



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

A preliminary hearing was originally held on January 31, 2022, and adjourned to July 5, 2022 to deal with the Landlord's application pursuant to the Residential Tenancy Act (the "Act") section 43 and the Residential Tenancy Regulation (the "Regulation") section 23.1 for an additional rent increase for capital expenditure. On July 5, 2022, the tenants' request for an adjournment was granted in order to allow the tenants time to obtain legal advice and representation.

Six Tenants attended the October 11, 2022 hearing, along with an advocate, MB. The Landlord was represented at the hearing by legal counsel, MD, as well as three agents for the landlord, LP, KM, and KC. The hearing commenced at 9:30 a.m., and ended at 12:38 p.m. in order to all parties who were in attendance a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

At the beginning of the hearing, counsel for the landlord provided a list of tenants who have moved since this application was filed. The remaining Tenants listed on the Landlord's application did not attend this hearing, although I left the teleconference hearing connection open until 12:38 p.m. in order to enable these Tenants to call into this teleconference hearing scheduled for 9:30 a.m.

I confirmed with the landlord's counsel that they had received evidence from tenants BF and CC, which was the only evidence submitted by the tenants. CC's letter was not submitted to the RTB prior to the hearing for consideration, but by consent of both parties, a copy of CC's letter was submitted to the RTB after the hearing. The landlord submitted in evidence proof of service of the landlord's application, Notice of Dispute Resolution Proceedings containing the calling instructions for the original hearing, and evidence package in accordance with sections 88 and 89 of the *Act*, as well as the

substituted service order that was granted on April 26, 2022. The landlord also provided a Certificate of personal Service dated July 13, 2022 signed by agent KC that they had served the tenants with the Interim Decision dated July 6, 2022, the Notice of Hearing for the new hearing date, as well as Respondent's Instructions. I am satisfied that the tenants were sufficiently served with the landlord's application, Notice of Dispute Resolution Proceedings, and evidence in accordance with the *Act*. As neither party raised any service issues, the hearing proceeded as scheduled.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This application pertains to a residential property that contains 48 individual dwelling units. The property is one of two properties owned by the landlord that share facilities. The landlord filed a separate application pertaining to the other property, which sits on a different parcel of land. The landlord calculated the proportion that applies to this property based on the number of units, and provided the breakdown in their evidentiary materials.

A landlord may apply for an additional rent increase if they have incurred eligible capital expenditures or expenses to the residential property in which the rental unit is located. To raise the rent above the standard (annual) amount, the landlord must have either the tenant's written agreement, or apply to the RTB for either an Additional Rent Increase for Expenses (ARI-E) or an Additional Rent Increase for Capital Expenditures (ARI-C).

The landlord is seeking to impose an additional rent increase for a capital expenditure of \$242,447.85 incurred to pay for work done for this property. During the hearing, counsel for the landlord corrected the amount to reflect two errors, which reduces the above capital expenditure amount by \$4,561.43 for expenditures related to interior design for the fitness room, and \$652.52 for a roof leak repair.

The landlord had testified that they had purchased, and took over management, of the buildings on December 14, 2017. The buildings on this property were built in 1969. The landlord submits that the following capital expenditures were incurred in an effort to comply with their obligations to maintain and repair the property in accordance with section 32(1)(1) of the *Act*.

The 18-month period prior to the application therefore began May 25, 2020, and the

landlord submits that because the project was a large one, the completion dates occurred at different times and intervals, but the payment for these capital expenditures occurred within the 18-month period, and therefore should apply.

The landlord submitted the following list of capital expenditures and corresponding invoices: (items that were removed during the hearing are highlighted in yellow, and with a strikethrough)

Detailed Table of Capital Expenditures

Social Room & Rooftop Patio							
<p>Scope of Work Completed: The Social Room and Rooftop Patio were completely updated with new flooring, electrical, lighting, wall finishes, appliances, kitchen and washroom facilities, exterior patio pavers, glass and aluminum guardrail, BBQs and furniture.</p> <p>Reason for Work: The existing social room was not very useable for functions or events (did not have a kitchen, air conditioning, or appropriate furniture). The interior finishes (carpet, lighting, furniture) were outdated and in need of replacement. The exterior rooftop patio wood decking was not level and needed to be replaced and an aluminum guard rail was installed to make the area safer and bring it to code. FOB access was added to the main entrance to the social room to make the area more secure.</p> <p>Timing of Last Repair/Upgrade: Unknown</p> <p>Anticipated Useful Life of Repair/Upgrade: 15-20 years</p> <p>Total Cost of Work Completed (Capital Expenditures): \$166,607.63</p> <ul style="list-style-type: none"> Building's Proportionate Share of the Capital Expenditures (51.6%): \$85,969.54 \$81,408.11 							
Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs							
Work Done	Invoice No.	Tab 2a Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2a Pg.#	Building's Share
Labour, materials and equipment for Social Room & Outdoor Patio furniture. (50% of \$21,214.91 – first payment)	217714-B	50	\$10,607.46	2020-01-02	878	49	\$5,473.45

Furniture delivery	161200	30-31	\$514.50	2020-02-18	934	29	\$265.48
Labour, materials and equipment for Social Room & Outdoor Patio furniture (50% of \$21,214.91 – second payment)	256775	52	\$10,607.45	2020-02-20	941	51	\$,5473.44
Fitness room design	120101.01-1	39	\$1,260.00	2020-04-01	969	38	\$650.16
Purchase of Supreme Office Products (chairs, table)	F156350	54	\$960.96	2020-04-01	976	53	\$495.86
Fitness room design	61	33	\$1,700.00	2020-05-01	1004	32(1)	\$877.20
Labour, materials and equipment for Social Room and Outdoor Patio	95653	3-6	\$43,805.48	2020-05-15	1021	2	\$22,603.63
Fitness room design	120101.01-2	55	\$3,234.00	2020-05-15	1025	40	\$1,668.74
Fitness room design	120101.01-3	41	\$1,134.00	2020-06-15	1061	42	\$585.14
Fitness room design	120101.01-4	44	\$567.00	2020-06-15	1061	42	\$292.57
Labour, materials and equipment for Social Room and Outdoor Patio	97701	9-13	\$37,674.79	2020-08-04	1112	7	\$19,440.19
Fitness room design	120101.01-6	48	\$567.00	2020-09-01	1162	47	\$292.57
Labour, materials and equipment for Social Room and Outdoor Patio	98667	15-19	\$21,027.67	2020-09-15	1170	14	\$10,850.28
Labour, materials	98886	21-	\$16,647.12	2020-	1183	20	\$8,589.91

and equipment for Social Room and Outdoor Patio		25		10-01			
Fitness room design	120101.01 5	46	\$378.00	2020-10-01	1186	45	\$195.05
Holdback re Labour, materials and equipment for Social Room and Outdoor Patio	95653 HB	3-6	\$4,867.28	2020-10-15	1195	26	\$2,511.52
10% Holdback re Labour, materials and equipment for Social Room and Outdoor Patio	97701 HB	9-13	\$4,186.09	2020-10-15	1195	26	\$2,160.02
Holdback re Labour, materials and equipment for Social Room and Outdoor Patio	98667 HB	15-19	\$2,336.41	2020-10-15	1195	26	\$1,205.59
Holdback re Labour, materials and equipment for Social Room and Outdoor Patio	98886 HB	21-25	\$1,849.67	2020-10-15	1195	26	\$954.43
Social room signs	676-17132(1)	35	\$406.01	2021-03-01	1310	34	\$209.50
6 th floor directional signage	676-17758	37	\$481.24	2021-07-02	1413	36	\$248.32(1)
Power wash and paint upper front wall and social room ledges, first floor, main entrance	99810	100	\$1,795.50	2020-11-02	1207	23	\$926.48

Corridor – Phase 3

Scope of Work Completed: The corridor was updated with new carpet, vinyl wallcovering, wood base, painting, door hardware, drop ceiling, LED pot lights, and new emergency exit lights. New deadbolts and stainless steel wraps were also added.

Reason for Work: The corridor finishes were outdated and damaged.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: 20 years

Total Cost of Work Completed (Capital Expenditures): \$69,147.96

- **Building's Proportionate Share of the Capital Expenditures (100%):** \$69,147.96

Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs

Work Done	Invoice No.	Tab 2b Pg. #	Cost	Date Paid	Cheque No. (Payment)	Tab 2b Pg. #	Building's Share
Corridor finishes	622	3	\$294.00	2020-06-01	1037	2	\$151.70
Plaster walls; Wallpapering corridor hallways	2157	5-6	\$7,875.00	2020-06-15	1063	4	\$4,063.50
Labour, materials and equipment - Corridor Renovations (Phase 3 of 4).	2349	8-13	\$45,932(1).46	2020-09-01	1164	7	\$23,701.15
Preparing floors and purchase and installation of vinyl plank flooring and underlay	70670	15-16	\$5,386.50	2020-07-02	1087	14	\$2,779.43
Corridor flooring	70856	19-20	\$6,247.50	2020-08-17	1145	17	\$3,223.71
Corridor flooring	70857	21-22	\$3,412.50	2020-08-17	1145	17	\$1,760.85

Window & Patio Sliding Door Screen Installation

Scope of Work Completed: Window and patio screens were added to all units.

Reason for Work: Window and patio door screens were added to improve air control, add pest and lighting control, and improve energy efficiency and security.

Timing of Last Repair/Upgrade: N/A

Anticipated Useful Life of Repair/Upgrade: 15 years

Total Cost of Work Completed (Capital Expenditures): \$52,127.25

- **Building's Proportionate Share of the Capital Expenditures (51.6%):** \$26,897.66

Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs

Work Done	Invoice No.	Tab 2c Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2c Pg.#	Building's Share
Labour, materials and equipment for Window Screens (first payment)	4557	3	\$26,063.63	2021-03-15	132(1)5	2	\$13,448.83
Labour, materials and equipment for Window Screens (second payment)	4636	5	\$26,063.62	2021-09-01	1465	4	\$13,448.83

Fencing

Scope of Work Completed: The existing fence was rotting and falling down. Although regularly maintained, the wood fence was beyond painting or repairs as a solution and needed to be entirely replaced.

Reason for Work: The fence was replaced to increase security at the Building (it was taller than the previous fence) and used environmentally friendly finishes.

Timing of Last Repair/Upgrade: N/A

Anticipated Useful Life of Repair/Upgrade: 15 years

Total Cost of Work Completed (Capital Expenditures): \$26,930.40

- **Building's Proportionate Share of the Capital Expenditures (51.6%):** \$13,896.09

Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs							
Work Done	Invoice No.	Tab 2c Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2c Pg.#	Building's Share
Supply and installation of new fence (first payment)	10730	9	\$11,025.00	2020-11-16	1235	8	\$5,688.90
Removal of old fence and landfill for fence installation	10854	12	\$1,491.00	2020-12-15	1258	10	\$769.36
Replace fence	11468	15	\$1,228.50	2021-06-15	1404	13	\$633.91
Supply and installation of new fence (second payment)	11497	18	\$13,185.90	2021-07-02	1419	16	\$6,803.92

Landscaping							
<p>Scope of Work Completed: An existing pathway was regraded and repaved, trees on the property were trimmed, the gazebo roof was replaced, and planter boxes were installed. A snowblower was also purchased for the building.</p> <p>Reason for Work: The existing pathway and gazebo roof were in poor condition and needed to be replaced. Trees were overgrown and required pruning, and the existing planter boxes were also in poor condition and needed to be replaced. The work was necessary to maintain a safe outdoor area for tenants. The snowblower increased safety for tenants because snow can now be cleared ahead of a landscaper visit after a snowfall.</p> <p>Timing of Last Repair/Upgrade: Unknown when most items were installed.</p> <p>Anticipated Useful Life of Repair/Upgrade: Approximately 15 years.</p> <p>Total Cost of Work Completed (Capital Expenditures): \$49,841.92</p> <ul style="list-style-type: none"> Building's Proportionate Share of the Capital Expenditures (51.6%): \$25,718.43 							
Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs							
Work Done	Invoice No.	Tab 2c	Cost	Date Paid	Cheque No.	Tab 2c	Building's Share

		Pg.#			(Payment)	Pg.#	
Installation of new pathway with gravel, soil, board, varnish, seed and fasteners	11575	31	\$12,731.80	2021-07-15	1427	30	\$6,569.61
Replace roof on gazebo	97525	21	\$4,226.25	2020-08-04	1112	19	\$2,180.75
Outdoor pond repairs	99811	25	\$4,588.50	2020-11-02	1207	23	\$2,367.67
Tree service	10717	28	\$4,200.00	2020-11-02	1218	26	\$2,167.20
Snowblower	11087	31	\$1,920.45	2021-02-16	1303	29	\$990.95
Tree pruning – entire property	11487	34	\$7,638.75	2021-06-15	1404	32(1)	\$3,941.60
Planting in big garden bed	11688	37	\$3,421.33	2021-08-03	1442	35	\$1,765.41
Installation of planter box	11713	40	\$6,580.01	2021-09-01	1470	38	\$3,395.29
Installation of flower bed	11791	42	\$4,534.83	2021-09-15	1480	41	\$2,339.97

Exterior Construction and Repairs

Scope of Work Completed: The crawlspace was cleaned out and treated due to a water spill. The exterior wooden stairs were replaced and safety strips were installed on the stairs.

Reason for Work: The exterior wooden stairs were rotting and dangerous and needed to be replaced. The crawlspace needed to be treated after a major water spill.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: 10 Years

Total Cost of Work Completed (Capital Expenditures): \$14,921.03

- **Building's Proportionate Share of the Capital Expenditures (51.6%):** ~~\$7,699.25~~ 7,047.73

Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs

Work Done	Invoice No.	Tab 2d	Cost	Date Paid	Cheque No.	Tab 2d	Building's Share
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		Pg.#			(Payment)	Pg.#	
Microbial treatment to crawlspace after major water spills	99545	45	\$2,721.60	2020-11-02	1207	23	\$1,404.35
Supply and installation of safety strips on wood stairs from top of building to garage	99546	46	\$2,835.00	2020-11-02	1207	23	\$1,462.86
Pour concrete and installation of bike storage rack	99548	47	\$1,146.60	2020-11-02	1207	23	\$591.65
Supply and installation of safety strips for exterior wooden stairs	99550	48	\$2,778.30	2020-11-02	1207	23	\$1,433.60
Paint hallways, elevator doors and frames, and exit doors	99552	49	\$1,146.60	2020-11-02	1207	23	\$591.65
Building exterior stairs in cottage area on east side of building	102549	52	\$3,030.30	2021-01-04	1266	50	\$1,563.63
Repairing roof leak	104581	55	\$1,262.63	2021-03-15	132(1)0	53	\$651.52

Mechanical & Plumbing Replacements and Repairs

Scope of Work Completed: Various repairs to heating and domestic hot water boilers as part of preventative maintenance. A number of components of the heating and water systems were also replaced.

Reason for Work: The City of White Rock required a backflow installation and a number of parts had to be replaced as the heating and hot water equipment were starting to fail.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: 10-15 years

Total Cost of Work Completed (Capital Expenditures): \$25,482.41

- **Roper Building's Proportionate Share of the Capital Expenditures (51.6%):** \$13,148.92

Detailed Description of All Work Done, Dates Costs Incurred, Method of Payment by Landlord, and the Building's Proportionate Share of Costs							
Work Done	Invoice No.	Tab 2d Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2d Pg.#	Building's Share
Installation of pump in mechanical room and replacing bearing assembly in building pump and repairing leak	1074169	60	\$3,065.48	2020-08-04	1121	58	\$1,581.77
Boiler repairs, installation of pilot assembly and set of burners	1075562	62	\$2,242.29	2020-09-15	1175	61	\$1,157.02
Hydro flush sanitary lines in parkade	1080087	65	\$2,362.50	2020-11-02	1213	63	\$1,219.05
Replacing section of 2" copper pipe	1082780	66	\$1,762.95	2020-11-02	1213	63	\$909.68
Installing motor on main heating pump	1093003	69	\$1,660.51	2021-01-04	1272	67	\$856.82
Inspecting lines with camera and auguring debris from stack (unit 203 – cleared kitchen line of heavy grease)	1095218	72	\$3,723.30	2021-02-01	1293	70	\$1,921.22
Testing backflow devices	1099773	74	\$1,079.05	2021-03-01	1313	73	\$556.79
Supply and installation of pressure gauge due to boiler leaking	1099655	82	\$1,445.77	2021-03-15	132(1)4	80	\$746.02
Supply and installation of bearing assembly due to circulating pump leaking	1111679	85	\$1,119.71	2021-06-01	1388	83	\$577.77
Replace storage tank	1103844	89	\$1,348.60	2021-05-17	1374	87	\$695.88
Installation of shut off	1115204	92	\$1,477.60	2021-	1415	90	\$762.44

valve for entire building due to leak from main shut off valve				07-02			
Supply and installation of non-freeze hose bib at front side of main building	1110576	99	\$4,194.75	2021-07-15	1426	97	\$2,164.49

The landlord testified the above work was required, and the capital expenditures were incurred within the 18 months before this application was filed. The landlord testified that they did not expect that these expenditures would re-occur in the next 5 years.

The landlord submitted copies of invoices supporting these amounts.

None of the tenants provided written consent for the applied increase. The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Some tenants have voiced their concerns about the about the capital expenditures referenced in this application, which included the inclusion of items that the tenants felt were routine repairs and maintenance items, or expenditures that were incurred due to inadequate maintenance or repair on part of the landlord, or previous landlord. The tenant CC attended the hearing, and had also written a letter to the landlord expressing their concerns.

CC questioned whether the window screens were already paid for, and had to be re-ordered as the landlord had ordered the incorrect size. The landlord denies that they were purchased years ago, and notes that the invoice date is the correct date. The landlord's agent testified that payment was made when the work was completed, as reflected in the invoices.

CC also questioned whether the current landlord had previously discussed the cost of capital expenditures, and accounted for them as part of the purchase agreement. CC also questioned whether the landlord had the ability to write-off the amortization for tax purposes. The agent responded that they could not confirm this information as they were not involved in the accounting for the landlord. CC also questioned whether the expenditures were minor in nature, and whether they actually qualified.

In CC's letter to the landlord, CC expressed concern that capital expenditures were annual expenditures, and are basic maintenance items that should not qualify. CC

noted their concerns that the landlord was intentionally providing false and misleading information in an effort to pass on costs for unnecessary upgrades and improvements to tenants.

The tenants LC and PF expressed concern in the hearing that the old walkway was replaced with loose gravel, which made the path inaccessible for the disabled. The tenants PO and EM noted that they previously did not have access to the social room, and that they only now have access as all tenants have FOB access. The tenants expressed concern that although they now have access to this amenity, the use of this area was not originally included as part of the tenancy agreement for them, and the landlord had added this amenity, and applied to increase the rent on the premise that this facility was upgraded and now included in their monthly rent.

The tenant BF wrote a letter expressing their concerns about how the expenditures were high and unnecessary, and how the rent increases would pose a significant burden for the tenants, especially those on fixed incomes. BF stated that they have been living here a long time, and the landlord had always budgeted for these expenditures instead of trying to recover them through rent increases from the tenants.

Analysis

1. Statutory Framework

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.

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

2. Prior Application for Additional Rent Increase

Based on the testimony of the parties, I am satisfied that the landlord has not previously imposed an additional rent increase on any of the tenants within the last 18 months.

3. 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.

As the specified work was performed pertains to work on the property and common areas accessible by tenants in all the buildings, I find that all units located at this address (48 in total) are "specified dwelling units". The *Act* requires that all units in the

building where the repairs or replacement was carried out be considered specified dwelling units, whether vacant or not.

4. Amount of Capital Expenditure

The landlord provided a comprehensive list of expenditures incurred in the 18 months prior to the filing of this application, which the tenants argued contained expenditures that should not qualify. See below for a specific analysis of each expenditure.

5. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- 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.

I will address this below.

a. Type of Capital Expenditure and Reason for Expenditure

1) **Social Room & Rooftop Patio**

I have reviewed the submissions by both parties, as well as the invoices and supporting documents describing the work done for the social room and rooftop patio. I note that facilities such as recreational areas of a residential property are recognized by the Regulation as a “major component”, and would qualify as a capital expenditure. However, in order for the capital expenditure to qualify, the capital expenditure must still meet the criteria set out section 23.1(4)(a) of the Regulation. In this case, I am not satisfied that the capital expenditures incurred meet any of the criteria. I am not satisfied that any repairs or replacements performed were required in order to maintain the residential property in a state of

repair that complies with section 32(1)(1)(a) of the *Act*, or that the items repaired or replaced were at the end of its useful life.

I note that there was reference to the installation of FOB access to the main entrance, but no invoices were included for this specific expenditure, which would meet the criteria as FOB access would increase security of the building as it would allow the landlord to obtain data linked to each FOB such as identity of user, and access times in the case of an event such as theft. As I am not satisfied that the landlord had provided sufficient evidence to support the cost and timing of the FOB access installation, I am not satisfied that the landlord has established their entitlement to a rent increase based on this expenditure.

2) Corridor – Phase 3

I am satisfied that the landlord had provided sufficient evidence to support that the repairs and updates to the corridor are qualifying expenditures as the work was required to comply with section 32(1)(1)(a) of the *Act*.

3) Window & Patio Sliding Door Screen Installation

I find that the installation of window and patio screens are additions that would contribute to efficient energy use by contributing to better air flow and quality in the rental units by allowing residents to open their windows and patio doors, while providing for better pest control. By allowing tenants to open their windows and patio doors more freely, I am satisfied that this will result in less reliance on other sources of cooling and air flow such as electric fans and air conditioning units. As noted in Policy Guideline #37, “Any reduction in energy use or greenhouse gas emissions established by the landlord will qualify the installation, repair or replacement for an additional rent increase.”

I note that although one of the tenants expressed concern that this expenditure was unnecessary and did not fall within the required 18 month time period, I find that the landlord has provided sufficient evidence to support that this expenditure took place during the required period. On the other hand, I do not find that the evidence supports the tenant’s belief that the landlord had provided false or misleading information in relation to this expenditure. I find that this expenditure qualifies.

4) Fencing

I find that the fencing meets the definition of a major component for the purposes of this application, and the fence had reached its useful life. I

find that the landlord incurred this expenditure in order to replace this aging component, and therefore I find that this expenditure qualifies.

5) Landscaping

I note that the landlord had included various expenditures under this category. I have reviewed the materials submitted by the landlord, and I am satisfied that the gazebo roof, pond, and pathway would meet the definition of major component or system. I am also satisfied that these expenditures were necessary in order for the landlord to comply with section 32(1) of the *Act*, and are therefore qualifying expenditures.

I find the remaining expenditures are items that either cosmetic upgrades, or would qualify as routine maintenance items, and are therefore not eligible

Installation of new pathway with gravel, soil, board, varnish, seed and fasteners
Replace roof on gazebo
Outdoor pond repairs
Tree service
Snowblower
Tree pruning – entire property
Planting in big garden bed
Installation of planter box
Installation of flower bed

6) Exterior Construction and Repairs

Similar to the above category, the landlord listed various expenditures under the category of exterior construction and repairs. In review of these items, as well as the supporting documents and information, I find that the stairs, bike storage area, hallways, elevator doors and frames, and exit doors qualify as major components or systems. I am satisfied that the expenditures listed in relation to those items qualify for the purposes of the rent increase application as the work was required to maintain these items in accordance with section 32(1) of the *Act*.

I find the installation of the bike storage rack would contribute to added security for the building, and is therefore also a qualifying expenditure.

I find the microbial treatment to be a routine maintenance item, and is therefore not a qualifying expenditure for the purposes of an additional rent increase application.

Microbial treatment to crawlspace after major water spills
Supply and installation of safety strips on wood stairs from top of building to garage
Pour concrete and installation of bike storage rack
Supply and installation of safety strips for exterior wooden stairs
Paint hallways, elevator doors and frames, and exit doors
Building exterior stairs in cottage area on east side of building

7) Mechanical & Plumbing Replacements and Repair

I find the items listed in this section qualify as major systems or components.

For the purposes of this application, I find that some of the items fall under the category of routine maintenance rather than substantive repairs, such as the hydro flushing of the sanitary lines, inspecting of the lines with a camera and auguring debris, and testing of backflow devices. I find that the remaining expenditures meet the criteria for qualifying expenditures as they relate to the landlord's obligation to maintain and repair the building under section 32(1) of the Act.

Installation of pump in mechanical room and replacing bearing assembly in building pump and repairing leak
Boiler repairs, installation of pilot assembly and set of burners
Hydro flush sanitary lines in parkade
Replacing section of 2" copper pipe
Installing motor on main heating pump
Inspecting lines with camera and auguring debris from stack (unit 203 – cleared kitchen line of heavy grease)
Testing backflow devices
Supply and installation of pressure gauge due to boiler leaking
Supply and installation of bearing assembly due to circulating pump leaking
Replace storage tank
Installation of shut off valve for entire building due to leak from main shut off valve

Supply and installation of non-freeze hose bib at front side of main building

b. Timing of Capital Expenditure

I accept that the landlord has met the timing requirements for this application, and that the incurred expenses occurred within 18 months of the landlord making this application.

c. Life expectancy of the Capital Expenditure

With the exception of the routine maintenance items I had noted above and have excluded, I find that the useful life for the components replaced all exceed five years. There is nothing in 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 RTB Policy Guideline 40. For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditures incurred to undertake the Work described are eligible capital expenditures, as defined by the Regulation.

6. Tenants' Rebuttals

Although I acknowledge the concerns brought up in the tenants' evidence and in the hearing, as stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

Although I am sympathetic about the financial hardship a rent increase of any amount may pose for tenants, including tenants on fixed incomes, as stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditures.

I find the tenants have not met the burden of proof under section 23.1(5), which includes proving that the repairs or replacement were due to inadequate repairs or maintenance on part of the landlord, or that the landlord has been paid, or is entitled to be paid, from another source.

The tenants challenged whether the above qualifying expenditures were the result of the landlord's, or previous landlord's, failure to maintain the building and perform required repairs. The tenants also questioned whether the landlord had already benefitted from tax deductions or benefits in relation to the claimed expenditures.

Residential Tenancy Policy Guideline #37 states the following:

If an amount of a capital expenditure is recovered or could have been recovered through grants, rebates or subsidies, insurance plans or claim settlements, that amount becomes ineligible, and must be deducted from an order for an additional rent increase (see below). For example, a landlord may be eligible to receive a rebate for installing a high-efficiency boiler. Repairs required due to a fire are typically covered by an owner's insurance. Similarly if repairs become necessary because of inadequate work by an earlier tradesperson, those repairs can often be claimed through a lawsuit.

Tenants bear the onus to establish on a balance of probabilities (in other words that it is more likely than not) that what is otherwise an eligible capital expenditure is ineligible. Tenants should gather and submit any relevant evidence before the dispute resolution hearing.

As noted above, a capital expenditure is not eligible if it has been established that the amount of the capital expenditure is recovered, or could have been recovered, through grants, rebates or subsidies, insurance plans, or claim settlements. First of all, as noted in the Policy Guideline, the onus is on the tenants to prove the ineligibility on these grounds. In this case, I am not satisfied that the capital expenditures have been funded through any other source.

The tenants also raised the issue of lack of maintenance records produced by the landlord for this application. As noted above, the tenants bear the onus to prove inadequate maintenance. Although I acknowledge the tenants' concerns that the landlord has not provided evidence to support past maintenance and repairs, the onus is on the tenants to request and obtain this evidence prior to the hearing date. As noted in Policy Guideline #37, "If there are certain documents a tenant requires that are in the possession of the landlord or someone else (like a tradesperson), such as maintenance records or grant applications, tenants should request these from the relevant person in advance of the hearing. If the landlord or other person fails to provide the requested documents, tenants may, as soon as possible before the hearing, apply for the production of these documents pursuant to [Rules 5.3 and 5.4 of the Rules of Procedure](#). A tenant can also apply to the director for a summons requiring a person to attend a hearing and give evidence. The tenant must provide conduct money for a witness in accordance with Rule 5.5 of the Rules of Procedure".

The tenants bear the onus to prove inadequate maintenance. In this case, I find that the tenants had ample time and opportunity to prepare for this hearing, and obtain and

present relevant evidence. The tenants were also provided with additional time to obtain legal advice and representation before this matter was heard on October 11, 2022. I find that the tenants had a fair opportunity to prepare for this hearing, and present evidence and call witnesses, but failed to establish that the otherwise eligible capital expenditures are ineligible.

7. Outcome

Summary

I find the landlord has met the burden of proof on a balance of probabilities that the following are eligible capital expenditures in the total amount of **\$102,687.40**. I find the landlord has established all elements necessary for an additional rent increase for the eligible capital expenditures as set out in the tables below.

Corridor-Phase 3

Work Done	Building's Share
Corridor finishes	\$151.70
Plaster walls; Wallpapering corridor hallways	\$4,063.50
Labour, materials and equipment - Corridor Renovations (Phase 3 of 4).	\$23,701.15
Preparing floors and purchase and installation of vinyl plank flooring and underlay	\$2,779.43
Corridor flooring	\$3,223.71
Corridor flooring	\$1,760.85

Window & Patio Sliding Door Screen Installation

Work Done	Building's Share
Labour, materials and equipment for Window Screens (first payment)	\$13,448.83
Labour, materials and equipment for Window Screens (second payment)	\$13,448.83

Fencing

Work Done	Building's Share
Supply and installation of new fence (first payment)	\$5,688.90

Removal of old fence and landfill for fence installation	\$769.36
Replace fence	\$633.91
Supply and installation of new fence (second payment)	\$6,803.92

Landscaping

Work Done	Building's Share
Installation of new pathway with gravel, soil, board, varnish, seed and fasteners	\$6,569.61
Replace roof on gazebo	\$2,180.75
Outdoor pond repairs	\$2,367.67

Exterior Construction and Repairs

Work Done	Building's Share
Supply and installation of safety strips on wood stairs from top of building to garage	\$1,462.86
Pour concrete and installation of bike storage rack	\$591.65
Supply and installation of safety strips for exterior wooden stairs	\$1,433.60
Paint hallways, elevator doors and frames, and exit doors	\$591.65
Building exterior stairs in cottage area on east side of building	\$1,563.63

Mechanical & Plumbing Replacements and Repairs

Work Done	Building's Share
Installation of pump in mechanical room and replacing bearing assembly in building pump and repairing leak	\$1,581.77
Boiler repairs, installation of pilot assembly and set of burners	\$1,157.02
Replacing section of 2" copper pipe	\$909.68
Installing motor on main heating pump	\$856.82
Supply and installation of pressure gauge due to boiler leaking	\$746.02
Supply and installation of bearing assembly due to circulating pump leaking	\$577.77
Replace storage tank	\$695.88

Installation of shut off valve for entire building due to leak from main shut off valve	\$762.44
Supply and installation of non-freeze hose bib at front side of main building	\$2,164.49

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of 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 48 specified dwelling units, and that the amount of the eligible capital expenditure is **\$102,687.40**.

Accordingly, I find the landlord has established the basis for an additional rent increase for capital expenditures of eligible capital expenditure as noted above ÷ number of units for that specific building ÷ 120.

If this amount exceeds 3% of a tenant's monthly rent, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The parties may refer to *RTB Policy Guideline 40*, section 23.3 of the Regulation, section 42 of the Act (which requires that a landlord provide a tenant three months' notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

I grant the application for an additional rent increase for capital expenditures as specified above. The landlord must impose this increase in accordance with the *Act* and the *Regulation*.

I order the landlord to serve the tenants with a copy of this decision in accordance with section 88 of the *Act*.

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

Dated: November 10, 2022

Residential Tenancy Branch