DECISION

Introduction

On June 18, 2024 (the "Application date"), the Landlord filed the Application pursuant to s. 43 of the *Residential Tenancy Act* (the "*Act*") for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Residential Tenancy Regulation* (the "*Regulation*").

The Landlord attended the hearing at the scheduled hearing time. A number of Tenants, as well as a Tenant advocate, were present in the hearings of September 26 and November 6, 2024.

Preliminary Issue – service and disclosure of evidence

The first scheduled hearing date in this matter was on September 26, 2024. An advocate who assisted some of the Respondent Tenants in this matter provided a written submission to the Residential Tenancy Branch and the Landlord on September 24. By interim decision dated September 27, I afforded the Landlord the opportunity to respond to the issues raised by the Tenant's advocate. I set a time limit for the Landlord to respond, and to serve that response to all Tenants, by October 22.

Prior to this, as shown in the document record for this hearing, one Tenant via the advocate had requested certain kinds of records in this matter from the Landlord on August 30 via email. The Landlord responded to the advocate's request, mentioning the relevancy of certain requested documents, on September 6.

Before the reconvened hearing, the Landlord prepared a written response, with included evidence, and served that to all Tenants by posting it to individual renal unit doors on October 21.

In the November 6 reconvened hearing, the Tenant advocate drew upon the Landlord's response package including evidence that was not provided by the Landlord with the Notice of Dispute Resolution Proceedings and hearing information to all Tenants in July. They stated this late provision of evidence makes the evidence late and not properly disclosed, and therefore inadmissible, as per the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*") which sets the time for submissions/responses as at the time of the Application.

The *Rules* provide as follows:

> **11.2 Evidence not submitted at the time of Application for Additional Rent**

Increase for Capital Expenditures

Notwithstanding Rule 3.14, evidence the applicant intends to rely on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 30 days before the hearing.

11.3 Respondent's evidence for an Additional Rent Increase for Capital Expenditures Proceeding

The respondent's evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The evidence that the respondent intends to rely on at the hearing must be served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Notwithstanding Rule 3.15, and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 15 days before the hearing.

11.4 Applicant must submit documentation related to ineligibility criteria

Applicants must submit with their application any documents in their possession at the time they made their application that relate to the maintenance of the major system or component that was repaired or replaced (e.g., maintenance records).

Additionally, applicants must submit as evidence any documents in their possession at the time they made their application related to payments they have received or are entitled to receive from other sources for installing, repairing, or replacing a major component or system.

Additional *Rules* provide as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the director will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

The arbitrator has the discretion to determine whether to accept documentary or digital evidence . . . provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of procedural fairness.

. . .

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

I afforded the Landlord the opportunity to review a submission from the Tenant via the advocate that was not served in accordance with the Rule 11.3.

I find there is no prejudice stemming from the Landlord's provision of additional evidence with their written response sent to all parties on October 21. This is an

application of Rule 3.17, being new and relevant evidence. I find the Landlord's provision of this evidence stems from both the advocate's request to the Landlord for additional evidence of August 30, as well as the advocate's written submission provided 2 days before the scheduled hearing. I question why the Tenant's advocate would make a request for more evidence to the Landlord well after the Application timeframe, then question the procedural fairness of the Landlord then including some additional evidence.

Additionally, the Tenant had a fulsome opportunity to review the material and prepare their response to the Landlord's written submissions for the scheduled reconvened hearing, just as I afforded the Landlord the same opportunity to review the Tenant's written submissions they provided 2 days before the scheduled hearing.

In sum, both parties' evidence and submissions receive full consideration where relevant and necessary. I assess the weight of evidence and consider the merits of either party's submissions herein.

Preliminary Issue – reversion of additional rent increase

The Tenant in their written submission of September 24 raised a point about the time period wherein they would pay an additional rent increase. This would be "indefinitely" and "for years", making the rent increase "unreasonable." This is given that the *Regulation* does not provide for how the rent will change or if it will revert to a base amount after three phases of additional rent increase.

In the hearing, the Tenant queried the Landlord directly on whether they would revert the rent amount to what it was prior to the Landlord's Application for each Tenant.

An authorized rent increase is amortized over 10 years, with an annual cap at 3%; therefore, this cannot exist in perpetuity. Further, an additional rent increase is limited, as it is not expected or contemplated that a tenant would remain in the rental unit in perpetuity.

The additional rent increase, for capital expenditures, is allowed by the legislation, and what the Tenant presents on this point, being a broader issue of unjustness or unfairness to a tenant, is not within the scope of my consideration in this hearing. There is no burden of proof on the Landlord to address this point in which the Tenant addressed the reasonableness of the legislation itself.

Issue to be Decided

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

Background and Evidence

The rental unit property consists of a single four-storey building with 64 rental units. The Landlord provided that the rental unit property was constructed in 1975. The Landlord acquired ownership of this rental unit property in 2008.

The Landlord retained a roofing company in 2023 to complete a replacement of the roof on the rental unit property building (the "Project"). The roofing company completed the work between June and July 2023.

The Landlord paid invoices which they submit are eligible capital expenditures:

	Description	date completed	paid
1.	deposit invoice for roof replacement	June 1, 2023	$97,298.94
2.	remainder invoice	July 28, 2023	$196,517.31
		Total	**$293,816.25**

For the Project, the Landlord presented a copy of invoices paid, pictures showing before/after, and a letter from the roofing company that sets out "the typical lifespans of the various types of roofs."

A representative from the roofing company, in a letter to the Landlord dated March 27, 2024, noted:

- the old roofing membrane was "APP base sheet" and they could not determine the age of the old roof membrane – either originally installed or part of some earlier re-roof project

- the new installed membrane has a warranty of 10 years, and a lifespan of "20 to 30 years"

- the old membrane was replaced "due to the roof membrane failing, causing roof leaks and the membrane was at the end of its lifespan."

In their written submission, the Landlord set out that "The roof of the building is a major component of the building" as per s. 23.1 of the *Regulation*. Also, citing the recurring leaks in the rental unit building due to aged roofing: "The Landlord had no intention of spending $292,000 without it being justified."

The Landlord also submitted a copy of each of the other tender bids to show their due diligence in obtaining "the best quote for the complete roof replacement." The "Scope of Work" document provided by the roofing company dated May 31, 2023 sets out a detailed list of the work involved in the Project.

The Landlord also provided (as it appears in a response package from one Tenant) an email from a technical advisor at the Roofing Contractors Association of British Columbia dated November 30, 2022. In this email the advisor sets out the life cycle of common roofing materials: tar and gravel roofs at 20 years; and SBS for a lifespan of 25 years.

In their written submission, the Tenant provided the following points on why the Landlord failed to meet the eligibility criteria set out in s. 23.1 of the *Regulation*:

- the Landlord provided no evidence about the age of the roof – calling into question the "Roof Report" as prepared by the roofing company, who moreover had a vested interest in the Project, with no other independent inspection undertaken prior to the Project

- alternatively, as stated by the Tenant in the hearing the Landlord provided conflicting information about the age of the roof with reference to a protective layer added in approximately 2000

- the roof replacement was reasonably foreseeable by the Landlord, thereby making the Project expenditures ineligible – reference to the Landlord's own records of 2020 to late-2021 maintenance records, with no other efforts by the Landlord to address repairs/maintenance until May 2023 – reference to rationale in a prior arbitrator's decision submitted

In response on these specific points, the Landlord provided:

- the age of the roof as such is not a reason to dismiss the Application – the Landlord's examples of prior arbitrator decisions setting out eligible roof replacements were met with rebuttals by the Tenant, who added that the age of the roofing was clear in those decisions

- they received tender bids from other roofing companies – the roofing company they chose to hire was a reputable roofer with experience

- the Landlord was advised of a protective layer added to the roof in 2000; however, with the purchase in 2008 there was no determination at that time that the roof required replacement

- they acted promptly and made repairs to the roof whenever there was a leak, fixing any issue – as a corollary example, they described a roof leak left unrepaired that continued and caused other structural damage, or mould; this would still mean the roof replacement was eligible (in a rebuttal to this, the Tenant provided that the Landlord's records show inspections, with no actual work completed)

Also in the Tenant's written submission, they provided the following points on the Landlord's inadequate repairs and maintenance:

- the Landlord's submitted records are insufficient to show that adequate repairs and maintenance were completed – in timeframe 1976 to 2018, and late-2021 to May 2023

- there is a running history of incomplete repairs/poor communication on other extant issues in the rental unit property – indicative of the Landlord's failure to adequately maintain the roof, equating to poor maintenance

Regarding repairs and maintenance, the Landlord submits:

- the Landlord cited previous arbitrator decisions wherein a roof replacement was found to be an eligible capital expenditure

- they provided maintenance invoices show completed work by the Landlord when required, as listed in point 22 – in the hearing the Landlord reiterated their regular maintenance schedule with onsite management who inspect the roof on a regular basis

- they listed miscellaneous other issues of repairs at the rental unit property to illustrate their due diligence overall with issues of repairs or maintenance.

One Tenant who attended the hearing provided pictures of more water leaking issues in their rental unit and the adjacent hallway. This was "About a year ago" as the Tenant set out in their written account with pictures. The Landlord in the hearing addressed this as a plumbing issue in the rental unit property that was resolved. The Tenant submitted that these leaks continued after the Project was completed.

Other tenants signed a prepared statement that set out the following points:

- two phases of work would allow the Landlord to bypass the 3% limit on rent increases

- an unsigned contract "might be used to claim higher costs"

- the "assessment is not applied to all tenants equally", only covering longer-term tenants

- the Landlord will profit from the Project, also receiving reimbursement through tax deductions.

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, for either:

- repairs or replacement 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 any of their capital expenditures, for an additional rent increase 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 64 dwelling units, of which all 64 are eligible: the building has 64 rental units that are affected by this roof replacement. For the purpose of calculating an authorized rent increase for capital expenditures, neither the *Act* nor the *Regulation* makes a distinction based on the recentness of a starting tenancy. The focus of the legislation for this is a "specified dwelling unit" affected by an installation made, or repairs/replacement carried out in the property where the dwelling unit is located.

Eligibility and Amount

For the Landlord's expenditure on the roof replacement, I address whether this expenditure is *eligible*, and the expenditure *amount*. I also make a finding on whether the Landlord will incur this expenditure again within 5 years.

The Landlord bears the onus of establishing on a balance of probabilities (*i.e.*, more likely than not) that this capital expenditure meets the requirements to be eligible for an additional rent increase.

The onus is on the Tenant to prove that a capital expenditure, that is otherwise eligible, is ineligible.

I find this Project was work undertaken to replace a major system as defined in the *Regulation* s. 21.1(1).

I find the reason for the Project was the replacement of a major system that was past the end of its useful life. Additionally, this was replacement of a major system in order to maintain the residential property in a state of repair that complies with health, safety, and housing standards. This is in line with the *Regulation* s. 23.1(4)(a)(i) and (ii).

The *Residential Tenancy Policy Guidelines: 40. Useful Life for Building Elements* sets out the concept of expected lifetime, or acceptable period of use, of an item under normal circumstances. The useful life of a flat roof is 20 years.

Though the Tenant raised questions about the actual proven age of the roof that was in place, even citing the Landlord's evidence as contradictory and of less weight, I find on a balance of probabilities that the roof was past its useful life. The Landlord provided documentation in the form of an email from a technical advisor on this very subject, who noted that there are various issues that can extend or reduce a life cycle. I find as fact that an additional protective layer was added in 2000, and the Landlord described this as adding 23 years to the roof useful life.

On this factor alone, I find it more likely than not that the roof was beyond its useful life, denoted to be 20 years. The Tenant provided no record or fact to establish ineligibility here, neither through their points about the Landlord's evidence being indirect on establishing the roof's age, or through submission of other industry-standard material that would establish a life cycle that is something beyond 20 or 25 years.

I find it reasonable that the Landlord extended the roof's useful life with an additional protective layer. The Landlord has met the burden of proof to show this was a major system that was past the end of its useful life.

Alternatively, given the other service and maintenance records submitted by the Landlord which focus on patching the roof at certain intervals, I find the Project was

undertaken to maintain the property in a state of repair that complies with health, safety, and housing standards.

I find the roof replacement was not reasonably foreseeable. Problems with the roof, or incidental repairs, do not point to this Project being reasonably foreseeable. The Tenant focused on the Landlord's records to show that replacement was inevitable; however, I find this does not make the Project expenditure ineligible. The prior arbitration decision that the Tenant presented as standing for this concept refers specifically to a documented engineer's report, pre-purchase, that specifically set out that the roof was past its useful life. I distinguish this prior non-binding arbitrator decision for this reason: in this Application, roof replacement was never documented specifically, therefore not "entirely foreseeable" which in any event is not a defining characteristic such that an expenditure would be deemed ineligible for this reason alone. Neither singly nor in combination with the other aspects of the Landlord's evidence (which the Tenant deems inadequate/contradictory) do I find the expenditure is ineligible.

I accept the point the Landlord raised: had other factors been in place, due to a lack of some other structural repair or maintenance that negatively affected the roof, then it could be said that its replacement was reasonably foreseeable. This could suggest that the roof replacement was reasonably foreseeable because of the Landlord's inaction on other structural repairs; however, that is not in place in the evidence in this present Application. This is as set out in s. D.1. of the *Residential Tenancy Policy Guideline 37C. Additional Rent Increase for Capital Expenditures*.

I find the roof replacement was not reasonably foreseeable by the Landlord; moreover, this is not an inherent defining characteristic of ineligibility.

The Tenant also pointed to the Landlord's records on maintenance as being insufficient to show that adequate repairs/maintenance were in place over an extended period of time. I find this links back to the useful life of the roof, and my finding that, on a balance of probabilities, the roof was past its useful life and required replacement. I find the replacement was not due to the Landlord's inaction. I find as fact that the maintenance records that are in place in the evidence serve to show that maintenance/repair could not salvage the old roof still in place past its useful life.

The Tenant raised other issues of repairs in the rental unit property as showing a pattern of Landlord inaction, even stating this tainted the Landlord's credibility in this Application. I find these claims are unrelated, and the Tenant did not provide sufficient proof of this other than loose allegations. I give no weight to these statements as evidence in this hearing. Further, I am satisfied that the issue of leaking that one Tenant brought forward with pictures is not related to the roof, and this does not prove other inadequate maintenance/repair related to the need for the Project.

A number of other Tenants signed their names to a prepared statement that set out 4 points. I find there is no basis for the Tenant's mention of the Landlord seeking "two

separate assessments". I give no merit to the Tenant's mention of an unsigned contract between the Landlord and the roofing company. Similarly, the Tenant did not adequately explain, with no evidence, their assertion that the Landlord gets repair "again through tax deductions": there must be some evidence in place to make this statement.

This statement also sets out that "Only longer term tenants with lower rents are being assessed." The Landlord's rationale for imposing a rent increase for capital expenditures to a smaller defined set of rental units was discussed in the hearing and the Landlord presented a list of rental units that were occupied after the Project. I find the Landlord's point 3 in their written response explains why the Landlord will not impose the rent increase in the other units. The Landlord is under no obligation to explain this rationale further with reference to other residents' tenancy agreements in evidence; I accept the Landlord explained this in their written submission disclosed properly in the evidence, and the Landlord provided testimony on this point under affirmed oath in the hearing.

Given the nature of the work involved, and a 10-year warranty in place, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years. This is with regard to the system itself, commonly given a useful life of 20 years.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of $293,816.25.

Outcome

The Landlord has proven all of the necessary elements for the roof replacement outlined above.

The Tenant did not meet the onus to establish, on a balance of probabilities, that the Landlord's capital expenditures are ineligible, showing neither inadequate repair/maintenance on the Landlord's part, or that the Landlord was paid from some other source.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure outlined above:

- $293,816.25 for roof replacement

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 64

specified dwelling units, and that the amount of the eligible capital expenditure is $293,816.25.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of $38.26 ($293,816.25 ÷ 64 ÷ 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.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of $293,816.25.

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. I authorize the Landlord to serve each Tenant by sending it to Tenants via email where possible. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a printed copy in person.

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: November 18, 2024

Residential Tenancy Branch