



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PORTAGE WEST LIVING INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI-C

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on October 18, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An additional rent increase for eligible capital expenditures.

The hearing was convened by telephone conference call at 11:00 am. (Pacific Time) on March 3, 2023, and was attended by two agents for the Landlord (Agents). All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agents were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agents were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Agents were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing, as well as any documentary evidence intended to be relied upon by the Applicant at the hearing. As no one attended the hearing on behalf of the Tenants, I confirmed service of the documents as follows. The Agents testified that the Landlord is now seeking a rent increase for only 34 of the 70 named respondents, as others have since vacated the rental units. The Agents stated that the Notice of Dispute Resolution Proceeding

(NODRP), which contains a copy of the Application and the Notice of Hearing, was sent to each of the 34 respondents by registered mail at the rental unit addresses, and provided registered mail tracking documentation. The Agents stated that the documentary evidence before me was sent either in the above noted registered mail packages or was personally served in November of 2022 and provided a document signed by each of the Tenants confirming receipt. As a result, and in the absence of any evidence or testimony to the contrary, I find that the Tenants were served with the NODRP and the documentary evidence before me from the Landlord, in accordance with the Act and the Rules of procedure. I verified that the hearing information contained in the Notice of Hearing was correct and I note that the Agents had no difficulty attending the hearing on time using this information. As a result, the hearing therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf, pursuant to rules 7.1 and 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email addresses confirmed in the hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to a rent increase for eligible capital expenditures?

#### Background and Evidence

The Landlord seeks an additional rent increase in relation to the following capital expenditures:

- \$63,599.21 for the replacement of a sewer pipe, and the related balcony replacements and landscaping costs; and
- \$29,813.89 for the replacement of three hot water tanks.

The Agents stated that 350 feet of the sewer pipe required replacement, as the gradient was insufficient and causing clogs and a lag in wastewater disposal from rental units. The Agents stated that this was causing frequent inconveniences and disruptions to tenants and reoccurring plumbing issues. The agents stated that the pipe replacement improved drainage and sewage flow and is not expected to reoccur for at least five

years. The Agents stated that in order to access the sewer pipe, two decks that span four rental units had to be removed, as well as grass and stone pavers, all of which were replaced once the sewer pipe replacement was complete. The Agents stated that the sewer pipe replacement and associated balcony replacements and landscaping repairs were completed by October 15, 2021, and that all associated expenses were incurred within the 18-month period preceding the date of the ARI-C Application. The Agents stated that there are 24 specified dwelling units related to this capitol expenditure, although they are not seeking to impose a rent increase against all 24 units.

The Agents stated that two hot water tanks were at the end of their useful lives and failing, and that the third was also past the end of its useful life but had not yet failed. The Agents stated that all three traditional hot water tanks were replaced, which has improved hot water efficiency and the hot water recovery rate. The Agents stated that the more efficient tank technology reduces the properties energy consumption as well as the environmental footprint. They also stated that the hot water tanks have a 5-year warranty and an expected useful life of 10-20 years. The Agents stated that the hot water tank replacement was completed September 28, 2022, and that all associated expenses were incurred within the 18-month period preceding the date of the ARI-C Application. The Agents stated that there are 71 specified dwelling units related to this capitol expenditure, although they are not seeking to impose a rent increase against all units.

The Landlord submitted documentary evidence to support their claim, such as photographs receipts, and invoices, and provided detailed testimony at the hearing about the dates the expenses were incurred (paid for), all of which they state were within the 18-month period preceding the date on which the Landlord made the Application.

No one appeared on behalf of any of the Tenants and no documentary evidence was submitted by any of the Tenants for my consideration.

### Analysis

I accept the undisputed documentary evidence and affirmed testimony provided by the Agents. As no one appeared on behalf of the Tenants to argue that I must not grant the Application pursuant to section 23.1(5) of the regulation, I find that section 23.1(5) of the regulation does not apply. I find that all the capital expenditures claimed are eligible

capital expenditures under section 23.1(4) of the Regulation. None of the costs claimed are for routine maintenance. All of the costs claimed are for the very type of costs contemplated by section 23.1 of the Regulation and RTB Policy Guideline 37.

As a result, I therefore grant the Application as follows, as I am satisfied that the Landlord has met the requirements set out under section 43(3) of the Act, section 23.1 of the regulation, and Residential Tenancy Policy Guideline (Policy Guideline) #37. I note that the Agents stated that no amounts are eligible to be reimbursed for from other sources.

I accept that the property consists of 96 dwelling units split throughout various buildings on the property, including 9 cottages. At the hearing the Agents stated that there are 24 specified dwelling units related to or impacted by the replacement of the sewer pipe and associated balcony replacement and landscaping costs, although they are not seeking a rent increase from all of these dwelling units. The relevant calculation pursuant to section 23.3 of the Regulation is:

$$\text{Total ARI} = \frac{\$63,599.21 \div 24}{120} = \$22.08$$

I accept the undisputed and affirmed testimony of the Agents that there are 71 specified dwelling units associated with or impacted by the replacement of the hot water tanks. The relevant calculation pursuant to section 23.3 of the Regulation is:

$$\text{Total ARI} = \frac{\$36,770.67 \div 71}{120} = \$4.32$$

The Landlord must do the remainder of the calculations and must impose the additional rent increases in accordance with the Act, Regulation and RTB Policy Guideline 37.

### Conclusion

The Landlord is entitled to impose the above noted additional rent increases. The amounts calculated pursuant to section 23.2(2) of the Regulation are \$22.08 for any of the 24 specified dwelling units associated with the sewer pipe replacement and \$4.32 for any of the 71 specified dwelling units associated with the replacement of the hot water tanks. The Landlord must do the remainder of the calculations and must impose this additional rent increase in accordance with the Act, Regulation and RTB Policy Guideline 37.

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

Dated: March 28, 2023

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Residential Tenancy Branch