

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an additional rent increase for capital expenditure in accordance with 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).

Landlord I.I.P.A.L. was represented at the hearing by legal counsel K.C. and K.T., and representatives G.W., A.A., J.J., and D.P. at the hearing.

Tenant J.K., Tenant R.C., Tenant H.M., Tenant J.D.2, Tenant S.N., Tenant N.M., Tenant J.S. attended the hearing for the Tenant.

The Landlord confirmed service of Notice of Dispute Resolution and proceeding package to each Tenant by posting to each unit door on January 10, 2025. The Landlord provided a statement from its representative who confirmed the posting to each unit, as well as the contents of each package including a letter from the Landlord with instructions on accessing and downloading the Landlord's evidence submitted with in support of its application.

The Landlord also served to each Tenant a letter providing access information to the Landlord's supplemental evidence submitted to the RTB two weeks prior to the re-scheduled hearing (this hearing previously adjourned at request of a Tenant). The Landlord's representative provided written confirmation of service of the Landlord's letter regarding its supplemental evidence by posting to each unit door on January 29, 2025.

I find the Tenants were served with the required materials in accordance with the Act.

Tenant M.F. had submitted prior to the first scheduled hearing in this matter a written request for an adjournment. Tenant J.S. submitted a written statement regarding domestic hot water issues in the rental building, with copies of emails regarding the issue in support of her testimony. There was no proof of service of the written documents to the Landlord.

### **Issue for Decision**

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

## **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 rental property was constructed in 1969, has 9 storeys and 50 rental units. The Landlord's application requests an additional rent increase for those Tenants who were residing in their units before September 20, 2023, the date on which the Landlord made final payment for the capital improvement.

The Landlord's application requests an additional rent increase for a capital expenditure made for the installation of an energy-efficient boiler and storage tanks which provides the heating and domestic hot water for Tenants. The cost for the boiler and storage tanks was \$184,663.74, but counsel confirmed the Landlord received a rebate for the energy-efficient products installed in the amount of \$9,882.00, which would be deducted from the total amount provided on its application. The Landlord made its final payment for the capital expenditure on September 20, 2023. The Landlord submitted copies of the invoices, together with evidence of payment, and evidence of the rebate received from the utility company. The Landlord also provided photographs of the replaced and newly installed boiler and storage tanks.

The Landlord submitted evidence regarding the energy-efficiency of the boiler system it has installed. The Landlord provided copies of its gas utility invoices for the period both pre- and post-installation together with a summary of energy used. During the hearing, Landlord's counsel clarified that in the year prior to installation of the new boiler system, the replaced boiler system consumed 2,475.02 kJ of energy. In the one-year post-installation, the new system used 1,903 kJ of energy (a 23 percent decline) and in the second year since installation the system has consumed 2,045 kJ of energy (a 17 percent decrease in energy consumption).

The Landlord purchased the rental property in 2021 and submitted an inspection report completed during its due diligence period. The property condition report was prepared by an engineering firm that identifies the age of the replaced boiler at that time to be 52 years old given the manufacture date of 1968 and notes the boiler has exceeded its useful life and replacement was recommended. The report's author notes the useful life for a boiler is 25 to 30 years. The two water storage tanks were identified as manufactured in 2009.

The Landlord's director of energy services stated the new boiler system was expected to have a useful life of approximately 20 years. The Landlord's counsel noted the gas utility company report projected the new system to last 20 years.

The Landlord provided a copy of the maintenance agreement for quarterly maintenance of the boiler and tanks. The copy provided indicates it was signed in 2024, but Landlord's counsel states that the maintenance contract was entered into after the Landlord purchased the rental property and has been renewed annually.

The Landlord's director of operations provided a brief explanation regarding the Landlord's rent assistance program that evaluates tenant financial hardship requests on a case-by-case basis.

Tenant J.K. expressed concerns regarding lack of hot water in the building since the installation of the new boiler. She stated that as of the hearing date, there was no hot water and when hot water was working, "it took forever" to reach her tap. The Landlord's director of energy explained this was due to an emergency plumbing repair for another unit in the building. Tenant J.K. also testified the heat was irregular in her unit since the installation of the new system, and she was unable to maintain a constant temperature in her unit. The Landlord's director of energy services acknowledged the temperature fluctuations arising since the installation of the new boiler and stated they were working to determine the cause.

Tenant H.M. confirmed the issues regarding lack of hot water and the heating in her unit was inconsistent. She stated she has resided in her unit more than 10 years and there were no problems prior to the Landlord replacing the boiler. She also stated she was frustrated with the Landlord's lack of response to her complaints regarding the hot water and heat in her unit.

Tenant J.D. set forth several objections to the additional rent application:

- the application places an unreasonable and disproportionate burden on tenants to raise objections to an application where the evidence is largely within the landlord's control;
- the application system was inherently unfair as tenants are laypersons and there is an imbalance of power between tenants and landlords;
- an additional rent increase causes financial strain on tenants, particularly those in urban areas with already high rents;
- the process is a deviation from the prior practice of placing the burden on landlords to improve the rental property at its own expense, rather than shifting the cost-burden to tenants;
- an additional rent increase is one that remains in perpetuity and may extend beyond the time necessary for the landlord to be compensated for the cost of the capital expenditure (and for this application, Tenant J.D. requested that if the Landlord's application is granted, the rent increase be limited to a fixed period);
- lack of tenant resources and landlord transparency as to the data the landlord has collected in support of the application;
- insufficient time for tenant response given the long-term effects of an additional rent increase.

Tenant J.D. essentially argued an additional rent increase is unfair as Tenants are financing the Landlord's capital improvement whereas landlords are required to make improvements to the property in accordance with their obligations under the Act.

Tenant J.S. agreed with Tenant J.D.'s position and noted further that at the time the Landlord purchased the rental property it was aware of the age, condition and recommended replacement of the boiler. Tenant J.S. reiterated prior Tenant testimony regarding the problems with intermittent hot water, lack of consistent temperature in the unit and the prior unit was functional with no problems. She stated that these resulted in a loss of enjoyment in her tenancy. She also noted that during installation there was a toxic smell and questioned the efficacy of the Landlord's rent income assistance program.

Tenant N.M. testified he was the building manager for the previous owner. He stated that since installation of the new boiler, there was no heat in the lobby area and generally questioned the necessity of installing the new boiler when the prior boiler was functional without problems.

Tenant S.N. stated the Landlord's additional rent increase application was a continuation of the Landlord "bullying" the tenants since purchasing the property and loss of heat and hot water was due to the Landlord's negligence. She stated the Landlord had a legal team and could shift costs to the Tenants. Further, the condition report provided notice to the Landlord that a new boiler would be needed at some point. Tenant S.N. was concerned the Landlord would replace the elevator and elderly tenants would have difficulty accessing their units without an elevator.

Tenant R.C. stated she lacked heat for several months and the temperature in her unit had declined one or two degrees over time after the installation of the new boiler.

The Landlord's counsel replied there were currently no "open" maintenance requests from Tenants in the Landlord's portal. She stated the Landlord makes effort to address Tenant repairs and provided the phone number for the resident building manager in response to a Tenant noting that elderly tenants do not have computers and internet connection. The Landlord was aware of some problems with the new boiler since installation and was attempting to determine the cause of the varying temperature in the building.

Tenant J.D. countered the Landlord did not promptly respond to Tenant repair/maintenance requests. He further stated the tenancy agreement does not provide for additional rent increases.

## **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 by submitting an application for dispute resolution.

## 1. Legislative History

The BC Rental Task Force set forth its recommendation for the additional rent increase. In a statement to then Premier Horgan and Minister Robinson:

While we are still working to complete our full report, the Task Force has agreed on a recommendation for a change to the Annual Allowable Rent Increase formula. We decided to share this recommendation now, to give the government the opportunity to act this year, as the need is great.

After considerable deliberation the Rental Housing Task Force is recommending that the B.C. government change the rent increase formula from the current formula of inflation plus a guaranteed 2% (4.5% total for 2019) to inflation only (2.5% for 2019), removing the automatic additional 2% yearly increase.

This decision was made after we heard of many cases where renters struggled to pay yearly maximum rent increases. We also heard from tenants who have faced maximum rent increases, while building maintenance was not done. In order to ensure building maintenance is prioritized, we are also recommending that changes be made to allow additional rent increases above inflation through application to the Residential Tenancy Branch. This will allow for additional modest rent increases in cases where renovations and repairs to rental units have been completed. This change would bring us into line with the similar practices that have been used in Ontario and Manitoba for over a decade and will ensure landlords can complete necessary work to maintain their buildings, while continuing to provide necessary housing. We suggest that the Ministry of Municipal Affairs and Housing work with landlord and tenant groups to determine criteria for above the guideline rent increases.

Taken together these two changes will make rent more affordable for British Columbians, while also helping ensure needed repairs are completed to maintain and improve rental housing in British Columbia.

Thus, the recommendation for the additional rent increase, which was subsequently enacted by the Legislature (as set forth below), was aimed at replacing the prior system of automatic rent increases where landlords may not have been using the generated funds to upgrade the rental property.

## 2. 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 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.

### 3. Prior Application for Additional Rent Increase

In this matter, based upon the Landlord's counsel's representation, I find there have been no prior applications for an additional rent increase within the 18 months before this application was filed.

### 4. 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 50 specified dwelling units to be used for calculation of the additional rent increase, although only those units which were included in the Landlord's application and served with a Notice of Hearing in this matter are subject to the additional rent increase, as the Tenants of these units were residing in the rental property prior to September 20, 2023, those tenants moving in on or after September 20, 2023, having their rental rates adjusted to include the capital expenditure.

### 5. Amount of Capital Expenditure

The Landlord claims the total amount of **\$174,781.74** as detailed in the Landlord's itemized capital expenditure set forth above, which includes the gas utility company's rebate for the installation of energy-efficient products.

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

As stated above, 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.

The capital expenditure at issue 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.”



### Hot Water Boiler and Storage Tanks

I find the boiler and storage tanks comprise a major component and major system of the rental building. I find the replacement was necessary as the replaced boiler was more than 50 years old and at the end of its useful life. Additionally, the storage tanks were also approximately 12 years old and were at or near the end of anticipated useful life.

The Landlord has established with satisfactory evidence that the new boiler is energy efficient. The gas utility company provided a rebate based upon the boiler energy efficiency and the Landlord provided documentation to establish a decrease in energy consumption from the old to the new boiler. I find the Landlord has provided sufficient evidence to satisfy the requirements of the Regulation.

I accept the Landlord's evidence that final payment for the work was made on September 20, 2023, within 18 months of the Landlord making this application on January 10, 2025.

The Landlord provided the invoices and receipts for the capital expenditure. I find it is reasonable to conclude this capital expenditure will not occur again within five years.

### Tenant Objections to the Capital Expenditure

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 (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.

I have found the boiler and storage tank replacement was necessary as the boiler was original to the building and both had reached or exceeded their useful life. Furthermore, I find the boiler meets the criteria of an energy-efficient major component or system under the Regulation.

I find the Landlord completed and paid for the necessary work and is bound only by the statutory framework in seeking the capital expenditure.

The Tenants generally raised issues regarding the operation of the new boiler since its installation not experienced with the replaced boiler. The Landlord's representatives recognized there were issues with the boiler which it was attempting to correct. Tenant J.D. also raised several concerns regarding the legislation enabling a landlord to request an additional rent increase, and the fairness to tenants in bearing the cost for the capital improvement. However, these are not issues which Tenants may urge to defeat an application for an additional rent increase for capital expenditure.

I find the Tenants have not provided sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for the capital expenditure.

Based on the above, I find the Landlord is entitled to recover for the energy-efficient boiler and storage tanks in the amount of \$174,781.74, which includes the rebate the Landlord received for the capital improvement.

## 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 a total capital expenditure in the amount of **\$174,781.74**, for the major component 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 divided by 120. In this case, I have found there are 50 specified dwelling units and the total amount for the eligible capital expenditure is \$174,781.74.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **\$29.13 per unit ( $\$174,781.74 \div 50$  specified dwelling units)  $\div 120$  months = \$29.13, for those current Tenants residing in their rental unit prior to September 20, 2023.** 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 the capital expenditure totaling **\$174,781.74**. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the Tenants with this Decision, in accordance with section 88 of the Act, within two weeks of the date of this Decision. I authorize the Landlord to serve those Tenants by email if the Tenant provided an email address for service. The Landlord must also provide a copy to any Tenant that requests a printed copy.

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

Dated: May 1, 2025

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Residential Tenancy Branch