



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## DECISION

Dispute Code: ARI-C

### Introduction

The Landlord seeks a rent increase 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 “Regulation”).

On July 22, 2022, the Landlord filed an application for a rent increase for eligible capital expenditures. A prehearing conference was held by teleconference on December 29, 2022 (see Interim Decision of December 29, 2022.) Written submissions and evidence were considered after May 19, 2023. This final decision in respect of the Landlord’s application was rendered on June 5, 2023.

This application applies to all rental units except for those Tenants who have either vacated their rental unit since this application was filed or who have consented to the rent increase.

The name of the Landlord as it appears in the style of cause has been amended upon the request of the Landlord’s in counsel’s “LANDLORD’S REPLY” submission dated April 11, 2023.

### Issue

Is the landlord entitled to impose an additional rent increase (“ARI”) for eligible 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.

The rental units subject to this application consist of 429 units in two buildings that are joined on the ground floor (the “property”). The two buildings were built in 2001.

The Landlord incurred the following capital expenses related to major systems or major components at the property. The Landlord submits that the capital expenses were incurred, or ought to be considered incurred, within the 18-month period preceding the date on which the Landlord filed the subject ARI application.

The capital expenditures include:

*1. LED Lighting Upgrade*

- i. Energy reducing LED lighting upgrade – to improve energy efficiency (according to the proposal, such lighting would be “80% more efficient and 30x longer life than standard incandescent”)
- ii. In and around August 2021, the Landlord upgraded the Rental Property’s common area lighting by installing energy efficient LED lighting
- iii. On August 31, 2021, SPG issued one (1) invoice for its work, Invoice # I21-04925. In total, the Efficient Lighting cost \$12,836.25
- iv. The Landlord issued one (1) payment to SPG for the Efficient Lighting. Payment for the Efficient Lighting was made on September 17, 2021
- v. September 17, 2021 is within 18 months of July 22, 2022
- vi. Replacement of the Efficient Lighting is not expected to recur for at least five (5) years; indeed, the SPG Proposal clarifies that the Efficient Lighting is rated to last up to 100,000 hour (10 years) and are warranted for five (5) years. Further, SPG has provided a letter, dated January 12, 2023 which confirms that replacement of the Efficient Lighting is not expected to recur for at least five (5) years.

*2. Intercom Security Upgrade*

- i. Non-residents of the Rental Property are only permitted to enter at the invitation of a Tenant. To facilitate the safe and secure entry of a non-resident, the property is equipped with an intercom system that provides non-residents with an opportunity to speak with a Tenant before entry into the Rental Property is granted. The original intercom was part of the Rental Property’s original construction.
- ii. On March 18, 2021, a security solutions company provided the Landlord with an estimate to upgrade the original intercom. According to the estimate, the company noted that the original intercom was obsolete. In and around July 2021,

the Landlord upgraded the original intercom. At the time of its replacement, the original intercom was more than 15-year-old.

- iii. On July 31, 2021, the security solutions company issued one invoice for its work. In total, the Upgraded Intercom cost \$39,754.40.
- iv. The Landlord issued one payment for the upgrade. Payment for the upgraded intercom was made on October 15, 2021.
- v. October 15, 2021 is within 18 months of July 22, 2022.
- vi. Replacement of the upgraded intercom is not expected to recur for at least five years.

### *3. Additional Security Upgrades*

- i. The Landlord upgraded the 15-year-old-plus fob system. Between January and March 2021 the fob system was upgraded. Four invoices were issued by the company upgrading the fob system for a total of \$11,230.56.
- ii. The first payment of February 5, 2021 was within 18 months of July 22, 2022.
- iii. Replacement of the fob system is not expected to recur for at least five years.

### *4. Electric Switch*

- i. The property has a main high voltage electrical switch (the "Original Switch"). The Original Switch allows the Landlord to turn the property's electricity supply on and off. Essentially, the Original Switch is the Rental Property's main panel which receives energy from a transformer and distributes the energy to two smaller panels. The Original Switch was part of the original construction.
- ii. In 2018, during a maintenance inspection, it was determined that arcing from within the Original Switch caused damage to the switch that was significant enough to warrant its replacement.
- iii. As the Original Switch was close to the end of its useful life, being 20 years old at the material time, the Landlord chose to replace it as doing so would prevent future equipment failure which might lead to significant electrical downtime at the Rental Property (the "Upgraded Switch").
- iv. The Landlord retained Prism Engineering ("Prism") to oversee the implementation of the Upgraded Switch; in doing so, Prism provided integral services pertaining to 4 5 coordination and project management. Conversely, Houle Electrical ("Houle") undertook efforts to install the Upgraded Switch.
- v. Between January and November 2021, the Landlord installed the Upgraded Switch. The Upgraded Switch project included the replacement of the Rental

- Property's high voltage load break switch, circuit breaker, protection relays, and transformer.
- vi. Prism issued five invoices amounting to \$4,200.00. The Landlord issued five payments to Prism on March 19, 2021; April 26, 2021; September 29, 2021; October 1, 2021; and November 19, 2021.
  - vii. Houle issued six invoices amounting to \$184,799.99.
  - viii. The Landlord issued six payments to Houle on April 26, 2021; three (3) payments on October 6, 2021; December 3, 2021; and December 10, 2021.
  - ix. March 19, 2021 is within 18 months of July 22, 2022.
  - x. Replacement of the Upgraded Switch is not expected to recur for at least five years; indeed, Houle has provided correspondence, dated January 10, 2023, which confirms that replacement of the Upgraded Switch is not expected to recur for at least five years.

Documentary evidence contained within the Landlord's 157-page written submission includes copies of proposals, estimates, an affidavit, invoices, photographs of the work completed, and copies of Residential Tenancy Branch policies.

The total cost of the work is \$252,821.20.

The Landlord submits that none of the tenant Respondents have served it or its legal counsel with evidence or submissions opposing the ARI. (See affidavit of K.F. dated April 11, 2023.) The Landlord therefore submits that the application is unopposed, and that the ARI ought to be granted as requested by the Landlord in its submissions filed on February 13, 2023.

### 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 429 eligible dwelling units in the building.

***Amount of Capital Expenditures***

The total amount of the capital expenditures is \$252,821.20.

***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 major systems or major component that has failed or is malfunctioning or inoperative or that is close to the end of their useful life.

The invoices for the LED lighting upgrade, the intercom security upgrade, the fob system upgrade, and the electric switch establishes that the expenditures were incurred in an 18-month period preceding the date on which the Landlord filed the application.

I am further satisfied, on a balance of probabilities that all the above-noted upgrades will not need to be further upgraded for at least five years. Indeed, likely, these systems are expected to last far beyond five years.

To conclude: the Landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$252,821.20 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 429 specified dwelling units. The calculation is thus as follows:  $(\$252,821.20 \div 429 \text{ units}) \div 120 = \$4.91$ . The eligible rent increase amount is therefore \$4.91.

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 should, in making these calculations, refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, and section 42 of the Act

### Conclusion

**The application is granted for an additional rent increase of \$4.91.**

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 or otherwise permitted under any previous interim decision or applicable substituted service decision, and in any case no later than 15 business days after receiving this Decision.

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

Dated: June 5, 2023

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Residential Tenancy Branch