



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding CASTERA PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Application Code    ARI-C

### Introduction

Castera Properties Inc. applied for 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).

Castera Properties Inc., represented by agent NDE (the Landlord), and the tenants named on the cover page of this decision attended the hearing. All the parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

### Service

The Landlord affirmed that he served the notices of dispute resolution proceeding and the evidence (the materials) on November 12 and 17, 2024 by attaching individual packages to the rental unit's front doors of all the named respondents and serving them in person. The Landlord submitted a proof of service letter indicating service of the materials in accordance with his testimony.

The attending Tenants confirmed receipt of the materials.

The Landlord confirmed receipt of the response evidence and that he had time to review it.

Based on the convincing testimony of the parties and the proof of service letter, I find the Landlord served the materials in accordance with section 89(1) of the Act and that the Tenants served the response evidence in accordance with section 88 of the Act. Thus, I accept service of the materials and the evidence.

### Application for Additional Rent Increase

The Landlord is seeking an additional rent increase for 2 expenditures totalling \$231,718.55:

1. Renovating 60% of the roof (\$155,155.64)
2. Upgrading the elevator (\$76,562.91)

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.

Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures “incurred in the 18-month period preceding the date on which the landlord makes the application”.

Per Regulation 23.1(2), if the landlord “made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.”

Regulation 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all the following:

- (a) the capital expenditures were incurred for one of the following:
  - (i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [landlord and tenant obligations to repair and maintain] of the Act;
  - (ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
  - (iii) the installation, repair or replacement of a major system or major component that achieves one or more of the following:
    - (A) a reduction in energy use or greenhouse gas emissions;

- (B) an improvement in the security of the residential property;
- (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
- (c) the capital expenditures are not expected to be incurred again for at least 5 years.

Per Regulation 23.1(5), tenants may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the expenditures were incurred:

- (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
- (b) for which the landlord has been paid, or is entitled to be paid, from another source.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed for the reasons set out in Regulation 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation 21.1 defines major component and major system:

- "major component", in relation to a residential property, means
  - (a) a component of the residential property that is integral to the residential property, or
  - (b) a significant component of a major system;
- "major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral
  - (a) to the residential property, or
  - (b) to providing services to the tenants and occupants of the residential property;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claim and my findings are set out below.

#### Number of specified dwelling units and benefited units

The Landlord stated the expenditures benefit all 47 rental units located in the building.

Based on the Landlord's undisputed testimony, I find the rental building has 47 rental units and that they all benefit from the expenditures, in accordance with section 21.1(1) of the Regulation.

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

The Landlord testified he submitted a prior application for additional rent increase on August 13, 2021 (the Prior Application file number is recorded on the cover page of this decision) and that the Landlord is seeking an additional rent increase only for the respondent Tenants.

I verified in the Residential Tenancy's Branch (RTB) records that this application was submitted on October 28, 2024 and the Prior Application on August 13, 2021.

Based on the Landlord's undisputed and convincing testimony, I find that the Landlord has not submitted a prior application for 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

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 April 27, 2023 and October 27, 2024.

The Landlord said the roof renovation was completed on June 15, 2023 and the elevator upgrade on February 12, 2024. The Landlord submitted 3 invoices for the roof (with due dates between April 14, 2023 and August 21) and 8 invoices (with due dates between December 3, 2023 and February 4, 2024) and affirmed he paid all of them by the due date.

Policy Guideline 37-A states: “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.

Based on the Landlord’s convincing and undisputed testimony and the invoices, I find the Landlord incurred the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b), as most of the invoices, include the last ones for each expenditure, were paid within that 18-month period.

#### Expenditure not expected to occur again for at least 5 years

The Landlord stated the expenditures are not expected to occur again for at least 5 years, as the life expectancy of the roof is at least 5 years, and the elevator is 50 years.

Based on the Landlord’s convincing and undisputed testimony, I find that the life expectancy of the expenditures is at least 5 years, and the expenditures are not expected to occur again for this period of time. Thus, I find that the capital expenditures incurred are eligible expenditures, per Regulation 23.1(4)(c).

#### Payment from another source

The Landlord testified that he is not entitled to be paid from another source for the expenditures claimed.

Based on the Landlord’s convincing and undisputed testimony, I find the Landlord is not entitled to be paid from another source for the expenditure, per Regulation 23.1(5)(b).

#### Roof

The Landlord said the building was built in 1974, and the roof was at least 25 years old when it was renovated. The Prior Application was for the renovation of the first part of the roof, and this application is for the remaining 60% of the roof, which was beyond its useful life.

The Landlord affirmed the roof was properly maintained, as his contractors constantly inspect the roof several times per year, repaired bubbles and did the patches as

needed. The Landlord stated the contractors informed him the roof was too old and it could not be repaired anymore.

The Landlord submitted 6 photos of the prior roof with cracked membranes and wrinkles and 3 photos of the renovated roof.

Based on the Landlord's convincing testimony, the invoices, and photos, I find the Landlord replaced the 25 years old roof in June 2023 and paid the amount claimed for this expenditure.

Tenant TLU testified that sometime in 2021 the roof drain was plugged and some units had flooding issues. The Landlord said he inspects the roof more frequently in the fall, as leaves are likely to plug the drains.

Tenant EFO affirmed the expenditures are regular maintenance and the Landlord could not have needed to renovate the roof with proper maintenance. EFO stated that inadequate roof maintenance is a possibility.

Tenant DOM testified the roof was perhaps not regularly maintained.

Tenant MNE said that she is aware the roof was not properly maintained and that she would like to see the maintenance records for the last 5 to 10 years. The Landlord affirmed he only had logs of contractors accessing the building, and he believes he no longer has access to old invoices for maintenance.

Tenant TLU stated that a prior building manager was frequently drunk on site. The Landlord testified that this manager was fired several years ago.

Policy Guideline 40, published in November 2004 and not updated when I conducted the hearing, states the useful life of a roof is between 15 and 20 years.

I find the testimony provided by TLU, EFO and DOM is vague, as they indicated vague dates (sometime in 2021) and were not sure of their allegations ("perhaps not regularly maintained" and "inadequate roof maintenance is a possibility").

I find the Landlord sufficiently addressed MNE's testimony about maintenance records.

Thus, I find the Tenants' testimony does not outweigh the Landlord's convincing testimony about properly maintaining the roof. Furthermore, the fact that the roof was functional after 25 years indicates it was properly maintained.

Thus, I find the Landlord proved that he properly maintained the prior roof and the renovation was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

The submissions of tenant TBE indicate the expenditures are related to regular wear and tear, as the rental building is from 1974, and the cost of the expenditures is the Landlord's obligation.

Policy Guideline 1 states: "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Section 23.1 of the Regulation does not prevent the Landlord from seeking an additional rent increase if the expenditure is due to regular wear and tear.

RTB Policy Guideline 37C states: "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..."

I find the roof is a major component of the rental building, as it is integral to the rental building, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$155,155.64 to renovate the remaining 60% of the roof is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord replaced the roof that was beyond its useful life and the roof is a major component.

## Elevator

The Landlord said the elevator upgraded in 2024 was 50 years old. Despite proper and regular maintenance, the elevator was beyond its useful life and needed to be modernized, as parts were not available for such an old equipment anymore.

The Landlord submitted 5 photos of the old and new elevator, a certificate of inspection dated February 5, 2024 indicating the elevator is appropriate for public use and a letter from the contractor responsible for maintaining the old elevator dated January 23, 2023. It states:

As per our conversation we believe the elevator noted in the header was in dire need of upgrades as almost all of the components were becoming obsolete. Parts were no longer available to maintain the unit properly. The elevator upgrade was essential to ensure reliable operation and safety.

Tenant DOM affirmed the elevator upgrade was not unforeseen due to its age.

Section 23.1 of the Regulation does not prevent the Landlord from seeking an additional rent increase if the expenditure is expected.

Policy Guideline 37 states that elevators are major components and policy 40 states the useful life of elevators is 20 years.

Based on the Landlord's convincing testimony and the January 23, 2023 letter I find the Landlord properly maintained the elevator and the upgrade was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

I find the elevator upgrade is a major component of the rental building, as it is integral to the rental building, per regulation 21.1 and Policy Guideline 37C.

Considering the above, I find that the expenditure of \$76,562.91 to upgrade the elevator is in accordance with Regulation 23.1(4)(a)(ii), as the Landlord upgraded the elevator that was beyond its useful life and the elevator is a major component.



### Tenants' Submissions

Tenant EFO stated the Landlord is trying to bypass the rent control legislation, as the eventual amount of additional rent increase is factored into rent, and the future yearly regular rent increases will factor in the amount of the additional rent increase.

Tenant TLU testified the legislation for additional rent increase is unconstitutional, as they moved in prior to this legislation and this change should not be applied for ongoing tenancies.

Several Tenants said they are facing financial difficulties and asked for the increase to be dismissed on compassionate grounds.

Some Tenants also alleged that Canadians have to stand united due to the economic threats currently faced by Canadians and that some tenants are afraid to suffer retaliation from the Landlord for disputing this application.

I am sympathetic to the Tenants' alleged financial difficulties. However, this is not a reason to deny the Landlord's request for an additional rent increase and I cannot deny the requested rent increase on compassionate grounds.

Section 5.1 of the *Act* states that section 44 of the Administrative Tribunal Act (*ATA*) applies to the *Act*. Section 44(1) of the *ATA* states: "The tribunal does not have jurisdiction over constitutional questions."

The Tenants are at liberty to challenge the constitutionality of the legislation related to an additional rent increase in the Courts. However, there is no decision from the Courts stating the additional rent increase is unconstitutional as of the date of this decision or that this legislation cannot apply to tenancies that started prior to the enactment of this legislation.

Furthermore, the Tenants have not presented specific evidence to prove the Landlord may retaliate against Tenants that disputed this claim. However, the Tenants are at

liberty to submit an application for dispute resolution if they have evidence that the Landlord is breaching any section of the Act.

### 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:

| <b>Expenditure</b> | <b>Amount \$</b>  |
|--------------------|-------------------|
| Roof               | 155,155.64        |
| Elevator           | 76,562.91         |
| <b>Total</b>       | <b>231,718.55</b> |

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 47 specified dwelling units and that the amount of the eligible expenditure is \$231,718.55.

The Landlord has established the basis for an additional rent increase for expenditure of \$41.08 per unit ( $\$231,718.55 / 47 \text{ units} / 120$ ). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 (<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 \$41.08 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: February 14, 2025

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Residential Tenancy Branch