



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding Nalabila Creek Investments Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: ARI-C

Introduction

In this application, the landlord seeks 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 filed their application for a rent increase on October 21, 2021 and a preliminary hearing was held on March 31, 2022. Interim Decisions were issued on March 31 and August 16, 2022.

On August 16, there was insufficient documentary evidence before me to find that the tenants had been properly served with the Interim Decision of March 31, 2022. As such, the matter was adjourned to a further written-submission-only hearing on December 23, 2022. The landlord submitted documentary proof of service of both interim decisions upon the tenants. The landlord is thanked for providing the requested proof of service and as such I am now in a position to consider the landlord's application.

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 44 rental units in the three-storey multi-unit residential property. 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 *Regulation* in the last 18 months.

The landlord is seeking to impose an additional rent increase for a capital expenditure incurred to pay for a new fire alarm package for the entire building. The landlord submitted that the “old system was obsolete and was malfunctioning creating almost daily false alarms. It was unsafe and disruptive for the tenants to live in these circumstances.”

Documentary evidence submitted in support of the landlord’s application included a quote for the work to be done, an invoice for the work completed, a quote which included the lists of reasons for the replacement, and, documentation establishing that the replacement of the new system was confirmed. Written reports indicated that the fire alarm system is now fully functional. Extensive checks of the system are documented.

The total cost of the work was \$27,865.94.

There were no written submissions from the respondent tenants.

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 44 eligible dwelling units in the building.

Amount of Capital Expenditures

The total amount of the capital expenditures is \$27,865.94.

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

In this application, based on the undisputed 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 fire alarm system.

The invoice for the fire alarm system establishes that the expenditures were incurred in an 18-month period preceding the date on which the landlord filed the application.

While the landlord did not provide any written submission regarding how long they expect the new fire alarm system to last, based on the useful life estimates as set out in *Residential Tenancy Policy Guideline 40* it can reasonably be expected that the system will last for at least 15 years. Therefore, I conclude that the capital expenditures are not expected to be incurred again for at least five years.

To conclude: the landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$27,865.94 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 44 specified dwelling units. The calculation is thus as follows: $(27,865.94 \div 44 \text{ units}) \div 120 = \5.28 . The eligible rent increase amount is therefore \$5.28.

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:

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

Conclusion

The application is hereby granted for an additional rent increase, for eligible capital expenditures, in the amount of \$5.28.

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 and within 15 business days of receiving the Decision.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 24, 2022

Residential Tenancy Branch