sure, as the last upgrade and repair occurred prior to its ownership and operation of the property but estimates it has been several years since the last repair or upgrade.

Anticipated Useful Life of Repair/Upgrade: 10-25 years

Total Cost of Work Completed (Capital Expenditures): \$31,689.93

9. Replaced Vinyl Siding and Metal Flashing

Note: this claim (for \$4,135.95) was abandoned and is not being sought.

The landlord's application initially sought a total of \$526,099.37 in expenditures to be approved under this application. However, landlord's counsel, both in written and oral submissions, noted that \$16,369.88 in various claims was being abandoned. An additional claim which included an invoice (#1350571 on Tab 2, page 11, of the landlord's PDF "Tab_2_-(2)") in the amount of \$1,147.72 was abandoned during the hearing. As such, the revised total amount in expenditures is thus \$508,581.77.

Both of the landlord's witnesses testified under oath regarding the need for these repairs and work, and their testimony essentially reflected the descriptions and content contained in the above table. Invoices and photographs for all of the work was submitted into evidence and was considered. Extensive reports were also provided. This included a professional recommendation that the elevators be modernized.

These capital expenditures were incurred in relation to a project completed within the 18 months preceding the additional rent increase application, and each expenditure relates to a project with an anticipated useful life of between 5-25 years.

These capital expenditures were incurred by the landlord in order to repair, install or replace a major system or a major component of a major system that had failed or was close to the end of its useful life, to maintain the property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, to reduce energy use at the property, and to improve the security of the property.

It should be noted that all of the capital expenditures were incurred after June 22, 2020, with the exception of one expenditure relating to the elevator modernization (Capital Expenditure 01) in the amount of \$4,410.00, which was incurred on October 1, 2019. This specific expenditure falls outside the 18-month period (to which I shall refer below in the Analysis section), for which the landlord makes the following written submission and argument:

1. The Landlord submits that because the work to modernize the elevator was part of a single, larger project to replace a major system (the elevator), and the last payment for this work was incurred after June 22, 2020 (on September 15, 2021), all capital expenditures made in relation to the elevator modernization as part of this same project should be considered as having been incurred during the 18 Month Period.
2. The Landlord takes this position because the reality of construction projects, particularly ones involving extensive changes to major systems, such as elevators, inevitably occur over a period of time, with payments made at various stages. It would not make sense to require a Landlord to bring two separate applications for an additional rent increase relating to a single project, simply because the project can be broken down into various payments, some of which were made before the 18 Month Period.

I will return to the landlord's argument later in this Decision.

The anticipated useful life of the capital expenditures are between 5 and 25 years. Further, based on the useful life of building elements in *Residential Tenancy Policy Guideline 40*, and knowledge of past repairs and replacements, where applicable, the landlord anticipates and expects that none of the capital expenditures will recur in the next five years.

Three of the attending respondent tenants took the opportunity to make statements and submissions after the landlord had concluded the presentation of its case.

One tenant (J.P.) expressed concern with the fact that all of the work being referred to in this application was completed before they began their tenancy. The tenant also referred to there being “quite a bit of problems” with the new hot water, though the landlord was described as being “excellent” in promptly attending to the problems. The tenant then concluded by submitting that they (that is, the tenants) feel that their rent is sufficient.

Tenant (R.R.) began by noting that the property manager (L.H., who was also one of the landlord’s witnesses) was “top notch.” In respect of this application, however, the tenant argued that the landlord is acting more like a strata corporation. The landlord was expecting the tenants to pay for things that would be of benefit to the tenants—if those tenants were condo owners. Yet they are not.

Regarding the security camera installation, at least \$10,000 of this claim was in fact unnecessary. Indeed, the tenant explained how, even after additional security cameras were installed, their personal vehicle was stolen. The new, additional security cameras had done nothing for the security, the tenant remarked.

Last, the tenant spoke of the current state of the economy, record high inflation, and that even if the rent increase only amounted to \$20 a month, this was still an impact. The tenant noted that many of the tenants are on a fixed income. There was also a concern that the rent increase would exceed the provincial limits.

The third tenant (M.S.) asked for some clarification on the percentage amounts of a rent increase, and landlord’s counsel briefly provided some explanation on how the increases are implemented. The tenant explained that they are a senior but that they still have to work to pay the bills. And the tenant described how they suffered a disruptive and stressful life during renovations that were being done in the building. There have, the tenant noted, been two renovations in the 4.5 years that they have resided in the building. The tenant argued that the landlord should, in seeking a rent increase of this nature, take into account the disruption caused by renovations.

Analysis

Onus and Burden of Proof

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

Regulatory Framework

Section 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

[...] 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 to be considered (excerpts only):

- (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; [. . .]
 - (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.

Number of Specified Dwelling Units

Section 23.1(1) of the Act contains the following definitions:

"dwelling unit" means the following:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit; [...]

"specified dwelling unit" means

- (a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or

- (b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

There are 190 eligible dwelling units in the building.

Regarding tenant J.P.'s submission that the rent increase ought not to apply to their tenancy because the work was done before they became a tenant, the Act and the Regulation make no provision to exclude a tenant, or a tenancy, based on the date that the tenancy began. Rather, the application for a rent increase is made against a specific dwelling unit that is in a building where capital expenditures were made.

If capital expenditures meet the criteria under the Regulation, and if those expenditures were made in the 18 months leading up to the date of a landlord's application, then the tenancies *in place at the time of the application was made* will be affected.

Amount of Capital Expenditures

The total amount of the capital expenditures claimed by the landlord is \$508,581.77. However, as noted below, I deduct \$4,410.00 from the claimed amount for a final total of \$504,171.77.

Eligibility and Application of Subsection 23.1(4)(a)

In this application, based on the undisputed oral and documentary evidence, it is my finding on a balance of probabilities that the capital expenditures were incurred for (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.

In respect of one respondent tenant's submissions that the new, additional security cameras were unnecessary, the landlord's evidence suggests otherwise. This is not to diminish in any way the tenant's personal experience of having his vehicle stolen. However, the additional security cameras have, by the landlord's property manager's own account, improved the security of the property.

Next, it is my finding that all but one of the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application. There is one exception, however. This is for a \$4,410.00 payment made on October 1, 2019, which occurred 26 months before the application was filed.

With respect to the landlord's argument that because the work to modernize the elevator was part of a single, larger project, that all capital expenditures made should be considered as having been incurred during the eighteen-month period, I must disagree.

I do not accept that the date of the payment—in this case October 1, 2019—somehow changes simply because the purpose of the payment is related to a project spanning more than 18 months. And while I appreciate that the reality of large-scale construction projects inevitably occurs over a long period of time, the absurd result of accepting the position of the landlord on this payment is such that a landlord may simply start work on a project, and then continue to incur expenditures without there being a reasonable time limit within which those expenditures might then be recouped.

To reiterate, the 18-month limit serves, I think, to establish a concrete time limit within which expenditures can be captured. If a landlord is permitted to claim for expenditures that are clearly outside the 18-month period, then there is no absolute limit on how far back a landlord may reach in seeking to recoup expenditures. For this reason, I do not accept that the \$4,410.00 payment in respect of the elevator modernization falls within the 18-month period as required by subsection 23.1(4)(b) of the Regulation. This amount is deducted from the total expenditures below.

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

Further, based on the evidence before me, it is concluded that the capital expenditures are not expected to be incurred again for at least five years. There is nothing in the evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at *Residential Tenancy Policy Guideline 40*.

For this reason, I find that the life expectancy of the components will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

Finally, I note that no submissions or argument was made by any tenant that either subsection 23.1(5)(a) or (b) of the Regulation might apply in the circumstances to defeat the landlord's application.

Given the above, the landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$504,171.77 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 190 specified dwelling units. The calculation is thus:
 $(\$504,171.77 \div 190 \text{ units}) \div 120 = \$22.11.$

The eligible rent increase amount is therefore in amount of \$22.11.

From this amount, 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, and section 42 of the Act

The Residential Tenancy Branch's provides an online rent increase calculator (which helps determine the maximum allowable increase amount per rental unit and the time that such an increase may be made). The calculator and other tools are accessible at:

www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase#calc

Conclusion

For the reasons given above the landlord's application is hereby granted for an additional rent increase, for eligible capital expenditures, in the amount of \$22.11. The landlord may only impose this increase in accordance with the Act and the Regulation.

The landlord is ordered to serve a copy of this Decision to the tenants, in compliance with section 88 of the Act, within 15 business days of receiving the Decision.

This decision is made on delegated authority under section 9.1(1) of the Act and a party's right to appeal this decision is limited to grounds under section 79 of the Act or by way of judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 26, 2022

Residential Tenancy Branch