



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's application pursuant to sections 43(1)(b) and 43(3) of the Residential Tenancy Act (the Act) and section 23.1 of the Residential Tenancy Regulation (the Regulation) for an additional rent increase for capital expenditure.

The parties listed on the coverage page attended the hearing on December 19, 2023; and, March 19, 2024.

The parties confirmed service of Notice of Dispute Resolution Proceeding and documentary evidence filed by the Landlord. I find the Tenants were served with the required materials in accordance with the Act.

### **Issue for Decision**

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

### **Background and Evidence**

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants at each hearing. However, not all details of the respective submissions are reproduced in this Decision. Only that relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The Landlord's application requests an additional rent increase from the Tenants as a result of certain capital expenditures made by it:

- Elevator modernization - \$253,260.86
- Renovations to hallways and lobby - \$84,303.09
- Balcony and railing repair - \$61,925.23
- Intercom and security system - \$46,686.50

- Building automation system - \$34,545.01

The rental property was constructed in 1969, is a three-storey building and consists of 54 rental units. The Landlord purchased the rental property in January 2021. Landlord's counsel states that the capital expenditures were incurred in relation to the projects within 18 months preceding their application and they are not expected to recur for at least five years. Documentation of payments made by the Landlord were provided in evidence.

Landlord's counsel takes the position these capital expenditures were incurred by the Landlord to repair or replace a major system or a major component of a major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life. The capital expenditures were also required to repair or replace a major system or major component to maintain the building in a state of repair that complies with section 32(1)(a) of the Act, to reduce energy use, and to enhance building security.

The Landlord has not previously applied for an additional rent increase within the past 18 months for capital expenditure as required by 23.1(2) of the Regulations for the residential rental property. Landlord's counsel represents the Landlord was not entitled to be paid from another source for the any of the work subject to this application.

#### Elevator Modernization

The Landlord modernized the elevator system in the building as it contends the then-current elevator was beyond its useful life. Counsel stated during the hearing that the elevator was original to the building and its age was such that parts were no longer available in the event it required repaired. The Landlord provided a written report from a consultant that noted the elevator was original to the building and past its useful life. Counsel stated that the issue was useful life, not that the elevator had failed. Thus, maintenance (and records thereof) was not relevant to the determination (although it had produced the records it had in its possession). Additionally, counsel stated that the elevator modernization was necessary to meet safety and municipal code standards.

The Landlord's written submissions provided the following summary:

### Elevator Modernization (Capital Expenditure 01)

**Scope of Work Completed:** Major control modernization was completed including installation of a hands-free telephone, hall door retainers, door unlocking devices, car top railings, cab finishes, barrier free access upgrades, emergency power operation, machine room cooling, and ensuring water entry to pit. Expenditure was recommended by an elevator consultant.

**Reason for Work:** Major components of the elevator were at the end of their useful life and required replacing. Due to the age of the elevator, replacement parts were difficult to find. The Landlord wanted to complete the modernization before a major breakdown occurred as the planning and tendering required could take a long time during which the tenants would not have access to an elevator. To meet code requirements, hoistway door unlocking devices were installed at every landing where there is an entrance, and elevator hall door retainers were added (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]). The elevator modernization increased the safety and security of residents, as there was a chance the elevator could malfunction and trap residents.

**Timing of Last Repair/Upgrade:** The elevator was originally installed in 1968 and the Landlord is not aware of any major modernizations that had previously been completed (see K.J.A. Report at Appendix C of Morrison Hershfield Report [Tab 6]).

**Anticipated Useful Life of Repair/Upgrade:** The RTPG 40 [Tab 4] sets out the estimated useful life for an elevator as 20 years. The elevator was installed in 1968 and the Landlord does not anticipate making similar repairs or upgrades again for the next 20 years.

**Total Cost of Work Completed (Capital Expenditures):** \$253,260.86

Various Tenants in attendance at the hearing objected to the Landlord's modernization of the elevator as a capital expenditure for which it could impose an additional rent increase. It was argued that the Landlord had failed to maintain the elevator, and while the elevator was old, it was not beyond its useful life and was still functioning quite well. It was further noted by the Tenants that the Landlord's single written report in support of the elevator modernization was written by a non-expert. Additionally, the invoices were not within the 18-month period and were incomplete. Tenant M.N. noted that he had resided in the building since 1989 and that he had never experienced an issue with the elevator as it had been maintained by previous landlords.

### Hallway and Lobby Repairs and Renovations

The Landlord states that certain components of its hallway and lobby repairs and renovations to the rental property are qualifying capital expenditures for an additional rent increase. The Landlord's property manager M.F. states this work included replacement of emergency signage (to more modern signs), upgrading to the hallway lighting and upgrading the door hardware. The Landlord's property manager noted that the hallway lighting was dim and required updating. The new lighting was LED integrated and the emergency signs were replaced for those that met municipal code standards. The property manager further noted that the fire safety lighting in the building was powered by an old battery pack and LED integrated lighting was preferable. The lighting in the common areas had not been updated when the lobby

was last renovated (more than 5 years ago). The door hardware was upgraded to comply with codes for those with disabilities. Additionally, the Landlord noted that the door hardware throughout the building was a mix, the result of *ad hoc* replacements in the prior years. The key system for these locks was thus a mix, and providing for a master key lock system improved emergency and fire response efforts. The entry door was also replaced to integrate with the new intercom system installed in the building. It was noted that the replaced front entry door was original to the building and had single pane glass, whereas the new security door was double-pane glass.

Landlord's counsel noted that although the lobby and hallways received new paint and new carpeting, these costs and those for "cosmetic" items were not included in the capital expenditures for which an additional rent increase was requested. The Landlord's property manager stated that the renovations and repairs were part of the larger improvement project that overlapped with the elevator modernization and the boiler improvement.

The Landlord's written submissions provided the following summary:

**Renovations and Repairs to Hallways and Lobby (Capital Expenditure 02)**

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**Scope of Work Completed:** Lighting was added and replaced to ensure adequate visibility for tenants, door hardware was updated, emergency exit signage was added, the entrance door was replaced, and electrical components including outlets were updated.

**Reason for Work:** Improvements to visibility and safety with electrical system, door hardware was replaced to ensure tenants had uninterrupted access, drywall was installed following elevator modernization, entry doors were replaced for compatibility with new intercom and FOB systems.

**Timing of Last Repair/Upgrade:** Unknown

**Anticipated Useful Life of Repair/Upgrade:** The RTB Guidelines estimate a useful life of 20 years for doors, 15 years for electrical panels and wiring, 15 years for light fixtures (see RTPG 40 [Tab 4]).

**Total Cost of Work Completed (Capital Expenditures):** \$84,303.09

Tenant C.B. stated that she had resided in the building for 14 years and that the hallway lighting and front entry door were adequate. Other Tenants noted that there was no information provided by the Landlord regarding prior replacements or repairs and there was no evidence that the replacement would last longer than 5 years. The Tenants stated that the prior lighting and doors had existed for approximately 10-15 years and that it was not necessary to replace those items at this time as there was no safety issue and the local government authority had not raised an issue. The Tenants suggested that the Landlord's capital expenditure was largely cosmetic. Tenant C.B. further stated that the Landlord had not met its burden of proof under regulation 23.1(4). The Tenants stated that the lobby area had been renovated in 2015 and the renovation including flooring, lighting and bringing certain items up to fire code requirements. Additionally, an improvement to the lighting was done 4 years prior and all standards

should have been met at that time. The Tenants noted that the timing of these upgrades was done in concert with upgrades done by the Landlord to other rental properties it owned as part of an effort to bring “brand uniformity” to the buildings demonstrating that the renovations were cosmetic. Several Tenants raised issues regarding the invoices for the work as evidence of a larger capital improvement plan by the Landlord for its buildings.

### Intercom and Security System Upgrades

The Landlord’s property manager testified that the installation of security cameras, including new cameras to the parking garage, were part of an overall project to improve the security measures in the building. He explained the installation of cameras and the intercom system required coordination with other improvement projects in the building, including the elevator modernization and lobby renovation and repairs. The work was ordered for a number of properties owned by the Landlord and therefore took some time to complete.

The Landlord’s written submissions set forth the following summary for this capital expenditure:

Intercom and Security System Install (Capital Expenditure 04)						
<b>Scope of Work Completed:</b> New intercom and security systems were installed.						
<b>Reason for Work:</b> A new intercom system was installed which enhanced safety at the building and allows for remote access and the security system was upgraded including the addition of an access control system and CCTV cameras.						
<b>Timing of Last Repair/Upgrade:</b> Unknown						
<b>Anticipated Useful Life of Repair/Upgrade:</b> 15 years (see RTPG 40, page 40-7 [Tab 4])						
<b>Total Cost of Work Completed (Capital Expenditures):</b> \$46,686.50						
Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord						
Work Done	Invoice No.	Tab 2c Pg.#	Cost	Date Paid	Cheque No. (Payment)	Tab 2c Pg.#
Vandelta Communication – Supply and install new security system	6046	15-17	\$32,721.50	January 19, 2022	10992	18
1Valet Corp. – Supply and install intercom system	INV-01810	20	\$1,344.00	September 20, 2022	11786	22
1Valet Corp. – Supply and install intercom system	INV-02352	24	\$12,096.00	January 10, 2023	12069	26
Vandelta Communication – Programming postal access for entry	9536	28	\$525.00	February 15, 2023	12162	29
<b>Total Cost</b>			<b>\$46,686.50</b>			

The Tenants' objections included that the intercom system was 15-20 years old and that it did little to protect against theft (noting a theft as recently as January 2023). The FOB system was approximately 8 years old. The intercom system did not operate to auto-lock the front door and often times the front door was unlocked or open. A June 2023 incident when an intruder simply walked into the building through the front door and broke into a Tenant's apartment was cited. Other Tenants also noted that the prior system (before the Landlord's upgrade/replacement) worked "better" as numerous break-ins had occurred in the building and the front door remained open after the Landlord's improvements were made. These Tenants thus questioned whether these improvements were enhancing security. Another Tenant stated that the Landlord's building manager resides out-of-province and may not be fully informed as to the state of security in the building as there were only 2 cameras in the basement area and the east-wing door of the building still required repair and undermined the building's security.

### Balcony and Railing Repair

The property manager M.F. explained that the balconies were made of wood, with wood supports and the top-mounted railings were also made of wood. Due to safety reasons, these balconies, which were more than 5 years old, were replaced as they had lacked deteriorated. The property manager further stated that it was unknown the age of the wooden balconies but he suspected that based upon the condition, replacement was necessary. Furthermore, the balconies were lacking a waterproof membrane, and with the moisture was contributing to the balconies' failing condition.

The Landlord's written submissions contained the following summary for this expenditure:

Balcony and Railing Repair (Capital Expenditure 03)
<p><b>Scope of Work Completed:</b> Remove coating on deck, repair soft spots, recoat deck, install new railings designed for strength.</p>
<p><b>Reason for Work:</b> Soft spots were discovered on some decks which required repair. The surface of the decks was recoated to ensure no further soft spots developed. Sturdier metal railings were added.</p>
<p><b>Timing of Last Repair/Upgrade:</b> Unknown</p>
<p><b>Anticipated Useful Life of Repair/Upgrade:</b> 15 years for the new metal and glass railings (see RTPG 40, page 40-4 [Tab 4]) and 5-15 years for the sealer and membrane that was replaced (see RTPG 40, page 40-4 [Tab 4])</p>
<p><b>Total Cost of Work Completed (Capital Expenditures):</b> \$61,925.23</p>

Tenant S.G. contended that the Landlord had failed to sustain its burden of proof under the Regulations to request the balcony replacements as a capital expenditure. Tenant S.G. stated that the Landlord had failed to provide adequate documentary evidence to

substantiate its claim for the cost, as bids for repair or contracts for replacement had not been submitted. Tenant S.G. therefore requested that an adverse inference be drawn.

The Tenants further noted that the report provided by the Landlord indicated that the balconies did not show “signs of distress.” The Landlord’s written submissions further provided that there were “soft spots” for repair. The Tenants noted that the consultant’s report referenced a previous condition report completed and this was not provided to the Tenants. The Tenants again requested that a negative inference be drawn against the Landlord. Tenant W.G.H. stated he moved into his unit in June 2022 and that there was a textured coating on the balcony. He stated that the new balcony “looks worse than before.” The Tenants contend the balcony repairs are primarily cosmetic as only the balconies facing the street were repaired. Again, the Tenants reiterated that the repair to the balconies visible to the street were done as part of the Landlord’s “uniform branding” as similar repairs and balcony replacements were done to another building owned by the Landlord. The Tenants state that the repairs were necessitated by inadequate maintenance.

The Landlord’s property manager noted that the balconies that were visible from the street had the greatest exposure to the elements, which contributed to their more rapid deterioration.

#### *Installation of Building Automation System*

Landlord’s counsel stated that the installation of a building automation system would track energy usage, could diagnose system malfunctions, and was capable of dispatching repair technicians remotely. The system would monitor water usage and promote energy efficiency. Counsel noted that the installation of the automation system



was part of the building's boiler replacement, although the boiler replacement was not part of the present application.

The Landlord's written submissions provided the following synopsis for this expenditure:

<b>Installation of a Building Automation System (Capital Expenditure 05)</b>						
<b>Scope of Work Completed:</b> Installation of building automation system ("BAS") including sensors and artificial intelligence ("AI") integration.						
<b>Reason for Work:</b> Work was undertaken to reduce the CO2 emissions through the use of sensors and AI to enhance tenant comfort and overall efficiency. Also provides real-time data to Landlord to allow for rapid response to any issues with systems.						
<b>Timing of Last Repair/Upgrade:</b> Unknown						
<b>Anticipated Useful Life of Repair/Upgrade:</b> 20-25 years (See Statement of Marek Kozlowski [Tab 7])						
<b>Total Cost of Work Completed (Capital Expenditures):</b> \$34,545.01						
<b>Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord</b>						
<b>Work Done</b>	<b>Invoice No.</b>	<b>Tab 2c Pg.#</b>	<b>Cost</b>	<b>Date Paid</b>	<b>Cheque No. (Payment)</b>	<b>Tab 2c Pg.#</b>
2257808 Ontario Inc. o/a PID Controls – Install building automation system	INV-2021-0100-001	31	\$8,570.63	May 31, 2022	11366	32
2257808 Ontario Inc. o/a PID Controls – Supply building automation system control panel	INV-2021-0100-002	34	\$262.50	September 20, 2022	11769	35
2257808 Ontario Inc. o/a PID Controls – Install building automation system	INV-2021-0100-003	37	\$22,283.63	October 12, 2022	11818	38
2257808 Ontario Inc. o/a PID Controls – Install building automation system	INV-2021-0100-004	40	\$3,428.25	December 28, 2022	12013	41
<b>Total Cost</b>			<b>\$34,545.01</b>			

The Tenants vigorously contested this expense. Tenant S.F. questioned whether the automation system met the purposes of the additional rent increase for capital expenditures policy; namely, that it was not a major component system. Another Tenant noted that after the automated system was installed, there was no heat for several months during the most recent winter months. The Tenant further contested the energy efficiency claims for the system, and stated there was no supporting data for the system. Landlord's counsel did state at this point that he provided a link to the Tenants



to obtain this information, but the Tenant replied that the link was not pertinent to the automated system installed.

## Analysis

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. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord has the onus to support their application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount that is greater than the amount calculated under the Regulations by making an application for dispute resolution.

### 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

In this matter, there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

## 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.

There are 54 specified dwelling units to be used for calculation of the additional rent increase.

## 4. Amount of Capital Expenditure

The Landlord is claiming the total amount of **\$480,720.69** as detailed in the Landlord's summaries for each capital expenditure set forth above.

#### 5. Is the Work an Eligible Capital Expenditure?

As stated above, 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.

Each item of capital expenditure will be reviewed under this analysis.

#### Elevator Modernization

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.

I find the elevator is a major component of the building. I find the Work was done to increase safety and reliability as the elevator was original to the building and while still operation was nearing its useful lifespan. I find this is sufficient to satisfy the requirements of the Regulation. I find that the elevator modernization was required because it exceeds its expected serviceable life as permitted by 23(1)(4)(a)(ii) of the regulations. Policy Guideline 40 provides that the useful life for an elevator is 20 years.

Residential Tenancy Branch Policy Guideline 37 states:

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

I accept the Landlords evidence that the final payment for the Work was made July 11, 2023, and within 18 months of the Landlord making this application on September 11, 2023.

The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

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.

Essentially, the Tenants do not consider the elevator a necessary repair as it was in good working order. Further, the Tenants contested the elevator modernization as there was a lack of maintenance records for the prior elevator system.

I find these arguments are insufficient to defeat the Landlord’s application. I find the Landlord completed necessary repairs, had to pay for such repairs, and is bound only by the statutory framework in seeking the capital expenditures, and not the arguments described above.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the elevator modernization in the amount of **\$253,260.86**.

Hallway and Lobby Repairs and Renovations

In this case, I find the lighting in the hallways, signage, door hardware and the main entrance are a major component of the building. I find the Work was done to increase visibility, security and safety. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the latest payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants argued that although such repairs were completed, they notice no improvements in the lobby area of the building and the renovations were poorly done. Additionally, the Tenants state that the improvements were done for purposes of uniform branding among the Landlord's various buildings. While this may be so, it does not detract from the additional safety afforded through these capital improvements.

I find these alternate arguments do not form basis to dispute the application.

I find the Tenants have failed to defeat the application for an additional rent increase for this capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$84,303.09**

Intercom and Security System Upgrades

In this case, I find the intercom and security system to be a major component of the building. I find the Work was done to improve security and safety. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure which were incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants submit that the building had a functional intercom and security system, and they consider the Landlord's improvements to have made the building less secure (specifically the front door). While there may have been unfortunate and isolated incidents of security breaches after the upgrades were installed, it is noted that the system is not required to be foolproof.

The Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure, and I find the Tenants' arguments are outside of those reasons and they do not form a basis to dispute the application.

I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$46,686.50**.

*Balcony and Railing Repair*

I find that the Tenants have successfully defeated the Landlord's application to recover its expenditure for the balcony repair. I find that the balcony repair was the result of poor maintenance and could have been avoided by proper maintenance. I find that the replacement of only street-facing balconies, ostensibly due to increased moisture, to be indicative of a repair that was primarily cosmetic in nature. The Landlord's written submissions evidence that the work to the balconies was to repair "soft spots."

I find the Landlord is **not entitled** to recover the amount of **\$61,925.23** for this Work.

*Installation of Building Automation System*

In this case, I find the installation of the building automation system to constitute a major component of the building. I find the Work was done to increase energy efficiency. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the final payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years.

The Tenants' submissions indicate the automated system did not promote energy efficiency and that heating was an ongoing issue after the system was installed. The Tenants raised concerns as to the energy efficiency reduction that would actually be garnered from such a system.

I find Tenants present alternate arguments that do not form basis to dispute the application. I find the Tenants have failed to defeat an application for an additional rent increase for capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$34,545.01**.

## Summary

The Landlord has been successful with its application. They have proved, on a balance of probabilities, the elements required in order to be able to impose an additional rent increase for total capital expenditures of **\$418,795.46**, for those major components as described herein.

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 have found that there are 54 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$418,795.46**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$64.63** ( $418,795.46 \div 54 \div 120 = 64.63$ ). 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 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

The Landlord has been successful. I grant the application for an additional rent increase for capital expenditures totaling **\$418,795.46**. 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 issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2024

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Residential Tenancy Branch