Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

A matter regarding IMH 1348 BARCLAY APARTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Application code ARI-C

Introduction

IMH 1348 Barclay Apartments Ltd. 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).

IMH 1348 Barclay Apartments Ltd, represented by legal counsel TBO and the other agents listed on the cover page of this decision, and the tenants also listed 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 letters containing a link and an email address to access the evidence (the materials) on January 10 and 30, 2025 by attaching individual packages to the rental unit's front doors of all the named respondents. The Landlord submitted a proof of service letter indicating service of the materials in accordance with his testimony.

The attending Tenants did not raise issues about service 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 due to capital expenditure for a new boiler system in the amount of $314,165.55.

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 expenditure benefits all 144 rental units located in the building.

Based on the Landlord's undisputed testimony, I find the rental building has 144 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 did not submit a prior application for an additional rent increase and that he named as respondents in this application all the tenants that he intends to impose the additional rent increase.

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 Tenants 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 made the payment of the application fee on December 18, 2024.

Rule of Procedure 2.6 states: "The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when the fee waiver application has been submitted to the Residential Tenancy Branch directly or through a Service BC Office."

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 June 17, 2023 and December 17, 2024.

The Landlord submitted five invoices for the new boiler:

Invoice number	**Date (all in 2023)**	**Amount $**
9839	January 23	95,413.50
9867	February 2	95,413.50
9955	February 24	95,413.50
10279	May 30	31,804.50
10309	May 30	19,466.55
Total		**337,511.55**

The Landlord said that he paid the last invoice for the expenditure (number 10309) on September 20, 2023 and submitted a financial report indicating the cheque for paying that invoice was dated September 20 and it was cashed on October 10.

Policy Guideline 37C 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.

Furthermore, Policy Guideline 37C explains: “If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be “incurred” is the date the landlord issued the final cheque. If a landlord pays for the capital expenditure using a post-dated cheque, the date the capital expenditure is considered to be “incurred” is the date the post-dated cheque is dated.”

Based on the Landlord’s convincing and undisputed testimony, the invoices and the financial report, I find the Landlord incurred the expenditures in the 18-month period, per Regulations 23.1(1) and 23.1(4)(b), as the last invoice for the expenditure was paid within that 18-month period.

Expenditure not expected to occur again for at least 5 years

The Landlord affirmed the expenditure is not expected to occur again for at least 5 years, as the life expectancy of the boiler system is at least 5 years.

Landlord GWI stated he is a specialist in energy management and the new boiler system is expected to last 15 years.

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

Expenditures because of inadequate repair or maintenance

The Landlord testified he purchased the rental building in 2020 or 2021 and properly maintained the previous boiler.

Landlord JDA, a property manager, said the prior system was properly maintained, the Landlord had a contractor to monthly inspect it, all the required repairs were completed, and the onsite staff conducted daily inspections of the prior boiler.

Tenants TEK and AJA affirmed the Landlord did not submit documentary evidence to prove the maintenance.

The Landlord stated there is no evidence the Landlord failed to maintain the prior boiler, JDA provided testimony about the maintenance, and this is enough to prove its adequate maintenance.

The Tenants did not indicate specific reasons for inadequate maintenance of the previous boilers. I find the convincing testimony under oath provided by the Landlord's agent JDA outweighs the Tenants' testimony about maintenance. The legislation does not require documentary evidence to prove maintenance. Thus, I find the expenditure was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

Payment from another source

The Landlord testified the total amount paid for invoices is higher than the amount requested. However, the Landlord received a rebate in the amount of $23,346.00 and the amount claimed is the post-rebate amount. The Landlord submitted the rebate confirmation showing the rebate amount in accordance with his testimony.

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

The 5 invoices submitted indicate a total expense of $337,511.55 and the Landlord received a rebate of $23,346.00. The expense minus the rebate equals the amount the Landlord is claiming ($314,165.55).

Tenant KMO affirmed the Landlord purchased the building knowing he would replace the boilers, so the Landlord should have received a discount from the sellers.

Policy Guideline 37C states:

> To be considered a “payment from another source,” a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute “payments from another source” because the landlord is not receiving payment by reducing their taxable income.

The Landlord stated there was no discount, and the eventual discount would not be a relevant issue.

Based on the Landlord’s convincing testimony and the rebate confirmation, I find the Landlord is not entitled to be paid from another source for the expenditure, per Regulation 23.1(5)(b), as the amount claimed is the post-rebate total.

The legislation does not indicate that a discount from the seller is a payment from another source. I find that an eventual discount from the seller would not be considered payment from another source, as such a discount is not a grant, subsidy or insurance claim settlement, as explained in policy guideline 37C.

Boiler

The Landlord testified the prior boiler system consisted of several boilers and hot water tanks installed between 2000 and 2015. The Landlord submitted an inspection report signed by a project manager on November 27, 2020 (the Report). It states:

> Heating throughout the Site Building is provided by perimeter hydronic baseboard heaters which are supplied with hot water from two natural gas-fired heating boilers. The heating boilers consist of two"Laars" units which were manufactured in approximately 2004 (i.e., approximately 16 years old) with an approximate input heating capacity of 1,499,940 British Thermal Units per Hour (BTUH) each. (page 39 pf PDF part 2)
> […]
> 3.10.3 Domestic Hot Water

> Domestic Hot Water (DHW) within the Site Building is provided by two natural gas-fired boilers which feed
> the four storage tanks located in the mechanical room. A natural gas-fired DHW heater was also noted within the mechanical room.
> The DHW systems serving the Site Building are summarized in the following table:
> Laars Boiler manufacturing age: 2000 and 2006
> Rheem Ruud – Storage tanks manufacturing age: 2015, 2016, 2019
> Bradford white - manufacturing age: 2015
> (page 40 pf PDF part 2)

The Landlord said the prior boilers were beyond their useful life, or close to the end of their useful life, and all the boilers needed to be substituted for a modern boiler system in order to reduce gas emissions.

The Landlord submitted a report from Fortis BC showing the rental building's address. It indicates the new boiler system is expected to save 2,999 GJ of gas per year. The Fortis Report also states:

> The existing boiler plant is reaching the typical life expectancy for this type of equipment. Although they can last longer but they could be replaced with a much more efficient combination condensing system. A single high efficiency system is often used to supply both space heat and domestic hot water and the calculation here assumes this is the case. This would not only save energy, but also avoid future costs of periodic hot water tank replacement. Longer life stainless steel storage tanks are suggested as part of the upgrade. The existing tanks are typical glass-lined storage tanks. Which have quite short lives. The extra cost of frequent tank replacement has been included in the ROI calculation and is included in the "annualized cost savings" in the table.

Landlord GWI affirmed that since the installation of the new boiler, the gas consumption reduced by 16% in comparison with the prior boiler.

The legislation does not require a specific amount of gas reduction. Nevertheless, I find a reduction of 16% is a significant reduction.

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, heating systems, plumbing and sanitary systems…"

I find the boiler system is a major component of the rental building, as it is integral to the rental building and provides the building's users hot water, per regulation 21.1 and Policy Guideline 37C.

Based on the Landlord's convincing testimony, the invoices, and the Fortis report, I find the Landlord proved that he replaced the boiler system in 2023 and the new boiler achieved a reduction in gas emissions.

Considering the above, I find that the expenditure of $314,165.55 to replace the boiler system is in accordance with Regulation 23.1(4)(a)(iii)(A), as the Landlord replaced the major component (boiler), and the new boiler system achieves a reduction in gas emissions.

Tenants' submissions

Tenant TEK stated the prior boilers were in good condition and did not need to be replaced.

The legislation does not prevent landlords from installing a new boiler system if the previous one was still in good condition.

Tenant ACA testified the Landlord informed the Tenants there would be "no change" when he purchased the building. Tenants EFA and LRE said they are having difficulties with the hot water in the units and they spend more water with the new system.

The Landlord asked the Tenants to submit a request for repair and affirmed the Landlord will address their repair issues for these specific units.

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 boiler system in the amount of $314,165.55.

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 144 specified dwelling units.

The Landlord has established the basis for an additional rent increase for the expenditure of $18.18 per unit ($314,165.55 / 144 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 $18.18 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: March 21, 2025

Residential Tenancy Branch