



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code      ARI-C

### Introduction

1355 West 14th Avenue Holdings Inc., Vancouver No. 1 Apartments Partnership applied for an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

1355 West 14th Avenue Holdings Inc., Vancouver No. 1 Apartments Partnership, represented by agent MF (the Landlord) and assisted by counsel MD, tenants SM and JJ attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Service

The Landlord affirmed that he served the notices of application, written submissions and evidence on December 8, 2023 by attaching individual packages to the tenants' front door. The Landlord submitted a declaration indicating the packages were attached to the doors on December 8, 2023.

The Landlord stated he attached the second evidence package to all the tenants' front doors on January 8, 2024. The Landlord submitted a declaration indicating the packages were attached to the doors on January 8, 2024.

The attending tenants confirmed receipt of the packages.

The Landlord confirmed receipt of the response evidence from tenant SM.

Based on convincing testimony and the proof of service declarations, I find the Landlord served the notice of application, submissions, and the evidence in accordance with section 89 of the Act and that tenant SM served the response evidence in accordance with section 89 of the Act.

#### Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 3 expenditures in the total amount of \$362,861.82. The expenditures are:

1. Boiler
2. Intercom
3. Hallway and lobby upgrades

The Landlord withdrew the claim for an additional rent increase for the exterior signage.

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.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures "incurred in the 18-month period preceding the date on which the landlord makes the application".

Per Regulation 23.1(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."

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all 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), tenants 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:

- (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.

Number of specified dwelling units

All the attending parties agreed the 28-rental unit building was built in 1965 and that all the expenditures benefit all the tenants.

Based on the uncontested testimony, I find the rental building has 28 rental units and that they all benefit from the expenditures. In accordance with Regulation 21.1(1), I find there are 28 specified dwelling units.

Prior application for an additional rent increase and application for all the tenants

The Landlord testified he did not submit a prior application for an additional rent increase and that the Landlord is seeking an additional rent increase for all the tenants.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not imposed an additional rent increase in the 18 months preceding the date on which the landlord submitted this application, per Regulation 23.1(2).

Based on the Landlord's convincing testimony, I find the Landlord submitted this application against all the rental 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

The Landlord submitted this application on November 30, 2023.

Regulation 23.1.(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between May 29, 2022 and November 29, 2023.

The Landlord said:

- the expenditures for the boiler happened between July 19, 2022 and June 20, 2023.
- The expenditures for the intercom happened between December 22, 2021 and January 10, 2023.
- The expenditures for the hallway and lobby upgrades happened between September 14, 2021 and October 28, 2022.

The Landlord submitted into evidence the invoices with the dates mentioned in the above paragraph.

The Landlord affirmed that all the expenditures are part of the same project and that the expenditures for the intercom replacement and the hallway and lobby upgrades took longer than 18 months to be completed due to delays from the contractors.

Policy Guideline 37C states:

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

I note that at least one of the invoices for the intercom and hallway expenditures is dated within the 18-month period.

Based on the Landlord's convincing and undisputed testimony and the invoices and considering policy guideline 37C, I find the Landlord incurred all the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b).

#### Expenditures expected to occur again for the next 5 years

The Landlord stated that the expenditures are not expected to occur again for at least 5 years, as the life expectancy of the expenditures is more than 5 years.

Based on the Landlord's undisputed convincing testimony, I find that the life expectancy of the expenditures is more than 5 years and they are not expected to be incurred again for at least 5 years. Thus, I find that the capital expenditures incurred are eligible capital expenditures, per Regulation 23.1(4)(c).

Expenditures because of inadequate repair or maintenance

The Landlord testified that the expenditures were not necessary because of inadequate repair or maintenance.

Tenant SM said the previous boiler was not properly maintained because the windows had condensed water.

The Landlord affirmed the previous boiler was properly maintained, but it over-operated because it was outdated. The Landlord stated the windows had condensed water because the previous boiler over-operated.

Based on the Landlord's detailed and convincing testimony, I find the Landlord sufficiently explained that the previous boiler was properly maintained.

Based on the Landlord's convincing testimony, I find the Landlord proved that 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 testified that he is not entitled to be paid from another source for the expenditures claimed.

Based on the Landlord's convincing and undisputed 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.

Boiler – expenditure 1

The landlord replaced the previous boiler from 1986 in 2022 because it was beyond its useful life. The Landlord installed a new energy efficient boiler. The Landlord said that he paid the eight invoices submitted in the total amount of \$125,605.13 for the new boiler.

The Landlord submitted an engineering report dated January 21, 2021 (hereinafter, the engineering report). It states: “The boiler and the boiler system was installed in 1986 and due to replace in next 5 years.” [SIC]

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.

(emphasis added)

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 and the engineering report that the boiler replaced in 2022 was from 1986. The parties did not submit testimony or evidence regarding the boiler's useful life contrary to the policy guideline. I find the previous boiler was beyond its useful life, as it was 36 years old when the Landlord replaced it, 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 boiler.

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 heat to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$125,605.13 to replace the boiler is in accordance with Regulation 23.1(4)(a)(ii).



### Intercom – expenditure 2

The Landlord replaced the previous intercom system, fob system to access the building and installed new security cameras, as the previous intercom system was at least 15 years-old and used an outdated software. The Landlord affirmed that the fob system to control the access to the building is part of the new intercom system. The Landlord also installed new security cameras.

The Landlord stated the new intercom, fob system and cameras will improve the security of the rental building.

The Landlord testified that he paid the three invoices submitted in the total amount of \$38,899.70 for the new intercom, fob system and cameras.

I find that the new intercom system, fob system and cameras improve the tenants' safety, as they will control the access of people into the building. Thus, I find that the intercom system, fob system and cameras are part of the rental buildings' security system.

Policy Guideline 37C states the security system is a major system.

Considering the above, I find that the expenditure of \$38,899.70 for the new intercom, fob system and cameras is in accordance with Regulation 23.1(4)(a)(iii)(B).

### Hallway and lobby upgrades – expenditure 3

The Landlord renovated the hallway and lobby by replacing the front door and rental unit's doors hardware, installing new lights, updating the interior fire safety signage, as the items replaced were in a state of disrepair due to their age. The new lights are energy efficient LED lights.

The report states:

Existing lighting systems are functional; however, existing lighting controls are not up to standard with advanced controls solutions mandated by applicable building code.

[...]

Existing lighting systems are functional; however, existing lighting controls are not up to standard with advanced controls solutions mandated by applicable building code.

The Landlord said the new front door is safer and helps to retain the heat in the building, thus it reduced the heat bill and gas emissions.

The Landlord affirmed that the new doors hardware is safer than the previous hardware.

The Landlord also replaced the carpet and tiles, as the previous ones were from 1965 and all the tenants use the hallways and lobby.

Policy Guideline 40 states the useful life of carpet is 10 years.

The Landlord stated that all the items replaced were beyond their useful life and that he excluded purely cosmetic renovations from the amount claimed.

The Landlord testified that he paid the nine invoices submitted in the total amount of \$198,356.99 for the hallway and lobby upgrades.

Based on the Landlord's convincing testimony, I find that the hallway and lobby's carpet and tiles are part of the rental building's primary flooring in common areas, and these items are a major component of the rental building, as the hallway and lobby's carpet and tiles are integral to the rental building, per Regulation 21.1 and Policy Guideline 37.

Based on the Landlord's convincing testimony, I find the new doors hardware and the new interior fire safety signage increase the tenants' safety, as they will make it harder to break-in the building and rental units and the rental building will be safer in case of a fire.

Based on the Landlord's convincing testimony, I find the new LED lights are more energy efficient.

Considering the above, I find that the expenditure of \$198,356.99 for the hallway and lobby upgrades is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord replaced carpets and tiles that were beyond their useful life and Regulation 23.1(4)(a)(iii), as the new doors and interior fire safety signage improve the security of the rental building and the new LED lights reduce the energy consumption.

### Outcome

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 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:

<b>Expenditure</b>	<b>Amount \$</b>
01.Boiler	125,605.13
02. Intercom	38,899.70
03. Hallway and lobby upgrades	198,356.99
<b>Total</b>	<b>362,861.82</b>

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 28 specified dwelling units and that the amount of the eligible expenditure is \$362,861.82.

The Landlord has established the basis for an additional rent increase for expenditures of \$107.99 per unit ( $\$362,861.82 / 28 \text{ units} / 120$ ). 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 37, Regulations 23.2 and 23.3, section 42 of the Act (which requires that a landlord provide a tenant 3 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 \$107.99 per unit. 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 Act.

Dated: March 15, 2024

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Residential Tenancy Branch