



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bcIMC Realty Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On January 30, 2024, the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the “Act”) and s. 23.1 of the *Residential Tenancy Regulation* (the “Regulation”) for an additional rent increase because of capital expenditures.

The Landlord attended the hearing at the scheduled hearing time. A few of the tenants who reside in the rental units in question were present for the hearing on April 2, 2024. Collectively, I refer to the “tenants” listed as the “Tenant” in this decision.

Preliminary Issue – service and disclosure of evidence

The Landlord provided the Notice of Dispute Resolution Proceeding and other key information to the Tenant in advance of the hearing as required. This was via registered mail and by attaching the information to individual units’ doors. In one case the Landlord utilized registered mail.

I find the Landlord completed service of required hearing information and evidence to the Tenant as required.

Issue(s) to be Decided

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

Background and Evidence

The rental property consists of a single building with 33 rental units in total. The Landlord specified 27 as their applicable rental units because of other residents who moved into other units after the capital expenditure installations were completed. This is an approximately 10-year-old building divided into 4 levels.

As set out in the hearing, the Landlord described every rental unit receiving new water heating tanks because of the age of the building which still had the original tanks in place. In one instance, the tank was replaced because it was leaking.

The work, as described by the Landlord in the hearing and set out in the documented evidence they provided, started on August 16, 2022 with the replacement of a single hot water tank in one unit because of leaking. The remaining work commenced on May 24, 2023, and ended on June 13, 2023 as shown in the invoices the Landlord provided.

The Landlord stated the tanks were “at the end of their life.”

One Tenant who attended raised the issue of the hot water heater being part of the hot water tank, which is really part of the basic infrastructure of the building that the Landlord is required to maintain or replace at their own cost. They submitted the Landlord is trying to get additional rent from the longer-term residents only.

In response to this, the Landlord stated that any hot water tank needs to be replaced after 10 years. The need for a replacement of all tanks was prompted by the Landlord’s insurer because of the risk of leakage.

Another Tenant spoke to their frustration in already receiving a yearly imposed rent increase. They provided a rundown of their monthly budget concerns, and questioned the likelihood of any incident arising from faulty water heater/tanks.

Another Tenant in the hearing reiterated these points and said the replacement of the hot water heating tanks was the Landlord’s responsibility. By paying for the component via a rent increase, this would make this Tenant the owner of that component.

The Landlord, as part of their evidence in this matter, provided a document from their insurer that set out the requirement for a hot water tank replacement. This highlights the “likelihood of catastrophic rupture” which “increases substantially.” This set out the maximum age for a water tank to be considered as 10 years.

On their Application, the Landlord provided the total capital expenditure amount of \$32,775.38, being \$31,675.38 for “replacement of the hot water tanks, they were at the end of their life.” The Landlord added \$1,100 for the replacement of the hot water tank in one specific unit because it was leaking.

In their evidence, the Landlord produced the following records:

	Description	invoice date	paid date	paid
A.	10 tanks purchase	June 5, 2023	June 6, 2023	\$7,110.43
B.	10 tanks purchase	May 19, 2023	May 24, 2023	\$7,110.43
C.	3 tanks purchase	June 13, 2023	June 14, 2023	\$2,133.13
D.	10 tanks purchase	May 15, 2023	May 16, 2023	\$7,110.43
E.	10 tanks installation	May 24, 2023	May 23, 2023	\$3,412.50
F.	13 tanks installation	June 12, 2023	June 12, 2023	\$4,436.25
G.	10 tanks installation	June 2, 2023	June 2, 2023	\$3,412.50
H.	single tank installation	August 16, 2022	August 16, 2022	\$1,155.00
			Total	\$35,880.67

Analysis

The *Residential Tenancy Regulation* (the “*Regulation*”), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
 - to repair, replace, or install a major system or a component of a major system;
 - and

- undertaken:
 - to comply with health, safety, and housing standards;
 - because the system/component was either:
 - close to the end of its' useful life, or
 - failed, malfunctioning, or inoperative
 - to achieve either:
 - a reduction in energy use or greenhouse gas emissions; or
 - an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, either:

- repairs or replacement were required because of inadequate repair or maintenance on the part of the landlord;
- or
- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase affiliated with capital expenditures within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

"dwelling unit" means:

- (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.

I find there are 33 dwelling units in the rental unit property. All 33 are eligible units as per the above definition.

Eligibility and Amounts

For the Landlord's submitted expenditures A. through H. above, I address whether each expenditure was eligible, and each expenditure amount. I also make findings on whether each expenditure will be incurred again within 5 years. I have divided these categories into the water heater purchases, and installations.

- water heating tank purchases

I find this was a replacement of the rental property's water heating system, on a unit-by-unit basis. The water heating system is a "major system" as defined in the *Regulation*, from which each individual water heating tank is a component.

I find these components were needing replacement so the Landlord can continue to meet their obligation to comply with health, safety, and housing standards required by law. This is a strict requirement as per the *Regulation*.

In addition, the components, being each individual water heating tank, had exceeded their useful life. I make this finding on a balance of probabilities, given the age of the building with no other evidence presented that any water heating tank had been replaced within the previous 10 years. With reference to the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*, the expected useful life of a domestic hot water tank is 10 years.

The Tenant submitted that this should properly be a cost borne by the Landlord as an investment in the infrastructure of the rental property. On my review, this is an eligible capital expenditure: that is a replacement of a major system that was close to the end of its useful life. The *Act* and *Regulation* were designed and contemplated this as a valid capital expenditure for which a landlord may be compensated via additional rent increases.

The Tenant also submitted that there was a minimal risk of incident from leakage of any kind that would cause damage. I find this is speculative and relates to the Landlord's submission about their insurer. I find the replacement was not driven by the Landlord's insurer; rather, I find the Landlord provided information about their insurer's guidelines to show an accepted

industry standard about the useful life cycle of water heating tanks. The *Policy Guideline 40* confirms this standard life cycle.

I accept the Landlord's evidence that their first payment for the work was May 15, 2023. This expense, as well as all other purchase expenses, occurred within 18 months prior to the Landlord making this Application to the Residential Tenancy Branch on January 30, 2024.

I find this work will not reoccur, and no expenditure relating to water tank purchases, incurred again within 5 years.

In conclusion, I grant this part of the Landlord's Application for capital expenditure of \$23,464.42. That is \$7,110.43 x 3, plus \$2,133.13 for water heating tank purchases. I grant the Landlord's claimed amount as shown in the invoices they submitted in their evidence, and not the differing amount they provided on their Application.

- installation of water heating tanks

I find each water heating tank required installation. This was installation of a major system, *i.e.* the components thereof. This means they are eligible as per s. 23.1(4) of the *Regulation*.

The first payment the Landlord made for an installation was in August 2022. This was within 18 months prior to the Landlord's Application.

I grant this part of the Landlord's Application for capital expenditure of \$12,416.25. That is \$3,412.50 (x2) + \$4,436.25 + \$1,155. I grant the Landlord's claimed amount as shown in the invoices they submitted in their evidence, and not the differing amount they provided on their Application.

Conclusion

The Landlord has proven all the necessary elements for two items in their Application, that of the water heating tanks, and their Actual installation.

I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$23,464.42 and \$12,416.25. This is pursuant to s. 43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation* referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the

number of dwelling units, divided by 120. In this case, I found there are 33 specified dwelling units, and that the amount of the eligible capital expenditure is \$35,880.67.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$9.06 ($\$35,880.67 \div 33 \div 120$) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any Tenant's monthly rent, and if so, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C, subsection H, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

I order the Landlord to serve all Tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. As per the Landlord's request in the hearing, I authorize the Landlord to serve each Tenant by posting a copy of the decision to each rental unit door. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a copy via email.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 9, 2024

Residential Tenancy Branch