



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding 1924 BARCLAY STREET HOLDINGS INC., VANCOUVER NO.  
1 APARTMENTS PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ARI-C

### **Introduction**

This hearing addressed the Landlord's application 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) for an additional rent increase for capital expenditure.

The parties listed on the cover page attended the hearing on December 9, 2024.

### **Service of Proceeding Materials**

The Landlord confirmed service of Notice of Dispute Resolution Proceeding with correspondence providing Tenants with an on-line link to access the Landlord's evidence on October 10, 2024. Service was accomplished by posting to the door of each rental unit. The Landlord submitted an affidavit to confirm this service. I find the Tenants were served with the required materials in accordance with the Act.

Landlord's counsel confirmed he received submissions from five Tenants.

### **Issue for Decision**

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

### **Background and Evidence**

I have considered the submission of the parties, the documentary evidence as well as the testimony of the participants attending the hearing. However, not all details of the respective submissions are reproduced in this Decision. Only relevant and material evidence related to the Landlord's application and necessary to my findings are set forth in my analysis.

The residential rental building was constructed in 1965, has 12 storeys and a total of 42 units. The building is serviced by one elevator.

The Landlord's application requests an additional rent increase for certain capital expenditures:

- Elevator modernization - \$315,618.66 (last invoice for this work paid by Landlord on May 3, 2024)
- Common area updates to hallways, stairwell, rooftop - \$94,548.96 (last invoice for this work paid by Landlord on April 19, 2023)
- Installation of building automation system - \$38,220.00 (last invoice paid by Landlord on December 19, 2023)

The Landlord's application also requested an additional rent increase for a capital expenditure incurred for the installation of two EV charging stations in the amount of \$19,845.25. During the hearing, Landlord's counsel withdrew this expenditure from the application.

The Landlord provided into evidence a condition report dated January 21, 2021. The Landlord purchased the rental property at approximately this time. The report was prepared by two professional engineers after inspection of the rental property. The condition report recommended, in relevant part, modernizing the elevator, upgrading the exit signage throughout the building to green pictogram signage and replacing the intercom system. The emergency exit signage is powered by battery packs.

The condition report determined the single elevator in the building to have been installed in 1965. Attached to the report was an elevator consultant company's evaluation and recommendation to modernize the elevator. The consultant notes the then-existing elevator lacks certain safety features, including a hands-free telephone for communication in the event the elevator is not operational with passengers in it; hall door unlocking devices (to allow emergency workers to open doors in the event people are trapped); bringing the elevator to current Code requirements; hall door safety retainers; door restrictors; and safety features for repairmen, and similar major control modernizations. The consultant's report further states that given the vintage of the current elevator and its decreased reliability, the modernization work would be required within 5 years (of the report date).

A representative from the company that oversaw the elevator maintenance submitted a written statement that confirmed the safety features found with modern elevators that were missing in the replaced elevator. The representative states the elevator was 55 years old and when repairs are necessary, parts are difficult to find leading to longer "down time" for the elevator. On the issue of safety, the representative further explains

the elevator, while old with replacement parts difficult to source, was properly maintained and operational. The Landlord provided elevator maintenance records for the prior elevator. Landlord's counsel stated the replaced elevator was operational and had an operation permit, but it was at or near the end of its useful life and lacked the mentioned safety features found in modern elevators. Photographs of the prior and modernized elevators were submitted in evidence.

With respect to the building automation system, the Landlord provided correspondence from its director of building systems. The representative states the building automation system (BAS) controls the heating and domestic hot water system and natural gas consumption. The BAS monitors ambient temperature, weather conditions, occupancy and other factors that affect temperature in the building, adjusting the boiler system accordingly. The prior system was manually adjusted. The Landlord also submitted evidence of reduced natural gas consumption year-to-year between the manual system and after implementation of the BAS to establish energy efficiency and reduced natural gas consumption. This evidence demonstrated an 11 per cent reduction in energy usage from the prior year.

The Landlord also submitted documentation relating to improvements made by it to the hallways, stairwells, including the signage; intercom system; and rooftop renovation. Counsel stated the hallway capital expenditures were for the improved emergency signage as well as replacement of the battery packs which were approximately 5 to 10 years old. The Landlord's property manager testified identification signage was installed for various doors (eg, maintenance doors and similar) particularly necessary for first responders (in particular, fire department). The Landlord submitted excerpts from the provincial fire code relating to sign standards. Signage for the rental unit doors was also upgraded and disability accessible door handles were installed. Landlord's counsel stated that although the carpeting was replaced and the hallways painted, as well as upgrades to the lobby/reception area, costs for cosmetic work were not included in the application. The Landlord provided a color-coded list of those capital expenditures that were included in the application. Counsel noted that lighting in the hallways and stairwells was updated replacing the 3 bulb lighting fixtures with one integrated LED 24-watt light, which offered brighter illumination and increasing Tenant safety.

As noted in the condition report, the intercom system was approximately 5 to 10 years old at the time of the report in 2021. The Landlord installed a new system that provides for connection to a tenant's cell phone thereby increasing flexibility of access for tenant guests, with facial recognition features and upgraded the security cameras in the common areas. The Landlord provided a statement that, in part, the current intercom system was utilizing out-dated software and as the software would not be updated, the system would ultimately become obsolete. The Landlord provided photographs of the prior intercom system and the newly installed system.

The Landlord renovated the rooftop of the building to provide for additional outdoor space for Tenant use. The Landlord submitted photographs of the unimproved rooftop as well as photographs of the renovated rooftop. The Landlord's representative testified this work included installation of new outdoor flooring as well as installation of gas lines for a barbeque. The rooftop deck also required installation of parapet walls for safety, a security door system, and privacy fencing to screen off the deck from the penthouse outdoor area. Counsel stated the rooftop deck was a facility open to all tenants and the Landlord was obligated to maintain it under the Act. Counsel noted this work was neither a repair nor a replacement of the rooftop.

As a general matter, several Tenants objected to the Landlord's application on the basis that the Landlord was able to improve its property and/or save on energy costs while passing along the costs for the improvement to the Tenants. One Tenant contended the Landlord was arbitrarily selecting which items to upgrade, and several upgrades were unnecessary. She pointed to the operation of the old security system. Tenants made written submissions to this effect as well. Tenants expressed concerns over the noise while upgrades were installed in the building, and the Landlord's ability to upgrade without prior notice or input from Tenants. A few Tenants stated the Landlord was continuing work on the rental property and they expressed concern the Landlord would submit future applications to additionally increase the rent. (Tenants were advised the Regulation provided for a 3 per cent cap for additional rent increase.)

Several Tenants also objected that the building automation system failed to operate properly as the temperature in rental units and common areas was below normal. Tenants stated they were forced to wear jackets and similar to stay warm in their units after the installation of the automation system. Concern was also voiced that the rental property at one time had an on-site property manager who would be able to manually adjust the temperature in the building and provide more immediate response to repair and maintenance requests. A Tenant stated the property manager was removed and an on-line maintenance/repair request system was implemented when the Landlord purchased the property.

A Tenant expressed the view that if the Landlord was obligated to bring a building component to current Code standards – whether it be signage or the elevator – it was incumbent upon the Landlord to solely bear the expense.

Tenants stated the old elevator operated effectively, pointing out the maintenance records the Landlord had submitted. A source of contention was the new elevator's repeated failure to operate, causing several tenants including an elderly Tenant in attendance at the hearing who also provided written submissions, stating she was forced to walk up many flights of stairs with her packages and groceries. A Tenant also stated that delivery services would inform her the elevator was not working causing them to walk many flights of stairs (the building has 12 storeys). The failure of the new elevator to be fully functional raised safety concerns with Tenants. A Tenant stated that

the Landlord provided no compensation to tenants during the four-month period required for installation of the new elevator.

An objection was raised to the rooftop patio area as an unnecessary cosmetic upgrade to the building. The Tenant stated each rental unit had a balcony and thus private outdoor access, making the rooftop deck area redundant. A Tenant further noted the rooftop patio area could only be used in warmer weather.

Tenants who had recently moved into the rental property objected to the Landlord's application stating they had been informed by Landlord representatives at the time of viewing their respective units of the upgrades as already included in the monthly rent they would pay. Their position was that these costs were currently included in their monthly rent and the Landlord should not be entitled to charge them again by means of this application.

Landlord's counsel replied the Regulation required that all specified dwelling units be included in the application, and thus a tenant's date of occupancy was not a factor. Counsel took the position that capital expenditures made for the hallway, reception/lobby area, and intercom were necessary as these components or systems were at or near the end of their respective useful life. The elevator modernization and emergency signage upgrades he stated were required as these were past useful life and increased security of residents, emergency responders and service personnel. With regard to the roof renovation, Landlord's counsel contended the Landlord was providing a new facility to the Tenants they did not have previously. As this facility was included in rent, the Landlord was now under an obligation to maintain it, and for this reason the Landlord could appropriately include this in its application.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not the facts occurred as claimed. As the dispute related to the Landlord's application for an additional rent increase based upon eligible capital expenditures, the Landlord bears the burden of proof in support of its application.

Section 43(1)(b) of the Act allows a Landlord to impose an additional rent increase in an amount greater than the annual amount provided under the Regulations through an application for dispute resolution.

### **1. Statutory Framework**

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a landlord is entitled to impose an additional rent increase for capital expenditures. To summarize, the landlord must prove the following, on a balance of probabilities:

- the landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
  - o the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
  - o the Work was undertaken for one of the following reasons:
    - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
    - because the system or component:
      - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
      - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
    - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
    - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
  - o the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
  - o the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

The Regulations provide tenants may have an application for an additional rent increase for capital expenditure dismissed 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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

If a landlord discharges its evidentiary burden and the tenant fails to establish the 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

In this matter, I find there have been no prior applications for an additional rent increase within the last 18 months before the application was filed.

### 3. Number of Specified Dwelling Units

Section 23.1(1) of the Regulation 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.

There are 42 specified dwelling units to be used for calculation of the additional rent increase.

### 4. Amount of Capital Expenditure

The Landlord claims the total amount of \$448,387.62 as detailed in the Landlord's itemized capital expenditure set forth above (excluding the cost for installation of EV charging stations), there being no other source of payment as set forth in the Regulation to pay for these capital expenditures in whole or in part.

### 5. Is the Work an *Eligible* Capital Expenditure?

As noted, 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
    - 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.

Each item of capital expenditure will be reviewed under this analysis.

Section 21.1 of the Regulation defines “major system” and “major component”:

"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;

"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;

RTB Policy Guideline 37 provides examples of major systems and major components:

Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

Residential Tenancy Branch Policy Guideline 37 states:

A capital expenditure is considered “incurred” when payment for it is made.

Policy Guideline 37C provides “the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.”

### Elevator Modernization

I find the elevator is a major component of the building. I find the replacement and modernization of the elevator was necessary as the existing elevator was original to the building and at or near the end of its useful life. Policy Guideline 40 provides that the useful life for an elevator is 20 years. I find this is sufficient to satisfy the requirements of the Regulation. Based upon the evidence, I further find the modernized elevator has several safety features for both passengers and repair personnel that meets the

Landlord's obligations to maintain the rental property in a state of repair that complies with the Act.

I accept the Landlord's evidence that the final payment for the elevator modernization was made May 3, 2024, within 18 months of the Landlord making this application on September 19, 2024. The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application. I find it is reasonable to conclude that this capital expenditure will not be expected to reoccur again within five years. I further accept the Landlord's submission there is no other source of payment (such as insurance proceeds or rebates) for this capital expenditure.

Based on the above, I find the Landlord is entitled to recover the amount of **\$315,618.66** as a capital expenditure qualifying for an additional rent increase under the Regulation.

#### *Building Automation System*

In this case, I find the installation of the building automation system which monitors the outdoor ambient temperature to initiate heating to qualify as a major component or system of the building. Based upon the Landlord's documentary evidence and testimony, I find this capital expenditure increases energy efficiency. I find this is sufficient to satisfy the requirements of the Regulation.

The Landlord provided the receipts for the capital expenditure and the final payment on December 19, 2023, was incurred within 18 months prior to the Landlord submitting this application on September 19, 2024. I accept the Landlord's submission and therefore I find it is reasonable to conclude that this capital expenditure is not expected to reoccur within five years. I further accept the Landlord's submission there is no other source of payment for this capital improvement.

Based on the above, I find the Landlord is entitled to recover the amount of **\$38,220.00** as a capital expenditure qualifying for an additional rent increase under the Regulation.

#### *Security System Upgrades & Safety Features in Hallways and Doors*

Policy Guideline 37C provides that security systems, including cameras and other mechanisms to prevent unauthorized entry, are a major system and major component "essential to support or enclose a building...or support a critical function of the residential property." I find the upgraded security system, including upgraded security cameras meet the criteria of the Regulation allowing for the installation of a major component or system that improves the security of the residential property. Policy Guideline 40 provides that intercom systems have a useful life of 15 years, and based

upon the Landlord's evidence, the intercom system was at or near the end of useful life. While the old intercom may have remained functional, being near or at the end of its useful life, the Landlord would be required to replace it. The security cameras promote and enhance security to Tenants, the building and its contents.

I accept the Landlord's evidence the LED lighting upgrade in the hallways and stairwells enhances security and reduces energy consumption by reducing the number and kilowatt of lightbulb used. The replacement of the LED lighting in the hallways and stairwells meets the Regulation criteria for reducing energy use and improving Tenant security as well as building security.

I further accept the Landlord's evidence the upgrade in signage and door handles to the rental unit doors also improves safety of residents and first responders.

I accept the Landlord's payment for this work occurred on April 19, 2023, as documented by the Landlord. This is within the 18 months preceding the Landlord's application. I accept the Landlord's submission it is not anticipated this work will be required again within 5 years. I accept the Landlord's submission there was no other source of payment for this work.

Subsequent to the hearing, and pursuant to undersigned's request, the Landlord provided additional information as to the cost of the rooftop renovation. On December 11, 2024, counsel submitted correspondence in this file stating that the Landlord was "irrevocably withdrawing" its claim for the capital expenditure related to the rooftop renovation. The Landlord reviewed the invoices for this work, provided a summary in its correspondence as to those related to the rooftop renovation, and determined that \$9,712.50 (including applicable tax) was to be excluded from the Landlord's application for capital expenditure to common area updates.

Therefore, based upon the Landlord's counsel's submission, I accept the Landlord's withdrawal of its claim to include the rooftop renovation in the amount of \$9,712.50, and deduct this amount from the Landlord's common area capital expenditures of \$94,548.96 as stated in the application.

Therefore, I find the Landlord is entitled to include the amount of **\$84,836.46** in its application for additional rent increase for capital expenditures related to the hallway and stairwells, signage, LED lighting, intercom system and security cameras.

#### Tenant Objections to the Capital Expenditures

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 the landlord must prove (also set out above), the 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.

The Tenants' submissions, summarized above, do not meet the Regulation to successfully object to the Landlord's application.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks, the sewer pipe repair and the window and sliding glass door replacements in the amount of **\$438,675.12**.

## Summary

The Landlord has been successful with its application. The Landlord has established, on a balance of probabilities, the elements required to impose an additional rent increase for total capital expenditures of **\$438,675.12**, for those major components as described herein.

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 specific dwelling units divided by the amount of the eligible capital expenditure amortized over 120 months. In this case, I have found there are 42 specified dwelling unit and that the total amount of the eligible capital expenditures is the amount of **\$438,675.12**.

I find the Landlord has established the basis for an additional rent increase for capital expenditures of **\$87.04 ( $\$438,675.12 \div 42 \text{ specified dwelling units} \div 120 \text{ months (10 years amortization)} = \$87.04$ )**. If this amount exceeds 3% of a Tenant's monthly rent, the Landlord may not be permitted to impose a rent increase for the entire amount in a single year.

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

I grant the application for an additional rent increase for capital expenditures totaling **\$438,675.12**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve all Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of this Decision. I authorize the Landlord to serve a Tenant by email if the Tenant provided an email address for service and to provide any Tenant with a printed copy if requested by the Tenant.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 13, 2024

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Residential Tenancy Branch