

## **DECISION**

### **Introduction**

On February 27, 2025, the Landlord filed an application pursuant to section 43 of the Residential Tenancy Act (the “Act”) and section 23.1 of the Residential Tenancy Regulation (the “RTR”) for an additional rent increase for the capital expenditures.

Agents for the Landlord, S.G., P.G. and M.J. attended the hearing at the scheduled hearing time. Tenant A.D.O.R., Tenant B.S., Tenant E.A., Tenant M.C., Tenant G.K. and Tenant S.K. were present for the entire duration of the hearing. Tenant O.D. joined the hearing an hour after the scheduled hearing time.

### **Service of Notice of Dispute Resolution Proceeding and Evidence (the Proceeding Packages)**

S.G. testified that the Landlord served the Proceeding Packages on March 20, 2025 by posting them to the doors of the rental units of the named respondents. Service by posting to the door of a rental unit is permitted for applications under section 43(3) of the Act pursuant to a director’s standing order dated February 17<sup>th</sup>, 2023.

Tenant A.D.O.R., Tenant B.S., Tenant E.A., Tenant M.C., Tenant G.K. and Tenant S.K. confirmed receipt of the Proceeding Packages.

S.G. acknowledged receipt of Tenant A.D.O.R. and Tenant B.S.’s evidence.

Based on the testimony of the parties, I find the Landlord served the Proceeding Packages in accordance with the Act. Thus, I accept service of the Landlord’s evidence. I also accept service of Tenant A.D.O.R. and Tenant B.S.’s evidence.

### **Issue to be Decided**

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

### **Background, Evidence and Analysis**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord’s claim, and my findings are set out below.

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. The onus to prove their case is on the person making the claim.

S.G. stated that the building was built in 1978 and that the Landlord became the owner in June 2023. The Landlord is seeking an additional rent increase for three expenditures in the total amount of \$487,353.56. The expenditures are:

1. Exterior works	\$327,381.13
2. Interior (common areas) works	\$116,180.43
3. Hytec Water Management System	\$43,792.00

Section 23.1 of the RTR 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 Tenants bear 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

There was no evidence that the Landlord made a prior application for an additional rent increase affiliated with the capital expenditures within the previous 18 months.

S.G. stated the Landlord did not submit any prior application for an additional rent increase for the capital expenditures within the previous 18 months.

Based on S.G.'s 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 section 23.1(2) of the RTR.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, section 21.1(1) of the RTR 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.

S.G. stated that there are 40 rental units within the building. He said that the Landlord intends to impose rent increase on only 29 of them, which are the named respondents, because the tenants of the other 11 rental units moved into the building after all the works were completed.

In accordance with section 21.1(1) of the RTR, I find that there are 40 dwelling units to be used for calculation of the additional rent increase.

### Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on February 27, 2025.

Section 23.1(1) of the RTR 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 August 26, 2023 and February 26, 2025.

Policy Guideline #37C discusses when a payment outside the 18-month window is considered part of a project which qualifies for an additional rent increase:

A “capital expenditure” refers to the entire project of installing, repairing, or replacing a major system or major component as required or permitted (see section C.1). As such, 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.

A capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.

For the Landlord’s submitted expenditures 1 through 3 above, I address whether each expenditure was eligible, and whether each expenditure incurred in the 18-month period preceding the date on which the Landlord applied. I also make findings on whether each expenditure will be incurred again within 5 years.

#### 1. Eligibility of the Exterior Works

The Landlord submitted that the above works involve replacing the building’s original tar and gravel flat roof, the building’s original windows and sliding doors, two rotten balconies, and removing a tree above the underground parkade.

An engineering report dated June 13, 2023 (the Engineering Report) was submitted as evidence. The Engineering Report sets out the following building envelope condition assessment of the building:

- The main low-slope roof area consists of a built-up roof system. We assume the roofing dates from original construction. At 45+ years old, the roofing has far exceeded its service life (typically 25-30 years) and is recommended to be replaced with a new 2-ply SBS modified bitumen membrane system.

- The windows and sliding doors consist of non-thermally broken aluminum frames. At approximately 45 years of age, the windows and sliding doors have exceeded their typical service life of 40 years. If delaying the replacement of windows is considered, it is recommended that a detailed BECA be completed with exploratory openings below windows to review if the windows are allowing water into the wall assembly below. The windows are thermally inefficient in comparison to modern windows. Damage to interior finishes as a result of condensation was also observed. Sliding door replacement is recommended in conjunction with balcony waterproofing replacement.
- The balconies are protected with what appears to be a vinyl sheet waterproofing. The balconies drain off the edge, with no rainwater collection via gutters and downpipes. The age of the waterproofing is unknown; however, appears to be about 15+ years old, as evidenced by the surface wear. It appears some of the wood siding on the guardrails has been replaced as part of a maintenance program. It is not clear if this included any structural repairs.
- Plaza slab waterproofing is believed to be present on the top surface of the suspended slab over the below-grade parking structure at areas outside of the building footprint. Evidence of water penetration past the waterproofing membrane was observed in the form of efflorescence on the underside of the plaza slab. The best way to remediate leaks through the suspended slab is from above the parkade, by removing the overburden, replacing the waterproofing and installing new landscaping.

An arborist report dated October 24, 2023 (the Arborist Report) stating the following was also submitted as evidence:

Directly below this Acacia, is the underground parking garage. Between the soil here and underground is a water membrane on the surface of the concrete. This membrane has developed a leak and to prevent any further disruption of the membrane the tree needs to be removed. [...] A defined water seam is now beginning to show indicating some penetration of the membrane. Started very likely from a pin-hole roots have found and developed into the layer between the membrane and concrete seeking water. At this stage, damage is limited but removing the tree will be the solution to preventing further damage and water. The weight of this tree can also be part of the problem on shallow soil. Depending on the concrete, its unlikely to have been engineered to have this additional weight over this area from a large tree.

#### Replacement of roof, windows, sliding doors, and balconies

S.G. stated that the roof, the windows and the sliding doors were originally installed in 1978 and therefore were past their useful life.

Policy Guideline #40 indicates the useful life of tar and gravel roof is 20 years, aluminium framed window is 35 years, sliding glass door is 25 years, and wood balcony is 15 years.

Based on the S.G.'s testimony and the evidence before me, I find the Landlord proved that they replaced the roof, the windows and sliding doors because they were beyond their useful life.

Based on the Engineering Report and the Landlord's submitted photographs showing the balconies before they were replaced, I find the Landlord proved that they replaced the balconies because they were malfunctioning and were close to the end of their useful life.

Policy guideline #37C indicates that roofs and windows are major systems. The RTR also defines a "major component" in relation to a residential building, as a component of the residential property that is integral to the residential property or a significant component of a major system.

I find the roof, the windows and sliding doors are major systems, as they are integral to the rental property, enclose the building and protect its physical integrity, per section 21.1 of the RTR and Policy Guideline #37C.

While the balconies are private balconies for which the individual tenants have access, I find that they are a structural system and form a component of the building envelope and that a building envelope is integral to the residential property.

I find the reason for the replacement of roof, windows and sliding doors, and balconies was for replacement of major systems because they were beyond or close to the end of their useful life and malfunctioning, in accordance with section 23.1(4)(a)(ii) of the RTR.

### Tree removal

Based on the Arborist Report, I find the slab waterproofing membrane developed a leak due to the presence of the tree and that it had to be removed to prevent further disruption of the membrane.

Policy guideline #37C indicates a major component is essential to support a critical function of the residential property.

I find the membrane is a major component of the structural system of the building as it is a significant component that is essential to supporting the waterproofing of the underground parking structure, per section 21.1 of the RTR and Policy Guideline #37C.

I find the slab waterproofing membrane is malfunctioning due to the presence of the tree and that removing the tree qualifies as a repair of a major component that is malfunctioning, in accordance with section 23.1(4)(a)(ii) of the RTR.

*Expenditure incurred in the 18-month prior to the application*

I accept S.G.'s testimony and the Landlord's evidence that the final payment for the exterior works was made on January 15, 2025. I find the expense incurred within 18 months prior to the Landlord making their application.

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

Given the nature of the works involved, I find the exterior works are not expected to be incurred again for at least 5 years.

Considering the above, I grant the capital expenditure of \$327,381.13 for the exterior works of the building.

2. Eligibility of the Interior (Common Areas) Works

The Landlord submitted that the above works involve drywall and painting, replacing the carpet, the LED lighting upgrade, replacing the door hardware of the rental units and the building's front entrance door, replacing the mailbox, and installing an intercom system.

Drywall and Painting

The Landlord submitted that they patched sections of drywall due to pinhole leaks and repainted the interior common areas.

Policy Guideline #37C indicates patching dents or holes in drywall would not be considered a repair of a major system or major component.

As such, I find the expenditures they incurred in patching the drywall and repainting of the interior common areas are not eligible as per section 23.1 of the RTR.

Carpet Replacement

S.G. stated that the carpet was in a poor condition and past its useful life based on his visual inspection. However, he did not know whether it was original or when it was installed.

Based on the S.G.'s testimony and the Landlords' submitted photographs showing the carpet in the hallways, I find the carpet replacement is not an eligible capital expenditure as the Landlord failed to provide sufficient evidence to support that the carpet exceeded its actual useful life and needed replacement due to malfunctioning or being inoperative.

As such, I find the expenditure they incurred in replacing the carpet in the hallways is not eligible as per section 23.1 of the RTR.

LED Lighting Upgrade (\$3,026.87)

S.G. stated that the LED lighting upgrade was to improve overall energy efficiency.

As there is no evidence to the contrary, I find that the reason for this work was an upgrade in the lighting system to achieve a reduction in energy use, as set out in section 23.1(4)(a)(iii)(A) of the RTR. I further find that this amounts to significant components of a major system, which cause them to be major components as defined in section 21.1 of the RTR.

Door Hardware and Front Entrance Door (\$10,188.94)

S.G. stated that the door hardware and the front entrance door were originally installed in 1978 and therefore were past their useful life. He said that prior to the replacement of the front entrance door, it was easy to gain access to the building without a key. He also said that there were a few illegal entry incidents related to the past tenants, so the Landlord decided to replace the door hardware of the rental units for security purpose.

Policy Guideline #40 indicates the useful life of exterior (all types) doors is 30 years and interior (solid-core, metal clad, fire-rated) doors is 30 years.

Based on the S.G.'s testimony and the evidence before me, I find the Landlord proved that they replaced the door hardware and the front entrance door because they were beyond their useful life and led to possible security risks.

Entry doors is an example of a major component per Policy Guideline #37C.

I find the reason for these works were for replacement of major components because they were beyond their useful life and malfunctioning, in accordance with section 23.1(4)(a)(ii) of the RTR.

Mailbox Replacement (\$2,218.00)

The Landlord submitted that the original mailbox was dated and malfunctioning.

Based on the Landlord's submissions and the evidence before me, I find the Landlord proved that they replaced the original mailbox because it was malfunctioning.

Policy guideline #37C defines a "major system" as a system that is integral to the residential property or to providing services to tenants and occupants and that a "major component" is a significant component of a major system.

I find the mailbox to be a major component as it is a significant component of a system that is integral to the building to provide services to the tenants.



I find the reason for this work was for replacement of a component because it was malfunctioning, in accordance with section 23.1(4)(a)(ii) of the RTR.

Intercom System (\$3,764.30)

The Landlord submitted that they installed a new intercom system to replace the original intercom system for an improvement of security.

I find the reason for this work was to improve in the security at the residential property, as set out in section 23.1(4)(a)(iii)(B) of the RTR.

*Expenditure incurred in the 18-month prior to the application*

I accept S.G.'s testimony and the Landlord's evidence that the final payment for the works of the LED lighting upgrade, the door hardware, the front entrance door, the mailbox, and the intercom system was made on January 15, 2025. I find the expense occurred within 18 months prior to the Landlord making their application.

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

Given the nature of the works involved, I find the interior works are not expected to be incurred again for at least 5 years.

Considering the above, I grant the capital expenditure of \$19,198.11 for the interior works of the building.

3. Hytec Water Management System

The Landlord submitted that this capital expenditure was incurred to install a water management system in the building to protect the plumbing pipes from potential pinhole leaks.

S.G. started that as the plumbing pipes were installed in 1978 and are past their useful life, the Landlord could either replace the pipes or install the Hytec Water Management System to extend their life and minimize the possibility of pinhole leaks. He said that the later option was more cost efficient and would not affect the tenants' occupancy in their units.

I accept the Landlord's submissions that replacing the pipes would be very costly and disruptive to the tenants. The Landlord has used the Hytect Water Management System as an alternative to this invasive plumbing work.

Based on the S.G.'s testimony and the evidence before me, I find the plumbing pipes are past its useful life and malfunctioning due to the presence of many pinholes. I find the solution adopted by the Landlord is an acceptable alternative to a wholesale replacement of the pipes.

I find the reason for this work was to repair a major system that was past its useful life and malfunctioning, as set out in section 23.1(4)(a)(ii) of the RTR.

*Expenditure incurred in the 18-month prior to the application*

I accept S.G.'s testimony and the Landlord's evidence that the final payment for the installation of the Hytec Water Management system was made on October 12, 2023. I find the expense occurred within 18 months prior to the Landlord making their application.

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

Given the nature of the work, I find this work is not expected to be incurred again for at least 5 years.

Considering the above, I grant the capital expenditure of \$43,792.00 for the installation of Hytec Water Management System.

*The Tenants' submissions*

Tenant A.D.O.R. submitted that the Landlord's application should be dismissed due to incompleteness of the works, the Landlord's bad faith intention, and the tenants' hardship. He further submitted that the Landlord has omitted their duties as a landlord to maximize the amount of the capital expenditures.

Tenant B.S. submitted that the Landlord's application should be dismissed because there was a lack of consultation with the tenants given the significant impacts on them. She also submitted that the roof replacement, the installation of the Hytec Water Management System and the repair of the first floor access panels were due to the previous landlords' inadequate repair or maintenance. She stated that some of the repair works are incomplete and do not apply to her unit.

Tenant E.A. and Tenant M.C. both submitted that the previous landlords were negligent. Tenant E.A. said that a previous tenant had sent an email to the previous landlords raising their concerns over their negligence whereas Tenant M.C. said that the previous landlords often ignored her service requests. Tenant E.A. admitted that the Landlord has been conducting various repairs and maintenance after they bought the building. Tenant M.C. agreed that the Landlord has been very responsive whenever an issue comes up.

Tenant G.S. raised her concerns over the overlapping relationship between the contractors and the Landlord and whether the bidding process was fair to ensure lower prices and higher quality. She also raised other concerns related to the effectiveness of the works.

Tenant S.K. raised his concerns over when the additional rent increase will occur and whether it will be all at once or over three years.

I find Tenant B.S., Tenant E.A., and Tenant M.C.'s submissions do not point to the actions of the current Landlord but rather the inadequate repair or maintenance of the previous landlords and their failures. As such, I find the capital expenditures incurred were not due to the present Landlord's inadequate repair or maintenance.

I find the other matters raised by Tenant A.D.O.R., Tenant G.S. and Tenant S.K. do not affect the Landlords' eligibility for capital expenditure rent increase which is the focus of this hearing.

### Outcome

The Landlord has proven all the necessary elements for the exterior works, five pieces of the interior works (namely, the LED lighting upgrade, the door hardware, the front entrance door, the mailbox, and the intercom system) and the Hytec Water Management System.

I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of \$327,381.13 (the exterior works), \$19,198.11 (the interior works), and \$43,792.00 (Hytec Water Management System). This is pursuant to s.43(1)(b) of the Act, and s. 23.1(4) of the RTR referred to above.

Section 23.2 of the RTR 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 40 specified dwelling units, and that the total amount of the eligible capital expenditures is \$390,371.24.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of **\$81.33** ( $\$390,371.24 \div 40 \div 120$ ) per month, per affected tenancy. This is as per section 23.2 of the RTR. **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 expenditures of \$390,371.24.

I order the Landlord to serve all tenants with this Decision, in accordance with section 88 of the Act. This must occur within two weeks of this Decision. I authorize the Landlord to serve each tenant by posting a copy of the decision to each rental unit door.

The parties may refer to RTB Policy Guideline 37C, sections 23.2 and 23.3 of the RTR, 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.

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

Dated: May 8, 2025

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Residential Tenancy Branch