



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1355 WEST 14TH AVENUE HOLDINGS INC.,  
VANCOUVER NO. 1 APARTMENTS PARTNERSHIP  
and [Tenant name suppressed to protect privacy]  
**DECISION**

Dispute Code ARI-C

## Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

an additional rent increase for capital expenditure pursuant to section 43(3) of the Residential Tenancy Act (the "Act") and section 23.1 of the Residential Tenancy Regulation (the "Regulation").

Agent R.S. attended for the Landlord.

The Tenants named on the first page attended.

All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

## **Preliminary Issue – Service**

This is a continuation of a hearing which was adjourned on February 26, 2024 to allow the Landlord to serve the Tenants.

In my Interim Decision, I ordered as follows:

1. This matter is adjourned to April 12, 2024 and is scheduled for one hour.
2. The Landlord will serve the Tenants with the Proceeding Package, Notice of Hearing, evidence and a copy of this Interim Decision by March 11, 2024.

3. The Landlord will submit to the RTB a letter enclosing a chart or similar information listing the following for each Tenant:
  - a. Unit number
  - b. Name
  - c. Method of service
  - d. Date of service
  - e. A copy of the package served will be attached to the letter with numbered pages
4. The Tenants may submit additional evidence before March 27, 2024.
5. The Landlord's email address for service was provided during the hearing and appears on the first page.

The Landlord submitted a 2-page spreadsheet which they testified accurately showed the method of service, the date of service, the name of the person who served the documents, the name of a witness, and the initials of the server and witness. The Landlord also submitted a copy of a photo for each posting to the Tenants' door. The attending Tenants, except for the Tenant T.P. in unit #304, confirmed receipt of the packages.

The Tenants made two objections regarding service.

T.P. stated that he is a co-Tenant in unit #304 and he did not receive an individually addressed package. T.P. and co-Tenant E.P. acknowledged the Landlord served E.P., a co-Tenant and that T.P. accessed E.P.'s package.

Section 71(1) of the Act authorizes me to make a find that a document not served in accordance with sections 88 or 89 was sufficiently given or served for purposes of the Act. Considering the testimony and the acknowledgment by Tenant T.P. that he had access to the materials, I find he was sufficiently served under section 71(1).

Secondly, the Tenants attending the hearing claimed the Landlord changed the application documents other than the addition of a cover index and numbering the pages. The Landlord testified he personally oversaw the copying, assembly, indexing and delivery of the evidence package. He denied changing, adding or removing documents. The landlord provided a copy of the document package.

I find the Landlord has provided credible testimony. I find the Landlord established the evidence package was complete and accurate. As well, throughout the hearing, I confirmed with the attending Tenants that they had received the relevant documents under discussion, such as the invoices and description of the work. All Tenants confirmed receipt.

The Landlord confirmed receipt of the written response evidence from Units 114, 118, 131, 303 and 213. The Tenants protested and complained about several factors including historical periodic loss of heating in the building, lack of available maintenance records, the ongoing nature of the rent increase, the inadequate heat in some units during the change-over to the new boiler and afterwards, and the failure of the Landlord to ask the Tenants for their agreement to a rent increase at the outset.

Based on convincing testimony, I find the Landlord served the notice of application and the evidence in accordance with section 89 of the Act and that the named Tenants served the response evidence in accordance with the Act.

#### Application for Additional Rent Increase

The Landlord filed this application on December 11, 2023.

The Landlord is seeking an additional rent increase for expenditures in the total amount of \$100,170.00. The expenditures are:

Boiler system, including hot water storage tanks, venting, wiring, piping, fittings, materials, permits, inspections, removal and disposal of replaced elements ("boiler")

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 63-rental unit building was built in 1975 and that all the expenditures benefit all the Tenants.

Based on the uncontested testimony, the rental building has sixty-three units and that they all benefit from the expenditures.

In accordance with Regulation 21.1(1), there are sixty-three specified dwelling units.

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

The Landlord testified they 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.

The Tenants did not dispute the Landlord's evidence.

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 December 11, 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 June 11, 2022 and December 11, 2023.

The Landlord said the expenditures for the boiler happened between December 1, 2023 and October 15, 2023.

The Landlord submitted into evidence the supporting relevant invoices dated September 5, 2023 and October 15, 2023. The work was completed October 10, 2023.

The Landlord affirmed that the expenditures in the invoices are part of the same project.

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 both invoices are dated within the 18-month period.

The Tenants did not dispute the Landlord's testimony.

However, the Tenants asked the landlord questions about whether the installation was complete as steam enters the building and disturbs residents on their decks and heating is still inadequate in cold months. The Landlord testified they are looking into redirection of the steam and the other concerns of the Tenants. I advised the Tenants of their rights to apply for repairs and compensation under the Act.

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.

The Tenants did not dispute the Landlord's evidence.

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. The replaced boiler was more than 20 years old, possibly original to building (48 years old), and replaced due to age, inefficiency and unavailability of parts.

The Landlord affirmed the previous boiler was properly maintained, but it was outdated. Tenants noted they did not have maintenance records. They did not submit any evidence that the repairs or replacement were required because of inadequate repair or maintenance on the part of the Landlord.

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 they are 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).

Reason for expenditure - boiler

As stated, the Landlord replaced the previous boiler installed more than 20 years ago because it was beyond its useful life. The Landlord installed a new energy efficient boiler. The Landlord said that they paid the two invoices submitted in the total amount of \$100,170.00 for the new boiler.

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.

Heating systems: 15 years

I accept the Landlord's uncontested testimony that the boiler replaced was 20 or more years old.

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 more than 20 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 and the invoices, I find the Landlord proved that they replaced the boiler at the expiry of its useful life.

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 \$100,170.00 to replace the boiler is in accordance with Regulation 23.1(4)(a)(ii).

### Outcome

In consideration of the evidence and submissions, I find 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>
Boiler	\$100,170.00
<b>Total</b>	<b>\$100,170.00</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 63 specified dwelling units and that the amount of the eligible expenditure is \$100,170.00.

The Landlord has established the basis for an additional rent increase for expenditures of \$13.25 per unit ( $\$100,170.00 / 63 \text{ units} / 120$ ). 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 \$13.25 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: April 12, 2024

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Residential Tenancy Branch