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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: ARI-C

Introduction

The landlord's application filed on December 7, 2021, is seeking 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. Residential Tenancy Policy Guideline 37: Rent Increases.

Pursuant to my Interim Decision dated September 14, 2022 (Interim Decision), I will only be considering the relevant evidence contained in the landlord's initial evidence, the tenant's response and landlord's final rebuttal.

The Interim Decision was sent by the Residential Tenancy Branch to all parties on September 16, 2022. The landlord and the tenant JK copies were sent by email and all other Respondents copies were sent by regular mail to the rental unit.

The format of this hearing as was by written submissions only.

I have reviewed the Affidavit of Service submitted by the landlord.

The affidavit show the landlord's written Summary of Dispute and supporting documents were served upon the head tenant JK by email on October 14, 2022, at the email address noted in the interim decision. I find the landlord complied with the requirements of the Interim Decision as they met the initial evidence deadline of October 17, 2022. I find JK and all tenants listed in the RTB 19 who have authorized JK to act on their behalf have been duly served. Filed in evidence is a copy of the email.

The affidavit further shows that all tenants were given the landlord's written Summary of Dispute and supporting documents by posting to the door of their residence on October 14, 2022 between the hours of 2:00 pm and 4:00 pm. I find the landlord complied with the requirements of the Interim Decision as they met the initial evidence deadline of October 17, 2022. I find all tenants subject to this application have been duly served.



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The tenants did not provide any response to the landlord's written Summary of Dispute and supporting documents to the Residential Tenancy Branch by December 19, 2022, which was the deadline noted in the Interim Decision.

The landlord provided a final reply, dated January 11, 2023, as permitted by the Interim Decision as this was before the January 15, 2023, deadline. The landlord's final reply confirmed that the landlord was not served with any evidence or submission from the tenants opposing the ARI sought. The landlord submits the ARI is unopposed and ought to be granted as requested.

The landlord is further seeking to amend the style of cause to remove the landlord's agent to the owner of the property. The landlord has provided a Title Search of the property showing the registered owner. I find it reasonable to amend the style of cause by removing the landlord's agent and inserting the owner of the property as the landlord. I find this is not prejudicial to the tenants as it has no impact on the application.

Issue to be Decided

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

Background and Evidence

While I have considered the written submission and documentary evidence of the landlord not all details of their submissions are reproduced here. The relevant and important evidence related to this application before me have been reviewed, and my findings are set out below in the analysis portion of this Decision.

The rental property was constructed in 1969 and consist of 40 rental units.

The landlord is seeking to impose an additional rent increase for a capital expenditure (ADI) incurred to pay for a work done to the residential property.



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The capital expenditure (the "Work") incurred as follows:

Item	Description	Amount
a.	BAS for Heating /DHW system	\$21,577.50
b.	Energy Reducing LED Lighting Upgrade	\$12,736.50
c.	Security Upgrade	\$29,662.50
d.	Energy/Environmentally Efficient Toilet Upgrade	\$14,502.60
		Total
		\$78,479.10

Summary of Landlord's written submissions

(a) BAS for Heating /DHW system- \$21,577.50

12. In and around November 2020, the Landlord installed a Building Automated System ("BAS") to make its Heating and Direct Hot Water ("DHW") systems energy efficient.

13. Briefly, the BAS is designed to reduce the amount of natural gas that is used by the Rental Property's Heating and DHW systems.

14. Between November 20, 2020 and January 20, 2021, Webir Automation & Control Services Ltd. ("Webir") issued two (2) invoices for its work, Invoice #s 10766 and 10766(2). In total, the BAS cost \$21,577.50 (see Exhibit C).

15. The Landlord issued two (2) payments to Webir for the BAS between January 25 and March 22, 2021 (see Exhibit C).

16. January 25, 2021 is within 18 months of December 7, 2021.

17. Replacement of the BAS is not expected to recur for at least five (5) years.

The landlord submitted the following as their argument:

50. The Landlord has not made a prior ARI Application for this capital expenditure.

51. The Landlord incurred this capital expenditure pertaining to the BAS within 18 months of filing the subject ARI Application.



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52. Pursuant to Guideline #37, the installation, repair or replacement of a major system or major component that was not required will still be eligible for an ARI if it, amongst other things, reduces energy use or greenhouse gas emissions. Put differently, any reduction in energy use or greenhouse gas emissions established by the Landlord will qualify the installation, repair, or replacement for an ARI.

53. The Landlord submits that the BAS is designed to reduce the amount of natural gas used by the Rental Property's Heating and DHW systems.

54. The Landlord submits that, since installing the BAS, the Rental Property's consumption of natural gas has decreased. To evidence reduced natural gas consumption, the Landlord submits utility invoices obtained from Fortis BC which detail the following rates of energy consumption both before and after the BAS's installation:

Comparison Period	Number of Days Billed	Avg. Daily Temp. (°C)	Avg. Daily usage of GJ	Total GJ per Billing Period
December 2019	32	6	10.99	351.6
November 2020	32	7	10.07	322.3
December 2020	32	7	10.07	322.3
January 2020	35	6	12.12	424.1
January 2021	35	5	10.37	362.9
February 2020	28	4	12.77	356.7
February 2021	28	5	10.59	296.4
February 2022	30	4	11.67	350.1
March 2020	30	5	12.35	370.5
March 2021	30	4	11.28	338.3
April 2020	28	6	11.66	326.7
April 2021	33	7	9.78	322.7
May 2020	30	9	9.46	283.8
May 2021	28	10	7.5	210.1
June 2020	32	14	6.93	221.8
June 2021	29	13	5.85	169.7
July 2020	30	17	5.59	167.6
July 2021	31	18	3.49	108.3

55. The Landlord submits that, once the BAS was installed, the above noted statistics obtained from Fortis BC reflect that the Rental Property's natural gas consumption decreased immediately; indeed, the year over year comparisons provided above supports this. For example: (a) in January 2021, when the temperature was colder than in January 2020, the Rental Property's total consumption of natural gas was reduced by 61.2 GJ, or by a daily average of 1.75 GJ; and (b) in February 2022, when the temperature was the same as it was in February 2020, the Rental Property's total consumption of natural gas was reduced by 6.6 GJ, or by a daily average of 1.1 GJ (note: the February 2022 billing period is 2 days longer than the February 2020 billing period). Since installing the BAS, Fortis BC's readings reflect reduce natural gas consumption by the Rental Property.



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56. The Landlord submits that Guideline #37 does not establish a threshold for how much a capital expenditure must reduce energy use or greenhouse gas emissions by; rather, if a capital expenditure reduces any amount of energy use or greenhouse gas emissions, however minimal, it must qualify for an ARI. The Landlord submits that the Rental Property's utility bills from Fortis BC reflect a reduction in the Rental Property's natural gas consumption in the months directly following the BAS's installation when compared to a prior relative period; as a result, it must qualify for an ARI.

57. It is understood that the replacement of the BAS is not expected to recur for at least five (5) years.

58. In short, the Landlord submits that it has met its burden and the capital expenditure incurred to install the BAS must qualify for an ARI.

(b) Energy Reducing LED Lighting Upgrade - \$12,736.50

18. In and around September 2020, the Landlord upgraded the Rental Property's common area lighting with energy efficient LED lighting (the "Efficient Lighting"). The Efficient Lighting also brightens the common areas to enhance one's safety and security when in or travelling through same.

19. On September 21, 2020, All Professional Trade Services Inc. ("All Professional") issued two (2) invoices for its work, Invoice #s 99657 and 99663. In total, the Efficient Lighting cost \$12,736.50 (see Exhibit C).

20. The Landlord issued one (1) payment to All Professional for the Efficient Lighting on November 16, 2020 (see Exhibit C).

21. November 16, 2020 is within 18 months of December 7, 2021.

22. Replacement of the Efficient Lighting is not expected to recur for at least five (5) years.

The landlord submitted the following as their argument:

59. The Landlord has not made a prior ARI Application for this capital expenditure.



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60. The Landlord incurred this capital expenditure' pertaining to the Efficient Lighting within 18 months of filing the subject ARI Application.

61. Pursuant to Guideline #37, the installation, repair or replacement of a major system or major component that was not required will still be eligible for an ARI if it, amongst other things, reduces energy use or greenhouse gas emissions. Put differently, any reduction in energy use or greenhouse gas emissions established by the Landlord will qualify the installation, repair or replacement for an ARI.

62. The Landlord submits that the Efficient Lighting is designed to reduce the amount of hydro energy used by the Rental Property as it pertains to the lighting found in the following common areas: hallways, stairwells, the laundry room, the underground parking garage, exterior wall packs and canopy features, and exit signs.

63. The Landlord submits that its pre-Efficient Lighting installation investigations revealed that, insofar as common area lighting is concerned, the Efficient Lighting would result in reduced hydro consumption by as much as 14,575 KWH based on 48,181 hours of collective lighting operation over the course of one (1) year.

64. The Landlord submits that, since installing the Efficient Lighting, the Rental Property's consumption of hydro energy has decreased. To evidence reduced hydro power consumption, the Landlord submits utility invoices obtained from BC Hydro which detail the following rates of energy consumption both before and after the Efficient Lighting's installation.

65. The Landlord submits that, once the Efficient Lighting was installed, the above noted statistics obtained from BC Hydro reflect that the Rental Property's hydro energy consumption decreased immediately; indeed, the year over year comparisons provided above supports this.

66. In addition, or in the alternative, the Landlord submits that the Efficient Lighting can also be classified as a major system and/or major component that has improved security at the Rental Property; indeed, Guideline #37 notes that, "Some examples of installations, repairs or replacements of major systems or major components that may improve security include... repairing the lighting in the parking garage". The Landlord



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submits that, in this case, security has been generally improved as the common area lighting, including exit signs, have been replaced with more luminescent Efficient Lighting that will provide the Tenants with enhanced visibility in areas that were (previously) not as brightly lit.

67. It is understood that replacement of the Efficient Lighting is not expected to recur for at least five (5) years. Indeed, the product information submitted indicates that the Efficient Lighting will have an operating life of between 50,000 hours and 84,000 hours, depending on the type of lighting. For clarity, one (1) year consist of 8,760 hours and, as a result, five (5) years consists of 43,800 hours. In short, the Efficient Lighting will not require replacement for at least five (5) years.

68. In sum, the Landlord submits that it has met its burden and the capital expenditure incurred to install the Efficient Lighting must qualify for an ARI.

(c) Security Upgrade - \$29,662.50

23. In November 2020, the Rental Property did not have the benefit of a security system other than an outdated entry phone. As a result, the Landlord undertook efforts to enhance security at the Rental Property.

24. The Landlord obtained a quote from Firetronics 2000 Inc. ("Firetronics") for the installation of equipment related to: access control equipment, security cameras, and a modernized entry phone (the "Security Upgrade").

25. The Landlord approved Firetronics' quote and, in December 2020, Firetronics installed the Security Upgrade.

26. On December 11, 2020, Firetronics issued three (3) invoices for its work, Invoice #s 79020, 79021, and 79022. In total, the Security Upgrade cost \$29,662.50 (see Exhibit C).

27. The Landlord issued one (1) payment on January 8, 2021 (see Exhibit C).

28. January 8, 2021 is within 18 months of December 7, 2021.



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29. Replacement of the Security Upgrade is not expected to recur for at least five (5) years.

The landlord submitted the following as their argument:

69. The Landlord has not made a prior ARI Application for this capital expenditure.

70. The Landlord notes that Guideline #37 states that, "... Examples of major systems or major components include, but are not limited to... security systems, including things like cameras..."

71. The Landlord submits that the Security Upgrade, which consists of access control equipment, security cameras, and a modernized entry phone, can be classified as a major system and/or major component as it is, fundamentally, a security system. The primary purpose of the Security Upgrade is to guard against unauthorized entry into the Rental Property.

72. The Landlord incurred this capital expenditure pertaining to the Security Upgrade within 18 months of filing the subject ARI Application.

73. The Security Upgrade, which can be classified as a major system or major component, is integral to the functioning of the Rental Property as it strictly relates to the prevention of unauthorized entry.

74. It is understood that replacement of the Security Upgrade is not expected to recur for at least five (5) years; indeed, Guideline #40 suggests that items like security systems, namely fire alarms and intercoms, have useful lives of fifteen (15) years.

75. Pursuant to Guideline #37, the Landlord is not required to establish that additional or better security was necessary in order for the Director to approve a security-related ARI. All the Landlord must evidence is that an installation, repair or replacement better protects persons and property at the Rental Property or that, security of the Rental Property has been improved. The Landlord submits that security has been improved and/or enhanced at the Rental Property as it now has the benefit of access control equipment, security cameras, and a modernized entry phone which are 9 security



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features that were previously absent from this rental community; this, in and of itself, warrants the approval of an ARI.

76. In sum, the Landlord submits that it has met its burden and the capital expenditure incurred to install the Security Upgrade must qualify for an ARI.

(d) Energy/Environmentally Efficient Toilet Upgrade - \$14,502.60

30. In and around October 2020, the Landlord replaced the toilets contained within the Rental Property to reduce their respective water consumption levels. The preexisting toilets consumed six (6) liters of water per flush while the toilets installed after October 2020 consume only three (3) liters of water per flush. In short, the newly installed toilets consume half the amount of water than their predecessors did.

31. On October 5, 2020, Water Matrix Inc. ("Matrix") issued one (1) invoice for its work, Invoice # 0000052392. In total, the energy efficient and environmentally friendly toilets (the "Efficient Toilets") cost \$14,502.60 (see Exhibit C).

32. The Landlord issued one (1) payment to Matrix for the Efficient Toilets on December 21, 2020 (see Exhibit C).

33. December 21, 2020 is within 18 months of December 7, 2021. 34. Replacement of the Efficient Toilets is not expected to recur for at least five (5) years.

The landlord submitted the following as their argument:

77. The Landlord has not made a prior ARI Application for this capital expenditure.

78. The Landlord incurred this capital expenditure pertaining to the Efficient Toilets within 18 months of filing the subject ARI Application.

79. Pursuant to Guideline #37, the installation, repair or replacement of a major system or major component that was not required will still be eligible for an ARI if it, amongst other things, reduces energy use or greenhouse gas emissions. Put differently, any reduction in energy use or greenhouse gas emissions established by the Landlord will qualify the installation, repair or replacement for an ARI.



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80. The Landlord submits that the term "energy use" is undefined but ought to be broadly interpreted to capture any type of capital expenditure that will result in the promotion of environmentally conscious conduct such as the efficient consumption of clean water.

81. The Landlord submits that the Efficient Toilets are designed to reduce the amount of water consumed by the Rental Property.

82. The Landlord submits that the Efficient Toilets consume only three (3) liters of water per flush instead of six (6) liters of water per flush as consumed by the previously installed toilets. In short, the Efficient Toilets consume half the amount of water than their predecessors did.

83. The Landlord submits that, since installing the Efficient Toilets, the Rental Property's consumption of water has significantly decreased. To evidence reduced water consumption, the Landlord submits utility invoices obtained from the City of Vancouver which detail the following rates of water consumption both before and after the Efficient Toilets' installation.

84. The Landlord submits that the November 4, 2020 utility bill reflects water consumption use between June 1 and September 30, 2020. At the material time, the Rental Property consumed an average of 5.76 units of water per day. However, once the Efficient Toilets were installed in October 2020, the Rental Property's consumption of water drastically reduced by 2.21 units of water per day, or by 39%. In short, the Efficient Toilets have decreased the Rental Property's consumption of water in a significant way.

85. It is understood that the replacement of the Efficient Toilets is not expected to recur for at least five (5) years; indeed, Guideline #40 suggests that toilets have a useful life of 20 years.

86. In short, the Landlord submits that it has met its burden and the capital expenditure incurred to install the Efficient Toilets must qualify for an ARI.



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Landlord's conclusion

The Landlord submits that it has met its burden and seeks the approval of an ARI for the capital expenditures listed under Section D. The Landlord asks that this ARI be combined with the next annual rent increase to be circulated to the Rental Property in 2023.

The landlords also have submitted the following documents in support of their application:

1. Residential Tenancy Branch (RTB) Policy Guideline 37 – Rent Increases
2. RTB Policy Guideline 40 – Useful Life of Building Elements
3. BC Assessment of Rental Property
4. Title Search of Rental Property
5. Invoices and proof of payment for item a ,b, c, d, and e
6. Fortis BC utility invoices
7. BC Hydro utility invoices
8. Consumption data report
9. Water utility invoices
10. Various letters and pictures.

Summary of Tenants' written submissions

The tenants did not provide any written submission, although they had sufficient time to do so.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. As the dispute related to the landlord's application for an additional rent increase based upon eligible capital expenditures, the landlord has the onus to support their application.



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Section 43(1)(b) of the Act allows a landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution

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



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- 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.

In this matter, there have been no prior application for an additional rent increase within the last 18 months before the application was filed. There are 40 specified dwelling units to be used for calculation of the additional rent increase. The landlord is claiming the total amount of **\$78,479.10** as outlined in the above table for capital expenditures.

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.

(a) BAS for Heating /DHW system- \$21,577.50

In November 2020, the landlord installed a Building Automated System ("BAS") to make its Heating and Direct Hot Water ("DHW") systems energy efficient.



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I find this is a major component of the building. I find that the Work was done to achieve a reduction in energy use. I find this is sufficient to satisfy the requirement of the Regulation.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years. Therefore, I find the landlord is entitled to recover the amount of **\$21,577.50**.

(b) Energy Reducing LED Lighting Upgrade - \$12,736.50

In September 2020, the landlord upgraded the Rental Property's common area lighting with energy efficient LED lighting (the "Efficient Lighting"). The Efficient Lighting also brightens the common areas to enhance one's safety and security when in or travelling through same.

I find this is a major component of the building. I find that the Work was done to achieve a reduction in energy use and enhance safety and security of the building. I find this is sufficient to satisfy the requirement of the Regulation.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years. Therefore, I find the landlord is entitled to recover the amount of **\$12,736.50**.

(c) Security Upgrade - \$29,662.50

The new security system was installed for the building. I find the Work was done for security and safety of the residence. The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that "major components" were installed to enhance security of the building. I find this is sufficient to satisfy the requirement of the Regulation that the work be undertaken to improve the security of the residential property. Therefore, I find the landlord is entitled to recover the amount of **\$29,662.50**.



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(d) Energy/Environmentally Efficient Toilet Upgrade - \$14,502.60

The landlord replaced the toilets contained within the rental property to reduce the energy consumption of water. I find this is a major component of the building.

The landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

I find that “major components” were installed to reduce energy consumption of the building. I find this is sufficient to satisfy the requirement of the Regulation. Therefore, I find the landlord is entitled to recover the amount of **\$14,502.60**.

Tenants’ Rebuttals

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.

The tenants did not provide any evidence to support either of these two arguments noted above.

However, as this application was based on work completed to achieve a reduction in energy use or greenhouse gas emissions; or to improve the security of the residential property the only relevant evidence would be proof that the landlord has been paid or is entitled to be paid from another source. I find the tenants have failed to defeat the application for additional rent increase.

Outcome

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the addition 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



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that there are 40 specified dwelling unit and that the amount of the eligible capital expenditures total the amount of \$78,479.10

I find the landlord has established the basis for an additional rent increase for capital expenditures of **\$16.34** ($\$78,479.10 \div 40 \div 120 = 16.3498$). **I note the landlord was seeking \$16.35; however, the Act does not allow the rent increase to be rounded up.**

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

The landlord has been successful. I grant the application for an additional rent increase for capital expenditure of **\$78,479.10**. The landlord must impose this increase in accordance with the Act and the Regulation.

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: January 18, 2023

Residential Tenancy Branch