



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

### **Introduction**

The Landlord seeks a rent increase 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”).

### **Issue**

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 extensive submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims, and my findings are set out below.

The Landlord seeks approval to impose an additional rent increase for capital expenditures on the basis that the Landlord has incurred \$369,051.72 in total eligible capital expenditures. The subject property in which the rental units are located is a 38-unit apartment building on Harwood Street, Vancouver.

I note that the Landlord has revised (and decreased) the total amount sought to \$334,616.90.

The Landlord has not applied for an additional rent increase for capital expenditures against any of the Tenants prior to this application.

The Landlord gave evidence that they are seeking to impose an additional rent increase for capital expenditures incurred to pay for a work done to the residential property's elevator, lobby and hallways, and intercom system.

The Landlord submitted copies of invoices supporting these amounts.

The parties agreed that the Landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

As set out in the Landlord's submissions, which were supported by the affirmed oral and documentary evidence of the Landlord's witness and the Landlord:

Regarding the elevator: "Major control modernization was completed including installation of a car door restrictor, hall door retainers, door unlocking devices, car top railings, cab finishes, and machine room cooling. Expenditure was recommended by an elevator consultant."

Regarding the hallway and lobby replacements: "Major control modernization was completed including installation of a car door restrictor, hall door retainers, door unlocking devices, car top railings, cab finishes, and machine room cooling. Expenditure was recommended by an elevator consultant."

Regarding the intercom and security system upgrade: "A new intercom system was added which included additional cameras and FOB access at all points of entry to enhance safety and security at Bay Tower."

## Analysis

### 1. Statutory Framework

Sections 21 and 23.1 of the Regulations sets 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 made an application for an additional rent increase against these tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the Work was an *eligible* capital expenditure, specifically that:
  - 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
      - because it 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.

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, or
- 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 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

As noted previously, no prior application has been made in respect of this property.

## 3. Number of Specified Dwelling Units

Section 23.1(1) of the Act 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.

As noted, there are 38 specified dwelling units.

#### 4. Amount of Capital Expenditures

The amount of the (revised) capital expenditures total \$334,616.90.

#### 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
    - because it 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.

Having reviewed the Landlord's evidence and submissions and having reviewed and considered the Tenants' and Tenants' advocate's submissions and argument, it is my finding that all of the expenditures are eligible for this type of application. I do not agree with the advocate's submissions and argument that they do not meet the requirements.

I accept the Landlord's evidence that the first payment for the work was incurred within 18 months of the Landlord making this application. I do not, with respect to the advocate's argument, accept that any of the payments were incurred outside the required 18-month window.

As stated above, the useful life for the components replaced all exceed five 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 (even if, as the advocate noted, the guideline is rather dated). For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five 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 a landlord must prove (set out above), a 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.

With respect to the Respondents' argument that I ought to draw an adverse finding from the purported failure of the Landlord to provide certain records and documents, the burden of proof lay with the respondent Tenant to provide or present evidence to support an argument that any of the repairs or work done was required due to inadequate repair or maintenance. No such evidence was presented.

Further, it is my finding that the Respondents have not provided sufficient or persuasive evidence to contradict the elements that the Landlord must prove in making this application.

I am not persuaded that there are any legal issues in respect of who the "Landlord" is in this application, nor do I find that any of the other issues raised by the Tenants gives rise to a final finding that the Landlord has proven the necessary elements in this type of application on a balance of probabilities.

## 7. Outcome

The Landlord is successful in this application. They have proven, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for capital expenditure.

Section 23.2 of the Regulate sets out the formula to be applied when calculating the amount of the addition 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 38 specified dwelling units and that the amount of the eligible capital expenditure is \$334,616.90.

Thus, the Landlord has established the basis for an additional rent increase for capital expenditures of \$73.38 ( $\$334,616.90 \div 38 \text{ units} \div 120$ ).

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 application is granted for an additional rent increase for capital expenditures of \$73.38.

The Landlord may only impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve all Tenants with a copy of this decision in accordance with section 88 of the Act.

This decision is final and binding, except where otherwise permitted, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: May 15, 2024