



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding Crossroads Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-C

Introduction

The landlord seeks a rent increase for eligible capital expenditures pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act*, SBC 2002, c. 78 (the “Act”) and section 23.1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003.

The landlord filed its application on February 24, 2022, a preliminary hearing was held on June 28, 2022, and a hearing was convened on November 22, 2022. Procedural matters covered at the preliminary hearing are outlined in the Interim Decision of June 28, 2022.

Attending the hearing on November 22 were an agent for the landlord (hereafter the “landlord” for brevity), two resident managers, and one tenant who appeared on their own behalf. The agent was affirmed before presenting evidence and neither party raised any issues regarding the service of documents.

Service of Interim Decision, Notice, and Evidence

As ordered on page two of the Interim Decision, the landlord was required to serve a copy of the Interim Decision, the new Notice of Dispute Resolution Proceeding, and the landlord’s evidence upon the respondent tenants within 15 business days of receiving the Interim Decision and the Notice of Dispute Resolution Proceeding.

The landlord submitted into evidence documentation, including Canada Post tracking numbers and a service history log showing when and how the various respondents were served with the Notice and the Interim Decision. Based on this evidence, including the landlord agent’s affirmed confirmation of successful service by both in-person and registered mail service, and in the absence of any information or evidence to the contrary, it is my finding that the landlord served the respondents in compliance with the order in the Interim Decision and e with the Act.

Issue to be Decided

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 69 rental units (on the date the landlord filed the application) in a multi-unit residential property. The property is a three-storey building.

The landlord has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application. And the landlord has not, based on the information before me, imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

The landlord testified that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a new boiler and for new patio/decks. The existing boiler was nearly 50 years old and was beginning to experience failures. The boiler had exceeded its life expectancy and required replacement. The boiler was replaced over the summer to minimize tenant discomfort, and the pricing was competitive. Invoices and photographs of the boiler replacement were submitted into evidence.

The second expenditure was to replace balconies that were starting to rot. The landlord noted that not all of the units in the building have balconies. Only 30 rental units have balconies, while the others do not. The landlord testified that the balconies were all built in the early 2000s and thus need replacing. Replacing them took the better part of 2021 and three payments were made for the work: June, August, and October 2021. Invoices and photographs of the balconies—both in the state of rot and after replacement—were submitted into evidence.

Regarding the life expectancy, or useful life, of the components, the boiler is expected to last a minimum of 20 years, though likely much longer. Similarly, the balconies are expected to last a minimum of 20 years. With preventive maintenance, including having a recoat done when a rental unit becomes available (between tenancies), the balconies should last beyond 20 years.

The work done, the date of the invoice, and the amount is summarized below:

Description	Date	Amount
Replacement of original boiler system. System was showing signs of failure and needed to be replaced, as it was 47 years old.	August 31, 2020	\$178,319.52
Replacement of rotten and leaking patios/decks	October 8, 2021	\$52,610.25
Total		\$230,929.77

The attending tenant at the hearing raised the issue (and question) of whether the rent increase, if approved, would apply to their tenancy agreement. The tenant noted that the work and expenditures were done before the tenant moved into the building.

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 69 eligible dwelling units in the building.

At this point it should be noted that, while the expenditures for the replacement balconies were for balconies that attach to only 30 rental units, all 69 rental units must be considered to be specified dwelling units. As the definition of "specified dwelling unit" is written, it means a dwelling unit that is *located in a building in which a replacement was carried out*. This encompassing definition is mirrored in *Residential Tenancy Policy Guideline 37: Rent Increases*, on page 12:

A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property.

Therefore, for purposes of calculating a rent increase all 69 rental units will be included in the calculation.

Regarding the tenant'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 the 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. In this case, tenant B.F.'s tenancy agreement is captured within the landlord's application.

Amount of Capital Expenditures

The total amount of the capital expenditures is \$230,929.77.

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 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—that is, the boiler replacement and the patio/deck replacement.

The invoice for the boiler replacement and thus the capital expenditures are dated August 31, 2020, which is 17 months and 25 days between being incurred and the application being made. They were thus incurred in the 18-month period preceding the date on which the landlord filed the application.

The invoice for the deck and patio replacement is dated October 8, 2021, which is 4 months and 17 days between the incurring of expenditures and the date of the application. Thus, the capital expenditures (including the two initial payments made on June 16 and August 13, 2021) were incurred within the 18-month period preceding the date on which the landlord made its application.

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 (though, in practical terms, likely not for at least another 20 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 replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

To conclude: the landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$230,929.77 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 69 specified dwelling units. The calculation is thus:
 $(230,929.77 \div 69 \text{ units}) \div 120 = \27.89 . The eligible rent increase amount is \$27.89.

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

The application is granted for an additional rent increase, for eligible capital expenditures, of \$27.89. 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 accordance with section 88 of the Act, within 15 business days of receiving the Decision.

This decision is final and binding, and it is made on delegated authority under 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 for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 23, 2022

Residential Tenancy Branch