Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding STET HOLDINGS INC., VANCOUVER NO. 1 APARTMENTS PARTNERSHIP
and [tenant name uppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

The applicant submitted this claim seeking an additional rent increase for capital expenditures, under section 43 of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).

The applicant, represented by agent MFO (the Landlord) and assisted by counsel MDR, tenants JRE, CPE, SNY, DJO, SHA, GPY, RDU, JOL and MAR attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Service

The Landlord affirmed that he served the notices of application, written submissions and evidence on February 15, 2024, March 11 and 20, by attaching individual packages to the tenants' front doors. The Landlord submitted a declaration indicating the packages were attached to the doors on the dates informed.

The attending tenants confirmed receipt of the packages.

The Landlord confirmed receipt of the response evidence from the tenants.

Based on convincing testimony and the proof of service declarations, I find the Landlord served the notice of application, submissions, and the evidence in accordance with section 89 of the Act and that the tenants served the response evidence in accordance with section 89 of the Act.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 3 expenditures in the total amount of $232,524.76. The expenditures are:

1. Boiler
2. Intercom
3. Hallway and lobby upgrades

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. Thus, the parties must prove the relevant points on a balance of probabilities.

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.

I note the hearing lasted 137 minutes, all the attending parties provided testimony, tenant SNY submitted into evidence letters dated February 15, 2024, March 12, 13 and 22 and April 26. Tenants RHA, DJO and JOL also submitted written submissions and documents.

Number of specified dwelling units

All the attending parties agreed the 23-rental unit building was built in 1954 and that all the expenditures benefit all the tenants.

Based on the uncontested testimony, I find the rental building has 23 rental units and that they all benefit from the expenditures. In accordance with Regulation 21.1(1), I find there are 23 specified dwelling units.

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

The Landlord stated he 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 except unit 204, as this unit is occupied by an employee. The Landlord considered all the 23 units for the calculation of the additional rent increase.

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 January 26, 2024.

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 July 26, 2022 and January 26, 2024.

The Landlord testified:

- the expenditures for the boiler happened between December 30, 2021 and January 25, 2023.
- The expenditures for the intercom happened between September 20, 2022 and July 11, 2023.
- The expenditures for the hallway and lobby upgrades happened between March 30, 2022 and March 10, 2023.

The Landlord submitted into evidence the invoices with the dates mentioned in the above paragraph.

The Landlord said that all the expenditures are part of the same projects and that the expenditures for the boiler and the hallway and lobby upgrades took longer than 18 months to be completed due to the complexity of the projects.

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 at least one of the invoices for the boiler and hallway expenditures is dated within the 18-month period.

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).

<u>Expenditures not expected to occur again for the next 5 years</u>

The Landlord affirmed 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.

Based on the Landlord's undisputed and 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).

Payment from another source

The Landlord stated that he is not entitled to be paid from another source for the expenditures claimed. The Landlord testified that he received a grant for replacing the boilers, but the Landlord subtracted from the amount claimed the amount of the grant received.

Tenant JRE said the Landlord should have subtracted from the price he paid for the building the amount of the expenditures.

JOL's written submissions state the landlord must have a contingency reserve fund, similar to strata buildings, as explained in the Strata Property Act.

The Act does not require landlords to have contingency reserve funds. The Strata Property Act does not regulate residential tenancies.

The Landlord affirmed the Landlord paid for the expenditures and that the amount claimed for this additional rent increase could not have been subtracted from the building's purchase price.

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).

Type and reason for each expenditure

I will individually analyze the expenditures claimed by the Landlord.

Boiler – expenditure 1

The Landlord completed the installation of the previous boilers in January 2023. The boiler used for heating was from 1995 and beyond its useful life. The boiler used for hot water was from 2015, but it was necessary to replace both boilers with a more efficient boiler. The Landlord stated the new boilers reduce the gas emissions and are 93% more energy efficient than the prior boilers. The Landlord testified that he paid the nine invoices submitted in the total amount of $196,075.86 for the new boiler.

The Landlord submitted a condition assessment report signed by an engineer dated January 12, 2021 (hereinafter, the engineering report). It states:

> 4.5 Mechanical
> Boiler Room (including boiler): Two boilers – one original for hydronic heating and one circa 2019 for domestic water. The older boiler is encased and has no identifying brand marks that were readily apparent. The new boiler is a gas fired A.O.Smith.
> 5.1 General
> Overall, the building in in reasonable condition for its age and is generally maintained.
> [page 4]
> Mechanical: Boiler replacement: 1995
> [last page – not numbered]

The Landlord said the prior boilers were properly maintained and submitted an invoice dated December 4, 2022 regarding a "spring boiler service" (the maintenance document).

The Landlord submitted a document from Fortis BC regarding the rental apartment efficiency program dated April 2022 (hereinafter, the utility letter). It states:

> The boiler upgrade opportunity at [rental unit's address], involves removing the existing heating boiler and domestic hot water (DHW) heating system and replacing them with two new high efficiency condensing boilers and a new indirect-fired DHW system that is heated by the main boiler plant.
> […]
> The boiler upgrade can provide an attractive ROI and address risks related to failure of older equipment.

The Landlord submitted an energy measurement and verification report dated January 03, 2024 (hereinafter, the energy report). It states:

> In figure 2 above, the graph shows that natural gas has cumulatively decreased by 23,830m3 from time of install till October 2023. This decrease is due to a combination of the boiler retrofit and increased control parameters from the BAS to better suite the buildings temperature requirements. In addition, the
> BAS has allowed for more proactive controls of the HVAC system and additional resources to properly diagnose any future HVAC related issues.
> […]
> In figure 2 above, the graph shows the natural gas utility data and the weather data

> used for the analysis. From just comparing monthly utility data it is evident to see a decrease in natural gas consumption each month.
> [page 2]

Tenant DJO affirmed the Landlord should not rely on policy guidelines because the Landlord has access to documents regarding the boilers' conditions and the Landlord did not prove it was necessary to change the boilers, as there are no maintenance projects. DJO stated that ambiguity should be resolved in favour of the tenants. DJO also testified that he is an electrical engineer, it was not necessary to replace the boilers and that the maintenance document is not relevant.

The Landlord said there is no ambiguity and that the previous boilers were properly maintained.

Tenant DJO affirmed that he requested the Landlord to submit documents regarding the maintenance of the boilers and the Landlord failed to do so.

Tenant MAR stated the hot water boiler was from 2015 and it was not necessary to replace it.

Tenant SNY submitted requests to repair the heat in her unit on February 17 and 27, 2023 and October 24, but testified the heat has been repaired as of January 2024.

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.

An installation, repair, or replacement of a major system or major component that was not described above will be eligible for an additional rent increase if it

> **reduces energy use or greenhouse gas emissions or improves the security of the residential property.**
> Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and any other substance prescribed in the regulations to the Climate Change Accountability Act.
> **Any reduction in energy use or greenhouse gas emissions established by a landlord will qualify the installation, repair, or replacement for an additional rent increase**.
> Some examples of installations, repairs, or replacements of major systems or major components that may reduce energy use or greenhouse gas emissions include:
> • replacing electric baseboard heating with a heat pump,
> • installing solar panels, and
> • replacing single-pane windows with double-paned windows.
>
> (emphasis added)

Based on the Landlord's uncontested testimony, the utility letter and the energy report, I find the Landlord proved the new boilers reduced the greenhouse gas emissions.

Based on the Landlord's convincing testimony and the engineering report, I find the Landlord proved the previous boilers were properly repaired. I find it is not necessary to have any other documents, as the engineering report is signed by an engineer and indicates the building was in reasonable condition and it did not mention any issues regarding the previous boilers. Thus, I find the parties proved the boiler replacement was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Furthermore, there is no ambiguity in the legislation regarding this expenditure, as the legislation and the facts are clear.

I find that the boilers replaced are a major component of the rental building, as the boilers are integral to the rental building and provide heat and hot water to the tenants, per Regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of $196,075.86 to replace the boilers is in accordance with Regulation 23.1(4)(a)(iii)(A).

Intercom – expenditure 2

The Landlord replaced the previous intercom system integrated with the fob system to access the building in February 2023, as the previous intercom system was from 2010 and used an outdated software from 2000. The Landlord said that the fob system to control the access to the building is part of the new intercom system.

The engineering report states the previous intercom system was from 2010.

The Landlord affirmed the new intercom improved the security of the rental building, as the old system's software was a cyber security risk because it could not be updated and used a dial up technology to access the internet. The Landlord stated the new system is a modern and safer system, as it has a modern software.

The Landlord testified that he paid the three invoices submitted in the total amount of $15,174.52 for the new intercom system.

The Landlord said that the prior intercom was properly maintained.

The Landlord submitted a letter from the chief information officer dated February 28, 2024 (the intercom letter). It states:

> The intercom and fob access system for the Building (the "Intercom System") was replaced for the following reasons:
> 1. the software used to operate the Intercom System (the "Software") was dependent on a version of Windows which was end of life and no supported – specifically, a Windows Operating System which was published over 20 years ago. This is a cybersecurity risk. Specifically, there is an increased risk of a cyber attack using an operating system that is no longer updated by the software manufacturer. This also goes against InterRent's IT policies which follow industry best practices in an effort to prevent against cyber attacks. InterRent's IT policies are audited by third parties as InterRent is a publicly traded company; and
> 2. the Software communicated with the Intercom System using a dial-up modem which functioned similar to a fax machine. This posed several issues with remote management as telecom carriers are transitioning their phone lines to VoIP which does not reliably work with dial-up data applications. Dial-up modems are an antiquated technology which are no longer widely used for this kind of purpose.
> Essentially, the old Intercom System used obsolete software which was reliant on an obsolete operating system running on obsolete hardware that was causing a cybersecurity risk and could not be effectively managed remotely due to the inability to

> communicate with new phone lines. The Intercom System was replaced to significantly reduce cybersecurity risks and to ensure reliable functionality for tenants.
> The new Intercom System is manufactured and designed to meet modern standards. The new system has full internet protocol (“IP”) capability and is integrated into InterRent’s enterprise resource planning (“ERP”) software to allow for automation and integration with other systems in the Building.

Tenant DJO affirmed that a dial up technology is very safe and the modern technology in the new intercom is a bigger cyber security threat.

Tenant GPY stated that he is a software engineer and that an outdated software does not increase cyber security risks.

Tenants RDU and JRE testified the building’s front door sometimes does not close properly and is left open. Landlord MFO said this issue is not related to the intercom and that he will repair it.

I find the intercom letter outweighs the testimony offered by tenants DJO and GPY, as it is signed by the Landlord’s chief information officer and provides more convincing details about the enhanced safety of the new intercom system.

I find that the new intercom system improves the tenants’ safety, as it controls the access of people into the building with a modern software. Thus, I find that the intercom system is part of the rental buildings’ security system.

Policy Guideline 37C states the security system is a major system.

Based on the Landlord’s convincing testimony and the engineering report, I find the Landlord proved the previous intercom system was properly repaired. I find it is not necessary to have any other documents, as the engineering report is signed by an engineer. It indicates the building was in reasonable condition and did not mention any issues regarding the previous intercom system. Thus, I find parties proved the intercom system replacement was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Considering the above, I find that the expenditure of $15,174.52 for the new intercom, fob system and cameras is in accordance with Regulation 23.1(4)(a)(iii)(B).

Hallway and lobby upgrades – expenditure 3

The Landlord renovated in August 2022 the hallway and lobby by:

- replacing the doors' different handles and locks with matching new handles, locks and closers (hereinafter, the door hardware) that allow the Landlord to access the rental building with only 3 master keys. The Landlord affirmed the new doors' handles and locks increase the safety of the building.
- updating the interior fire safety signage, as the signage replaced was incomplete and some signs did not match. The Landlord stated the prior signage did not comply with the current fire safety code and the new signage increases fire safety.
- installing new lights in the common areas, which reduced electricity consumption, as they have integrated LED fixtures and the previous lights were original, old and with screws.

The Landlord testified that he paid the eight invoices submitted in the total amount of $21,274.38 for the hallway and lobby upgrades and that he excluded purely cosmetic renovations from the amount claimed.

The Landlord said that there is no record regarding the maintenance of the items replaced. The Landlord replaced the items for modernization, not because they were damaged.

Tenant DJO affirmed the Landlord did not provide the previous light bulbs specifications and that the Landlord did not prove the new lights reduce electricity consumption. DJO stated the local fire safety bylaws do not require new signage.

Tenant SNY testified that she is not sure if new door hardware was installed, as the current ones look the same as before the upgrades.

Landlord MFO said that he worked with the contractors who installed the new door hardware.

I find the testimony offered by the Landlord and MFO is more convincing than SNY's vague testimony. Based on the convincing testimony offered by the Landlord and MFO and the invoices, the Landlord replaced the door hardware, installed new LED lights in the common area and updated the interior fire signage.

Based on the Landlord's convincing testimony, I find the new doors hardware and the new interior fire safety signage increase the tenants' safety, as they will make it harder to break-in the building and the rental building will be safer in case of a fire with a modern matching fire signage. Thus, I find the door hardware and fire safety signage are part of the building's security system.

Policy Guideline 37C states the security system is a major system.

Based on the convincing testimony offered by the Landlord and MFO, I find the new lights are more energy efficient than the previous ones, as the previous lights were old and used screws and the new lights use LED integrated fixtures. I do not find necessary to require the Landlord to provide technial specifications for lights, as it is expected that new integrated LED fixtures are more energy efficient than old light bulbs.

The parties did not present evidence that the hallway and lobby upgrades were incurred because of inadequate repair or maintenance on the part of the Landlord. Thus, I find the parties did not prove that the Landlord incurred this expenditure because of inadequate repair or maintenance, per Regulation 23.1(5)(a).

Considering the above, I find that the expenditure of $21,274.38 for the hallway and lobby upgrades is in accordance with Regulation 23.1(4)(a)(iii), as the new door hardware and interior fire safety signage improve the security of the rental building and the new LED lights reduce the energy consumption.

Final Submissions

Tenant JRE affirmed that after the Landlord amortizes the expenditures the additional rent increase should be revoked, as the legislation does not indicate the rent increase can continue permanently. JRE submitted a spreadsheet with her calculation regarding the amortization of the additional rent increase. Tenant RHA raised the same concerns in his submissions.

The Act does not state that the Landlord must revoke the additional rent increase after the Landlord amortizes the expenditures. The Landlord is at liberty to reduce the rent by any amount at any time.

However, the Act does not require the Landlord to do so. The Landlord is at liberty to continue receiving rent with the additional rent increase until the tenancies end.

Tenants stated that they are facing financial hardship, and it is not fair to further increase their rent.

The Tenants' alleged financial hardship is not a reason to deny the requested rent increase.

DJO's submissions state:

> 16. It is also important to note that there are many broader policy reasons why Landlords should fail on the burden of proof in cases where they don't provide any or insufficient documents. First, if landlords could lift their burden of proof merely by providing invoices, Landlords would never do anything else. Why risk any scrutiny from the tenant or the arbitrator, by providing the full breath of documents available to them, if they can merely show invoices and that is deemed to lift their burden of proof. Second, the less information an arbitrator has on a case the greater the chance that they come to an erroneous conclusion, as such it is in the interest of correct decisions that Landlords submit the documents for the arbitrator to review.

The Landlord provided the engineering report, maintenance document, utility letter, energy report, intercom letter, the invoices, and provided a coherent consistent testimony during the hearing. I explained throughout this decision why I found the Landlord proved the relevant points in this claim.

As noted in Rule of Procedure 6.6, the standard of proof in this application is on a balance of probabilities, not beyond a reasonable doubt.

Outcome

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:

Expenditure	**Amount $**
01.Boiler	196,075.86
02. Intercom	15,174.52
03. Hallway and lobby upgrades	21,274.38
Total	**232,524.76**

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 23 specified dwelling units and that the amount of the eligible expenditure is $232,524.76.

The Landlord has established the basis for an additional rent increase for expenditures of $84.25 per unit ($232,524.76/ 23 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 $84.25 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: May 21, 2024

Residential Tenancy Branch