



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 both hearings. Only 1 Tenant was present to give submissions at the second hearing and 9 Tenants were present at the first hearing to give submissions. All parties provided affirmed testimony. The Tenants confirmed receipt of the Landlord's application, Notice of Dispute Resolution Proceeding, and evidence packages. The Landlord also provided a proof of service document showing that they served all rental units in person or by posting the Notice of Dispute Resolution to the front door of the respective units. Pursuant to section 90 of the Act, I find the Tenants are deemed served with these packages 3 days after they were posted to the door and the same day if delivered in person.

The Landlord advised they served the Tenants with evidence through a link and Tenants were advised to contact the Landlords agents if they had issues accessing the link. Several Tenants advised they had some issues accessing the link but were prepared to proceed today. The Landlord advised they only received evidence from Tenant JB, but nothing from the other Tenants. As the other Tenants did not serve their evidence on the Landlord this evidence was excluded pursuant to Rule of Procedure 3.17.

I find the Landlord sufficiently served the Tenants with the Notice of Dispute Resolution Proceeding and evidence packages.

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.

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 explained there are 5 residential buildings on the property and each building consists of the following number of units:

989 Lytton – 21 Units
 900 Berkely – 21 units
 904 Berkely – 21 Units
 908 Berkely – 22 Units
 912 Berkely – 22 Units

There are a total of 107 units throughout the 5 buildings. I was advised this application was only filed against 101 units, as 1 unit was vacant in 989 Lytton and 900 Berkely, 2 units were vacant, and one is a manager unit in 908 Berkely.

The Landlord further explained these rental buildings were built around 1968 and the Landlord became the owner of the buildings around 1978. There is no evidence that the Landlord had applied for an additional rent increase for capital expenditure against of the Tenants prior to this application.

The Landlord applied to impose an additional rent increase for capital expenditure that was incurred as follows on each building:

989 Lytton

Description	Date	Amount
2 Boilers and 1 Hot Water Tank	April 24, 2023	\$53,189.15
	May 31, 2023	\$9,837.24
	June 28, 2023	\$14,755.86
Balcony Restoration		\$120,984.07
	Total	\$198,766.32

900 Berkeley

Description	Date	Amount
2 Boilers and 1 Hot Water Tank	April 24, 2023	\$53,189.15
	May 31, 2023	\$9,837.24
	June 28, 2023	\$14,755.86
	December 14, 2022	\$25,305.00
Balcony Restoration		\$115,484.79
Roof	October 6, 2023	\$93,555.00
	Total	\$312,127.04

904 Berkely

Description	Date	Amount
2 Boilers and 1 Hot Water Tank	November 25, 2022	\$17,000.00
	December 14, 2022	\$26,755.00
	January 18, 2023	\$850.00
Balcony Restoration		\$115,484.79
	Total	\$160,109.79

908 Berkely

Description	Date	Amount
2 Boilers and 1 Hot Water Tank	November 17, 2022	\$17,850.00
	December 7, 2022	\$26,755.00
Balcony Restoration		\$115,484.79
	Total	\$160,109.79

912 Berkely

Description	Date	Amount
2 Boilers and 1 Hot Water Tank	April 24, 2023	\$53,189.15
	May 31, 2023	\$9,837.24
	June 28, 2023	\$14,755.86
Balcony Restoration		\$115,484.79
	Total	\$193,267.04

The Landlord submitted copies of invoices supporting these amounts and advised the Landlord's accounting department allocated the amount owed per each building. Every building had 2 boilers and 1 hot water tank installed and balcony restorations; however, the Landlord is also seeking an additional rent increase for 900 Berkely for the roof replacement.

The Tenants argued the way the invoices were divided among the 5 buildings does not seem fair. The Tenants position is that the invoices are divided evenly among the buildings and there is no evidence that each building had the same amount of work.

The Landlord and Tenant spoke to each of the above noted items, as follows

1) Replacement of Hot Water Tanks and Boilers

The Landlord advised 2 heating boilers and 1 hot water tank were installed per building. The Landlord stated the hot water tanks and heating boilers were originally installed in 2015. Witness for the Landlord MB (Witness MB), worked for the company that did repairs on the hot want tanks and boilers, and advised they were called in on an emergency call around 2022 for 2 of the buildings and from there an assessment was done on the other buildings and it was determined the hot water tanks and boilers in each building were failing, starting to have problems or only had one working boiler. Furthermore, Witness MB advised, in the buildings where only one boiler had failed it was not possible to just replace one boiler as the boilers had to be the same type to function. Witness MB also testified that the lifespan of the boilers and hot water tanks depends on demand and in buildings with multiple units it gets used quite a bit more. The Landlord's plumbing maintenance company provided a document outlining the repairs and service work since 2020 and stated, "in our professional opinion these boilers needed to be replaced" (Plumbing Company Document). The Landlord advised they had applied for a rebate that would reduce the total cost of the hot water tanks and boilers by 10% but have not heard back. The Landlord provided documentation showing the denial of warranty claims on the hot water tanks and boilers.

The Tenants' position is that there are no maintenance records provided by the Landlord for the period of 2018-2022 and without those records the Tenants are unable to meet their burden of establishing if the hot water tanks or boilers were properly maintained. The Tenants requested the entire application be dismissed because the Landlord did not meet its burden under Rule of Procedure 11.4. The Landlord advised they provided any records in their possession to the Tenants. The following maintenance documents were provided, service contract from 2014, a list of maintenance transactions from 2013-2023, and the Plumbing Company Statement regarding services and maintenance since 2020.

2. Roof Replacement 900 Berkley

The Landlord advised the original roof was done in November 2009 and began to show signs of wear and tear around the beginning of 2021. Photographic evidence was provided to support this. A report on an assessment on the roof in 2022 by BMAC Technologies and Consulting was provided as evidence (the BMAC Report). The Landlord advised that twice a year in the spring and fall the building manager cleans the drains on the roof and they have a contract with a company that comes annually or semi-annually to inspect the roof.

The Tenants' position is that the roof is an ineligible expense because the roof was not properly maintained. In support of this the Tenants pointed to the BMAC report that indicated improper, poor workmanship and poor maintenance was the direct cause of the end of life for the roof. Additionally, the Tenants argued there is no evidence to support that any maintenance or repairs was undertaken by a professional.

The BMAC Report stated the "membrane repairs on the roof indicate active water ingress into the building due to failed waterproofing membrane. The existing membrane on the roof appears to have exhausted its service life space. Replacement of the existing waterproofing membrane lay shall be considered ASAP." Also, the BMAC Report made the following observations on page 2 "Debris accumulation and grown vegetation due to poor roof maintenance was generally observed on the surface of the roof" and on page 5 "A membrane repair performed with poor poor-quality workmanship was installed on the east elevation of the roof..." and "some of the roof penetrations were reinforced via some liquid-applied waterproofing membrane installed with poor quality workmanship".

3. Balcony Restoration

The Landlord advised the membrane of the balconies were replaced in 1978 and over the last 40 years the balconies have become unsafe for residence. The Landlord confirmed these are private balconies that can only be accessed through the rental units and main floors do not have balconies but a concrete slab. A report on the balconies was conducted by a consulting company and submitted as evidence by the Landlord (the Balcony Report). The Balcony Report stated, "due to the age of the membrane, poor parapet siding condition, it is recommended to have the balcony membrane renewed and parapet walls replaced ...".

The Tenants' position is that the balconies are not an eligible expense because the Landlord has not provided any documentation for the maintenance of the balconies and there is work that has not been completed on the balconies. In response, the Landlord advised all work on the balconies have been completed and after a city inspection the permit was closed by the City of North Vancouver. The Landlord argued there are soffits that need to be replaced but this was not included in the scope of work for the balcony restoration. Invoices were provided outlining the scope of work.

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));
 - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
 - o 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 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

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 explained there are 5 residential buildings on the property and each building consists of the following number of units:

989 Lytton – 21 Units

900 Berkely – 21 units

904 Berkely – 21 Units

908 Berkely – 22 Units

912 Berkely – 22 Units

There are a total of 107 units throughout the 5 buildings. At the time of the application 4 rental unit were vacant and 1 rental unit is a manager unit. However, I am satisfied that all 21 units in 989 Lytton, 21 units in 900 Berkely, 21 units in 904 Berkely, 22 units in 908 Berkely and 22 units in 912 Berkely are dwelling units, and specified dwelling units, given they are all located in the same buildings, where all of the renovations were completed.

4. Amount of Capital Expenditure

The Landlord applied for the following capital expenditures per building:

989 Lytton

- 1) 2 Boilers and 1 Hot Water Tank - \$77,782.25
- 2) Restoration for 22 balconies- \$120,984.07

900 Berkeley

- 1) 2 Boilers and 1 Hot Water Tank - \$103,087.25
- 2) Restoration for 21 balconies- \$115,484.79
- 3) Roof - \$93,555.00

904 Berkely

- 1) 2 Boilers and 1 Hot Water Tank - \$44,625.00
- 2) Restoration for 21 balconies- \$115,484.79

908 Berkely

- 1) 2 Boilers and 1 Hot Water Tank - \$44,625.00
- 2) Restoration for 21 balconies- \$115,484.79

912 Berkely

- 1) 2 Boilers and 1 Hot Water Tank - \$77,782.25
- 2) Restoration for 21 balconies- \$115,484.79

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. Replacement of Hot Water Tanks and Boilers

A hot water tank is a “major system” or “major component” because it is part of the system that supplies hot water to the Tenants and is integral to providing an expected service to the Tenants. “Boilers” are a “major system” or “major component” because they are part of the heating system for the building and are integral to providing services to the Tenants. I note that RTB Policy Guideline #37 specifically contemplates boilers being a major system or component.

2. Roof

I am satisfied the roof replacement is considered a repair to a “major component”, of a “major system” as the roof is essential to support or enclose the building, protects its integrity or supports critical function of the residential property.

3. Balcony Restoration

The Regulation defines a “major component” in relation to a residential building, as a component of the residential property that is integral to the residential property or a

significant component of a major system. While the balconies are private balconies for which the individual tenants have access, I find that they are a structural system and form a component of the building envelope and that a building envelope is integral to the residential property.

Overall, I find all 3 items were undertaken to replace “major components” of a “major system” of the residential property.

b. Reason for Capital Expenditure

Based on the testimony of Witness MB and the Plumbing Company Document, I find the replacement of the hot water tanks and boilers were due to the components beginning to fail.

RTB Policy Guideline 40 states that the useful life expectancy of balconies is 15 years, and the Landlord testified the balcony membrane was last replaced in 1978. Based on the Balcony Report and submissions of the Landlord I am satisfied the balconies were past their useful life expectancy and in poor condition.

Based on the BMAC Report, I find that the roof had exhausted its service life span and was beginning to fail and cause water ingress into the building. This was additionally supported by the Landlord’s testimony and photographic evidence.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

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

RTB Policy Guideline 37C stated “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.”

The Tenants’ position is that the balconies are unfinished, and thus the capital expenditure for the balconies was not completed at the time the application was filed. Based on the photographs submitted by Tenant JB, it shows the underside of the balcony is missing wood or a finishing element. The Landlord explained the soffits, which is the finishing material that is put on the underside of a construction element, was not included in the scope of work and will be completed separately. Additionally, the Landlord argued the City of North Vancouver inspected and closed the Landlord’s

city permit, which would not have occurred if work was left incomplete. I find the position of the Landlord is supported by the invoices which outline the scope of work and does not mention the replacement of soffits. As such, I find that the unfinished soffits are not a part of the scope of work for the balconies and have no impact on whether the work was completed.

I note the Landlord made the application on October 25, 2023, and I am satisfied that all work was paid within the 18-month period preceding this application. Final payment for the boiler and hot water tanks was paid on or around June 28, 2023, final payment for the roof was paid on or around October 6, 2023, and final payment for the balconies was paid on or around March 8, 2023.

d. Life expectancy of the Capital Expenditure

According to RTB Policy Guideline 40, the useful life expectancy for a domestic water heater is 10 years, 20 years for a commercial water heater, 15 years for a boiler, 20 years for a flat roof and 15 years for balconies. The useful life for the components replaced all exceed 5 years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at RTB Policy Guideline 40. For this reason, I find that the life expectancy of the components replaced will exceed 5 years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within 5 years.

For the above-stated reasons, I find that the capital expenditure incurred to undertake the Work is an eligible capital expenditure, as defined by the Regulation.

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 took issue with the formula used to distribute the costs among the 5 buildings, I find that this argument does not form a basis to dispute the application and there is insufficient evidence to suggest the invoices and breakdown of cost is not accurate.

The Tenants also argued the following:

- Misleading advertisement
- Breach of initial contract because services were not provided due to issues with the hot water tanks
- The Boilers previously installed were designed for pools
- Only recently renting and was not informed when they signed the tenancy agreement of these expenses
- Recently rented and those expenses should have been reflected in the rent
- Each apartment should be assessed on a case-by-case basis

Although I am sympathetic about the hardship a rent increase of any amount may pose for tenants, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, and I find that none of the above listed arguments form a basis to dispute the application.

Hot Water Tanks and Boilers

The Tenants argued the hot water tanks and boilers are an ineligible expense because the Landlords did not provide any maintenance records between the period of 2018-2023. In reviewing the evidence provided by the Landlord I find the Landlord provided several documents regarding maintenance of the hot water tanks and boilers including a service contract from 2014, a list of maintenance transactions from 2013-2023, and the Plumbing Company Statement regarding services and maintenance since 2020. The Landlord also advised all maintenance records were provided. Landlords are only required to provide documents in their possession and while the documents provided may not meet the expectation of what a tenant wants to see for maintenance records, I do not find that this implies or proves records were not provided. Therefore, I find there is no evidence to suggest the Landlords have not complied with Rule of Procedure 11.4 regarding the maintenance records for the hot water tanks and boilers.

Given the evidence supplied by the Landlord there was no eligible warranty, but the Landlord advised they applied for a rebate that could cover 10% of the cost for replacing the water heaters and boilers but have not heard back. As stated in RTB Policy Guideline 37C “if an amount of capital expenditure is recovered or could have been recovered through grants, rebates, subsidies, insurance plans or claim settlements, that amount becomes ineligible and must be deducted”. I find the 10% rebate must be deducted from the amount claimed for the hot water tanks and boilers.

Roof

The Tenants argued the roof is an ineligible expenditure because the replacement was due to inadequate repair or maintenance on the part of the Landlord. In support of this the Tenants pointed to the BMAC Report. On page 2 the BMAC Report stated “Debris accumulation and grown vegetation due to poor roof maintenance was generally observed on the surface of the roof” and page 5 stated “A membrane repair performed with poor poor-quality workmanship was installed on the east elevation of the roof...”

and “some of the roof penetrations were reinforced via some liquid-applied waterproofing membrane installed with poor quality workmanship”. In the conclusion of the report, it was stated that “the high amount of debris accumulation on the surface of the membrane caused the noted biological growth affecting the lifespan of the membrane” and “the plumbing stacks were found to be installed with poor-quality workmanship creating water ingress within the roof assembly”. The findings of the BMAC Report and the fact that the roof on 900 Berkely only lasted 13-14 years, while the RTB Policy Guideline specifies the useful life expectancy of a flat roof is 20 years, supports that the capital expenditure was incurred because of inadequate repairs or maintenance. As such, I find the roof is an ineligible capital expenditure.

Balconies

The Tenants argued the balconies are an ineligible expensive given the lack of maintenance records provided by the Landlord. The Tenants advised there are no maintenance records for the balconies. I find that the absence of the maintenance records for the balconies, which were requested of the Landlord, indicates that the Tenants are correct in questioning this aspect of the Landlord’s application. However, I note the policy guideline specifies that the useful life expectancy of balconies is 15 years. The Landlord advised the balcony membrane was last replaced in 1978. I find it more likely than not that the balcony membrane was at least 45 years old and was likely past its useful life. I note the Balcony Report noted “given the age of the membrane and poor parapet siding condition, it would be recommended to have the balcony membrane renewed” and the Balcony Report made no finding of improper maintenance or repairs. The Balcony Report findings is consistent with a product that is at the end of its useful life, rather than one that is failing because it was not properly maintained. As such, I find that there is no evidence that this capital expenditure was incurred due to inadequate repair or maintenance on the part of the Landlord.

7. Outcome

The Landlord has been partially successful and have proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for 2 of the capital expenditures. 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. Below I will provide the eligible capital expenditure amount for each building.

989 Lytton

The eligible amount for the 2 boilers and 1 hot water tank is reduced by 10% to \$70,004.03, which reduces the total claim to:

Description	Amount
2 Boilers and 1 Hot Water Tank	\$70,004.03
Balcony Restoration	\$120,984.07
Total	\$190,988.10

In this case, I have found that there are 21 specified dwelling units for 989 Lytton and that the amount of the eligible capital expenditure is \$190,988.10.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$75.79 ($\$190,988.10 \div 21 \text{ units} \div 120$). 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.

900 Berkeley

The roof is not an eligible capital expenditure and the eligible amount for the 2 boilers and 1 hot water tank is reduced by 10% to \$92,778.53, which reduces the total claim to:

Description	Amount
2 Boilers and 1 Hot Water Tank	\$92,778.53
Balcony Restoration	\$115,484.79
Roof	Ineligible
Total	\$208,263.32

In this case, I have found that there are 21 specified dwelling units for 900 Berkely and that the amount of the eligible capital expenditure is \$208,263.32.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$82.64 ($\$208,263.32 \div 21 \text{ units} \div 120$). 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.

904 Berkely

The eligible amount for the 2 boilers and 1 hot water tank is reduced by 10% to \$40,162.50, which reduces the total claim to:

Description	Amount
2 Boilers and 1 Hot Water Tank	\$40,162.50
Balcony Restoration	\$115,484.79
Total	\$155,647.29

In this case, I have found that there are 21 specified dwelling units for 904 Berkely and that the amount of the eligible capital expenditure is \$155,647.29

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$61.77 ($\$155,647.29 \div 21 \text{ units} \div 120$). 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.

908 Berkely

The eligible amount for the 2 boilers and 1 hot water tank is reduced by 10% to \$40,162.50, which reduces the total claim to:

Description	Amount
2 Boilers and 1 Hot Water Tank	\$40,162.50
Balcony Restoration	\$115,484.79
Total	\$155,647.29

In this case, I have found that there are 22 specified dwelling units for 908 Berkely and that the amount of the eligible capital expenditure is \$155,647.29.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$58.96 ($\$155,647.29 \div 22 \text{ units} \div 120$). 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.

912 Berkely

The eligible amount for the 2 boilers and 1 hot water tank is reduced by 10% to \$70,004.03, which reduces the total claim to:

Description	Amount
2 Boilers and 1 Hot Water Tank	\$70,004.03
Balcony Restoration	\$115,484.79
Total	\$185,488.82

In this case, I have found that there are 22 specified dwelling units for 912 Berkely and that the amount of the eligible capital expenditure is \$185,488.82.

So, the landlord has established the basis for an additional rent increase for capital expenditures of \$70.26 ($\$185,488.82 \div 22 \text{ units} \div 120$). 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 partially successful. I grant the application for an additional rent increase for capital expenditure of \$75.79 for 989 Lytton, \$82.64 for 900 Berkely, \$61.77 for 904 Berkely, \$58.96 for 908 Berkely and \$70.26 for 912 Berkely. 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: March 28, 2024

Residential Tenancy Branch