



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding AUSTEVILLE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

Landlord Austeville Properties Ltd applied for an additional rent increase for capital expenditures (expenditures), under section 43(3) of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

This decision should be read in conjunction with the Interim Decision dated December 13, 2022.

On April 20, 2023 the applicant was represented by agents THO and ERB (the landlord). Tenant CLH (the tenant - unit 122 ALL) also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing.

Service of documents

The landlord affirmed that he served all the tenants the written submissions, the evidence and the interim decision (the materials) in accordance with the interim decision.

The landlord submitted witnessed proof of service forms (RTB 34) indicating that he attached the materials to the tenants' front door on January 12, 2023.

The tenant confirmed receipt of the materials.

Based on the undisputed testimony, I find the landlord served the materials in accordance with section 89(1) of the Act and the interim decision. I deem all the tenants received the materials on January 15, 2023, per section 90(c) of the Act.

Application for Additional Rent Increase

The landlord testified the rental complex containing towers TOR and ALL was built in 1968 and that each tower has 110 rental units. The landlord submitted this application against all the tenants of the occupied 106 units in TOR tower and 108 units in ALL tower.

The landlord is seeking an additional rent increase for five expenditures: boiler, elevator, fire alarm and roof replacement and for the exterior upgrade.

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. The onus to prove the case is on the person making the claim.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures:

(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;
- (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
 - (A) a reduction in energy use or greenhouse gas emissions;
 - (B) an improvement in the security of the residential property;
- (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.

Per Regulation 23.1(5), the tenant may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the expenditures were incurred:

- (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.

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 in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

- "major component", in relation to a residential property, means
 - (a) a component of the residential property that is integral to the residential property, or
 - (b) a significant component of a major system;

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral
(a) to the residential property, or
(b) to providing services to the tenants and occupants of the residential property;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

Previous application for additional rent increase

The landlord said he did not submit a prior application for rent increase.

Based on the landlord's undisputed and convincing testimony, I find that the landlord has made a previous application for an additional rent increase, in the 18 months preceding the date on which the landlord submitted the application, per Regulation 23.1(2).

Number of specified dwelling units

The landlord stated the roof replacement benefits only the rental units in ALL tower and that all the rental units in both ALL and TOR towers benefit from the remaining expenditures.

Regulation 21.1(1):

"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.

Based on the landlord's undisputed convincing testimony, I find the rental complex has 110 specified dwelling units in ALL tower and 110 specified dwelling units in TOR tower, with a total of 220 rental units.

I find the landlord submitted this application against all the rented residential units on which the landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

RTB Policy Guideline 37 states: "capital expenditure is considered 'incurred' when payment for it is made."

The landlord stated that all the expenditures claimed were incurred between January 14, 2021 and June 22, 2022. The landlord submitted invoices for the expenses claimed.

Based on the landlord's convincing testimony and the invoices submitted, I find the landlord proved that he incurred the expenditures in the 18-month period preceding the submission of this application, per Regulation 23.1(4)(b) and 23.1(1), as the expenditures occurred between January 14, 2021 and June 22, 2022 and the landlord submitted this application on July 13, 2022.

Expenditures not expected to be incurred for the next five years

The landlord said that the expenditures are not expected to occur again for at least 5 years.

The landlord testified the boiler, elevator and fire alarm are expected to last at least 20 years, the exterior upgrade is expected to last 10 years and the roof is expected to last 25 years.

Based on the landlord's undisputed and convincing testimony, I find the landlord proved that all expenditures are not expected to be incurred again for at least five years, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair

The landlord said that the expenditures were not necessary because of inadequate repair or maintenance on the part of the landlord.

Based on the landlord's undisputed convincing testimony, I find the expenditures were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

The landlord stated that he is not entitled to be paid from another source for the expenditures claimed.

Based on the landlord's undisputed and convincing testimony, I find the landlord is not entitled to be paid from another source, per Regulation 23.1(5)(b).

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the landlord.

Boilers

The landlord replaced the original boilers from 1968 in 2021 because they were beyond their useful life. The landlord installed two boilers in each tower. The landlord affirmed that he paid the eight invoices submitted in the total amount of \$115,349.34 between January 25 and July 19, 2021 for the four new boilers in both towers.

The landlord submitted an engineering report dated August 23, 2018:

The boiler and heating systems are serviced by and have undergone servicing and repairs over the years. The heating boiler and associated systems are well maintained and were operating at the time of the site visit.

The atmospheric type boilers have an operating seasonal efficiency of about 60% to 70% and a reliable service life of 15-20 years. The boilers are original with the building so are considered to be at the end of their reliable service life.

RTB Policy Guideline 37C states:

The Regulation defines a "major system" as an electrical system, mechanical system, structural system, or similar system that is integral to the residential property or to providing services to tenants and occupants. A "major component" is a component of

the residential property that is integral to the property or a significant component of a major system.

Major systems and major components are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.

Examples of major systems or major components include, but are not limited to, the foundation; load-bearing elements (e.g., walls, beams, and columns); **the roof;** siding; entry doors; windows; primary flooring in common areas; subflooring throughout the building or residential property; pavement in parking facilities; electrical wiring; **heating systems; plumbing and sanitary systems;** security systems, including cameras or gates to prevent unauthorized entry; and **elevators.**

A major system or major component may need to be repaired, replaced, or installed so the landlord can meet their obligation to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Laws include municipal bylaws and provincial and federal laws. For example, a water-based fire protection system may need to be installed to comply with a new bylaw.

Installations, repairs, or replacements of major systems or major components will qualify for an additional rent increase if the system or component has failed, is malfunctioning, or is inoperative. For example, this would capture repairs to a roof damaged in a storm and is now leaking or replacing an elevator that no longer operates properly.

Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life. A landlord will need to provide sufficient evidence to establish the useful life of the major system or major component that was repaired or replaced. This evidence may be in the form of work orders, invoices, estimates from professional contractors, manuals or other manufacturer materials, or other documentary evidence.

Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair. Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or

component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.

The following is a non-exhaustive list of expenditures that would not be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life:

- repairing a leaky faucet or pipe under a sink,
- routine wall painting, and
- patching dents or holes in drywall.

RTB Policy Guideline 40 states:

A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period. When reviewing applications for additional rent increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.

[...]

Useful life of hot water tank: 10 years domestic. 20 years commercial.

I accept the landlord's uncontested testimony that the boilers replaced in 2021 were from 1968. The parties did not submit testimony or evidence regarding the boilers' useful life contrary to the policy guideline. I find the original boilers were beyond their useful life, as they were 53 years old when the landlord replaced them, and Policy Guideline 40 provides the useful life of a commercial hot water tank is 20 years and a residential hot water tank is 10 years.

Based on the landlord's convincing testimony, the engineering report and the invoices, I find the landlord proved that he replaced the boilers.

I find that the boiler replaced is a major component of the rental building, as the boiler is integral to the rental buildings and provides warm water to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$57,674.67 per tower to replace the boilers is in accordance with Regulation 23.1(4)(a)(ii).

Elevators

The landlord replaced the original elevators from 1968 in 2021 in both towers because they were beyond their useful life. The landlord stated he paid the ten invoices submitted in the total amount of \$505,267.01 between January 14 and August 13, 2021 for the new elevators in both towers.

The landlord submitted an engineering report dated July 24, 2018:

We reviewed the elevator equipment in [the rental buildings].

The elevators in both buildings are of a geared overhead traction [...] installed in approximately 1972.

The base recommended upgrades for the elevators are to replace the control systems with newer microprocessor-bases systems including new car and hall control fixtures. Replacement the DC motors with new AC motors which are much simpler to maintain as well as completion of mandatory fire alarm upgrades as required in the elevator safety code (CSA B44-07).

RTB Policy Guideline 40 states the useful life of an elevator is 20 years.

I accept the July 24, 2018 engineering report that the elevators replaced in 2021 were from 1972. The parties did not submit testimony or evidence regarding the elevators' useful life contrary to the policy guideline. I find the elevators were beyond their useful life, as they were 49 years old when they were replaced, and Policy Guideline 40 provides the useful life of an elevator is 20 years.

I find the elevators replaced are a major component of the mechanical system, as the elevators are integral to the rental buildings and are essential for the tenants in the 13-floor towers, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$252,633.51 per tower to replace the elevators is in accordance with Regulation 23.1(4)(a)(ii).

Fire alarm

The landlord replaced the original fire alarm system from 1968 in 2021 in both towers because it was beyond its useful life and not in accordance with the current fire alarm requirements. The landlord testified he paid the 19 invoices submitted in the total amount of \$301,440.42 between January 14 and June 18, 2021 for the fire alarm system in both towers.

The landlord submitted an engineering report dated October 22, 2018: "We have performed a preliminary review of the buildings and have been able to determine that the existing fire alarm system is not capable of handling the future elevator upgrade."

RTB Policy Guideline 40 states the useful life of fire alarms is 15 years.

The parties did not submit testimony or evidence regarding the fire alarm's useful life contrary to the policy guideline. I find the fire alarm system was beyond its useful life, as it was 53 years old when the landlord replaced it, and Policy Guideline 40 provides the useful life of fire alarms is 15 years.

I accepted the July 24 and October 22, 2018 reports that the previous fire alarm was not in accordance with the current fire alarm requirements (CSA B44-07).

Per section 32(1)(b) of the Act, the landlord must maintain the rental unit suitable for occupation.

I find that a fire alarm that complies with the current fire alarm requirements is essential for the tenants' safety. Thus, I find that the fire alarm system is part of the rental buildings' safety system. I find the safety system is part of the rental buildings' major systems, as this system is integral to the rental buildings and provides safety to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$150,720.21 per tower to replace the original fire alarm system is in accordance with Regulation 23.1(4)(a)(ii).

Exterior Balcony Surfaces

The landlord replaced the rental buildings' exterior balcony surfaces (the exterior) from 1968 in 2021 because the exterior was beyond its useful life. The landlord upgraded and caulked the exterior to prevent water ingress and to maintain the buildings suitable for occupation. The landlord said he paid the six invoices submitted in the total amount of \$410,033.40 between May 19 and August 27, 2021 for the exterior upgrades in both towers.

The landlord's written submission states:

The building exterior is noted to be original condition to the property with routine upkeep provided by the Landlord. The building exterior has been determined to be a major system /component to enclose a building and protect its physical integrity. As

noted in the Residential Tenancy Policy Guideline 40. Useful Life of Building Elements, exterior painting is said to have a useful life of 8 years. Site preparation has been included as an integral part of the project and necessary to ensure proper installation of sealing and coating products.

The landlord submitted four photographs showing the exterior before and after the replacement.

Based on the landlord's convincing undisputed testimony, I find the exterior is a major component of the rental buildings, as the exterior is a load-bearing element, per Regulation 21.1 and Policy Guideline 37C.

RTB Policy Guideline 40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

Based on the landlord's written submissions, convincing testimony and the photographs, I find the exterior has a useful life of 8 years. I find the original exterior was beyond its useful life, as it was 53 years old when it was placed in 2021.

Considering the above, I find that the expenditure of \$205,016.70 per tower to replace the original exterior is in accordance with Regulation 23.1(4)(a)(ii).

Roof

The landlord replaced the roof in ALL tower from 1968 in 2021 because it was beyond its useful life. The landlord affirmed he paid the eight invoices submitted in the total amount of \$281,310.75 between May 19, 2021 and June 22, 2022 for the new roof.

The landlord submitted six photographs showing the roof before and after the replacement.

RTB Policy Guideline 40 states the useful life of a roof is up to 20 years.

I find the roof was beyond its useful life, as it was 53 years old when it was replaced, and Policy Guideline 40 provides the useful life of a roof is up to 20 years.

I find the roof is a major component of the rental buildings, as the roof is integral and essential to the rental building, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$281,310.75 to replace the roof in ALL tower is in accordance with Regulation 23.1(4)(a)(ii).

Outcome

Both parties confirmed they had enough time to present their evidence.

The landlord has been successful in this application, as the landlord proved that all the elements required to impose an additional rent increase for expenditure under Regulation 23.1(1) to (4) and the tenants failed to prove the conditions of Regulation 23.1(5).

In summary, the landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	TOR Tower \$	ALL Tower \$
Boilers	57,674.67	57,674.67
Elevators	252,633.51	252,633.51
Fire alarm	150,720.21	150,720.21
Exterior	205,016.70	205,016.70
Roof	0	281,310.75
Total	666,045.09	947,355.84

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 specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 110 specified dwelling units in each tower and that the amount of the eligible expenditure is \$666,045.09 for TOR tower and \$947,355.84 for ALL tower.

The landlord has established the basis for an additional rent increase for expenditure of \$50.46 per unit (\$666,045.09/110units /120) in TOR tower and \$71.77 (\$947,355.84

/110units /120) in ALL tower. If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with Regulation 23.3.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 (<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>) for further guidance regarding how this rent increase may be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for expenditures of \$50.46 per unit in TOR tower and \$71.77 per unit in ALL tower. The landlord must impose this increase in accordance with the Act and the Regulation.

The landlord must 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: May 15, 2023

Residential Tenancy Branch