



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      ARI-C

### **Introduction**

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

The Landlord (agents of) attended the hearing. Two Tenants identified themselves to provide submissions during the hearing. All parties provided affirmed testimony. The Landlord provided a proof of service document showing that they served all rental units with the Notice of Dispute Resolution Proceeding and evidence by Canada Post and provided the tracking numbers. Tenant SO confirmed receipt of the Landlord's application, Notice of Dispute Resolution Proceeding and evidence. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages 5 days after they were sent by registered mail.

The Landlord's agent JF (the Landlord's Agent) confirmed they received the evidence served by the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### **Preliminary Issue**

I amended the Landlord's application to list the legal business name of the Landlord.

### **Issues to be Decided**

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 Landlord's Agent explained this rental building consists of 35 units, but this application was only served on 28 units. The Landlord's Agent advised they acquired the rental building in 2012 and it was built in the early 1970s.

There is no evidence that the Landlord has imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

The Landlord applied initially for permission to impose an additional rent increase for capital expenditure that were incurred to pay for 2 different items, as follows:

1. \$107,816.91 – Elevator Modernization
2. \$14,927.62 – Hot Water Tank Replacement

At the hearing, the Landlord's Agent advised that they want to reduce their claim for item #2 above to \$7,400.00 because they were approved for a partnership with FortisBC which will result in the hot water tank being replaced in the fall of 2024 with a high efficiency hot water tank. The Tenants advised they believe a significant reduction in the amount being claimed is owed considering the hot water tank will only have been used for 2 years.

The Landlord and Tenants spoke to each of the above noted items as follows:

1. \$107,816.91 – Elevator Modernization

The Landlord's Agent stated that the elevator was original to the building and is about 50 years old. The Landlord's Agent argued the elevator modernization was required because the elevator was having major issues, their contractor was having difficulty sourcing parts for the elevator and the work was required to keep the elevator running and in a safe condition. The Landlord's Agent advised that prior to the modernization the elevator has stopped working for a significant period. The Landlord's Agent referenced the service contract, which was submitted into evidence, which showed that since 2012 when they acquired the building the elevator was serviced monthly.

The Tenants argued they did not have any service information on the elevator prior to the Landlord acquiring the rental building in 2012. The Landlord's Agent advised they know the elevator is original to the building and some components were likely maintained or replaced prior to 2012, but no modernization has been done prior to the work completed by the Landlord. The Tenants argued they received no compensation

or rent reduction for the period the elevator was inoperable, and the rental building is advertised as a walk out.

## 2. \$7,400.00 – Hot Water Tank Replacement

As mentioned above the Landlord's Agent advised after they had installed the water heater and filed this application, they received acceptance for a partnership with FortisBC which will result in an upgrade to the water heater that was just replaced to a high efficiency boiler in the fall of 2024. The Landlord's Agent suggested reducing their claim to \$7,400.00 to account for the fact that the 2022 installed water heater will be replaced again. The Landlord's Agent advised the water heater was at least 10 years old and was beginning to leak. The Landlord provided an invoice that supported their claim that the water heater was beginning to leak and needed to be replaced.

The Tenants argued that they are being forced to pay for a hot water tank that will only be in the building for about 2 years before being replaced through the FortisBC partnership. The Tenants questioned whether the hot water tank could have lasted two more years and been replaced through the FortisBC partnership. The Landlord's Agent responded that the best course of action was to replace the hot water tank since it was leaking and that could cause a lot of damage to the rental building.

In the submissions submitted by Tenant SO they argued the Landlord is claiming these expenses on their taxes and argued the Tenants are being required to pay a higher amount than the Landlord's expenses.

## **Analysis**

### 1. Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- 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 (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
    - because the system or component:
      - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or

- had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
- to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
- to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
- the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges their evidentiary burden and the tenants fail 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

I am satisfied that the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months. This was not in dispute.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

The Landlord's Agent explained that there are 35 separate units in the building, but the application was only served on 28 rental unit. The Landlord's Agent advised the other 7 units were not included in this application since they recently became tenants and are paying market rent. I am satisfied that all 35 of the separate units in the building are both dwelling units, and specified dwelling units, given they are all located in the same building, where all of the renovations were completed.

#### 4. Amount of Capital Expenditure

The Landlord initially applied for the following 2 items:

\$107,816.91 – Elevator Modernization  
\$14,927.62 – Hot Water Tank Replacement

However, during the hearing, the Landlord's Agent requested to reduce item #2 to \$7,400.00 due to the FortisBC partnership they were accepted for which will result in a replacement to the hot water tank in Fall 2024. These remaining 2 items total \$115,216.91.

#### 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
    - 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.

I will address each of these in turn.

a. Type of Capital Expenditure

Section 21.1 of the Regulation defines “major system” and “major component”:

"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;

"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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

1) \$107,816.91 - Elevator Modernization

Policy Guideline 37C states that an elevator is a major system of rental buildings. I find the elevator is a major system and integral to the rental building, as elevators are essential for tenants to reach their units, per regulation 21.1 and Policy Guideline 37C.

2) \$7,400.00 – Hot Water Tank Replacement

I am satisfied the hot water tank replacement is considered a repair to a “major component”, of a “major system” as it is part of the core plumbing and hot water system, as laid out in the Guidelines above. This services the whole building.

As such, I find that the elevator modernization and hot water tank replacement was undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

Based on the evidence and submission of the Landlord, I am satisfied that the elevator was at least 50 years old, and the hot water tank was approximately 10 years old and were close to the end of their useful life expectancy. I am also satisfied that some of related components had already started malfunctioning and failing. For example, the elevator stopped working several times and the hot water tank was leaking. As such, I am satisfied that the work for the 2 items was completed to repair, remediate, and replace aging building components that were at the end of their useful life expectancy.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

I note the Landlord made the application on December 1, 2023, and I am satisfied that all work was completed and paid within the 18-month period preceding this application. Work for the elevator was completed and invoiced on or around September 27, 2022 and the work for the hot water tank was completed and invoiced on or around September 16, 2022.

All of these dates are within 18 months of the Landlord making this application.

d. Life expectancy of the Capital Expenditure

Policy Guideline 40 sets out the useful life expectancy for typical building components. Elevators and hot water tanks all last longer than 5 years. Both parties advised due to recent acceptance of the rental building into a partnership with FortisBC the rental building is being upgraded in the fall of 2024 to a more energy efficient building, which includes replacing the hot water tank with an energy efficient hot water tank. Given that acceptance into the FortisBC partnership happened after the repairs to the hot water tank were needed and the hot water tank was expected to last over 5 years when it was replaced, I find that the FortisBC partnership does not prevent the hot water tank from qualifying as an eligible capital expenditure. Below I will address the arguments of both sides for reducing the amount being sought for the hot water tank.

I find that the life expectancy of the components replaced will exceed 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.

While the Tenants argued they don't have any maintenance records prior to 2012, I find that the Landlord did not own the rental building prior to 2012. As such, I find that since the Landlord did not own the building at that time, they are not held responsible for any inadequate repairs or maintenance on the part of the previous landlord. Additionally, the Tenants argued the elevator broke down several times in 2022 which supports that the elevator was not maintained. However, I do not find that an elevator breaking down implies or proves that the elevator was not maintained, and the Landlord provided the maintenance contract which shows the elevator was serviced monthly. As such, I find that the elevator was properly maintained. The Tenants also argued that the Landlord claimed these expenses on their taxes; however, as stated in Policy Guideline 37C, a landlord is not reimbursed by another party under a tax credit and deduction scheme as the landlord is not receiving a payment by reducing their taxable income.

While the Tenants took issue with not receiving compensation or a rent reduction when the elevator breakdown and the rental building being advertised as a walk out, I find that these arguments do not form a basis to dispute the application.

The Tenants argued the amount being claimed for the hot water tank should be reduced significantly given the FortisBC partnership will result in the hot water tank being replaced after 2 years. The Landlord requested it be reduced by half as they argued it addresses the fact that it will be replaced in the fall and 2024 but considers that the Landlord had to make this expenditure to replace the leaking hot water tank. Given the unique situation and the compelling arguments from both sides, I will use my discretion under section 62(3) of the Act and deviate from the formula set out in the Act.

## 7. Outcome

The Landlord has been successful. They have proved, on a balance of probabilities, all of the elements required in order 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 additional 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 will use the formula for the elevator; however, given my statements above I will deviate from the formula for the hot water tank as this will better address the unique situation and compelling arguments from both sides.



## **Elevator**

I have found that there are 35 specified dwelling unit and that the amount of the eligible capital expenditure for the elevator is \$107,816.91.

So, the Landlord has established the basis for an additional rent increase for the elevator of \$25.67 ( $\$107,816.91 \div 35 \text{ units} \div 120$ ).

## **Hot Water Tank**

Pursuant to section 62(3) of the Act, I will use my discretion to deviate from the formula setout in the Act and set the the basis for an additional rent increase for the hot water tank at \$1.23.

Based on the above, the Landlord has established the basis for an additional rent increase for both capital expenditures of \$26.90. If this amount exceeds 3% of a tenant's monthly rent, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

The parties may refer to RTB Policy Guideline 37, 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 \$26.90. The Landlord must 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 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: February 27, 2024

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Residential Tenancy Branch