



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## DECISION

### Introduction

This matter pertains to the Landlord's application under the *Residential Tenancy Act* ("Act") and the *Residential Tenancy Regulation* ("Regulation") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The Landlord, along with four representatives of the Landlord, attended the hearing. Two Tenant were also present at the hearing.

### **Preliminary Matter: Service of Notice of Dispute Resolution Proceeding and Evidence**

The Landlord confirmed that all affected Tenants were served with the Notice of Dispute Resolution Proceeding and the Landlord's documentary evidence by Canada Post registered mail. Copies of the registered mail receipts and tracking information were submitted and it is my finding that the Tenants were either served in compliance with section 89(1)(c) of the Act or were deemed served pursuant to section 90(a) of the Act.

It is noted that registered mail that is not picked up by a recipient is still considered to have been properly served under the Act. A recipient of registered mail is expected to pick up and claim their mail.

(The Landlord noted that five of the fifteen packages mailed were returned unclaimed. One of those packages that went unclaimed was sent to one of the two Tenants who attended the hearing.)

## **Issue**

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

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The property to which this application relates is a twenty rental unit multi residential building. There are, however, a total of only fifteen rental units affected by this application. Five of the non-affected tenants/rental units were not included because those tenancies began after the completion of the projects for which this application pertains.

The Landlord testified that he has not applied for an additional rent increase for capital expenditure against any of the Tenants prior to this application.

The Landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for work done to the residential property's main water line, boiler upgrade, and an upgrade of fencing and electrical (collectively, the "Work").

Regarding the first claim, the Landlord's application particulars describe this claim as follows: "The main water supply line to the building from the street was leaking. The ground outside the building had to be excavated and the line replaced from the main City supply line in the street to the meter inside the building. Ground was repaired with new sod. Total cost of \$37,142.94 and the new water line is expected to last 30 to 50 years."

The Landlord's testimony largely mirrored these facts, and he added that the project was completed on May 27, 2022.

The Landlord anticipated the Tenant's submission regarding the current condition and state of the walkway or path and acknowledged that it is still in gravel condition but that the Landlord is not including those future costs in this application.

Regarding the second claim, the application particulars describe this claim as follows: "The boiler system was replaced with a new efficient system for space heating and domestic hot water for the building. We did apply for and receive a rebate from FortisBC for the high efficient system in the amount of \$7,182 which was deducted from this application. The new boiler system is expected to last 20 years."

On this aspect of the application, the Landlord's testimony also largely mirrored these facts. In answer to a question I had about the age of the boiler system that was replaced, the Landlord explained that the old boiler system was approximately twenty years old. The building itself was built in the late 1960s.

Regarding the third claim, the application's particulars describe the claim as follows: "An old wood fence was removed between the property and a neighbouring City owned bare parcel as we had security issues with homeless people camping and hiding behind the fence, often starting fires. The fence had electrical plug-ins for vehicles attached to it that had to be replaced with new concrete bases and plugs. We also included conduit for future electric vehicle chargers. The total cost was \$30,017 but only half is applied to the residents in [property address]."

The Landlord's testimony and submissions largely reflected these facts as described, and he added that, while the Tenant's J.M.'s parking spot did not fall within the electrical plug-in upgrade, the entirety of the project was to the benefit of all affected Tenants. Last, the Landlord testified that the upgrade is expected to last 20 to 30 years.

The Landlord submitted documentary evidence of the Work completed, along with copies of invoices reflecting the amounts expended and sought.

One Tenant raised concerns with the pathway or walkway still not being repaired fully, even after two summers. She noted that water can pool and then freeze, creating slippery and unsafe conditions. She also questioned whether there is an improvement in security and argued that the amount of unwelcome pedestrian traffic has increased, and that safety has decreased.

In response, the Landlord testified that the missing piece of fence and the future repairs to the pathway are not included in this application.

## **Analysis**

### **1. 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:
  - o the Work was to repair, replace, or install a major system or a component of a major system
  - o 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
- 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.

## 2. Prior Application for Additional Rent Increase

The Landlord has not made any prior application for an additional rent increase for eligible capital expenditures under the Act.

### 3. 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 a total of 20 dwelling units but only 15 are eligible in respect of this application.

### 4. Amount of Capital Expenditure

The total amount of the capital expenditures is \$141,175.69.

5. 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.

It is my finding that the Work, consisting of upgrade and repair of a main water line, the boiler upgrade, and an upgrade of fencing and electrical, were all done to repair, replace, and install a major system of the property. All of the Work was done because the components were close to or at the end of their useful life, there was a reduction in energy use resulting from the boiler upgrade, and (with respect to the Tenant) there was an improvement in security to the residential property.

It is further my finding, based on the undisputed oral and documentary evidence, that the capital expenditures were all incurred less than 18 months before the application was made (the application was made on November 16, 2023).

Finally, based on the evidence before me, it is my finding that the capital expenditures are not expected to be incurred again within five years.

## 6. 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.

Neither the Tenants who attended the hearing or those who did not, provided any submissions or argument that falls within either of the above-noted two grounds on which the Landlord's application ought to be dismissed.

Last, while I appreciate that the one Tenant's parking spot was not upgraded, the repairs fall under an eligible capital expenditure and must therefore be applied to that Tenant's rental unit as part of this application.

## 7. Outcome

It is my finding that the Landlord has been successful in this application. He has proved, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for capital expenditure.

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 that there are 15 specified dwelling units and that the amount of the eligible capital expenditure is \$141,175.69. So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$78.43 ( $\$141,175.69 \div 15 \text{ units} \div 120$ ).

The parties may refer to *Residential Tenancy 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**

For the reasons set out above, the Landlord's application is granted for an additional rent increase for capital expenditures in the amount of \$78.43. The Landlord may only impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act and by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: January 23, 2024

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Residential Tenancy Branch