

DECISION

Introduction

On February 6, 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 expenditure.

Counsel for the Landlord, P.P., and Tenants C.D.F., K.B., J.M., J.H., J.M.2, L.L., F.P., S.L., D.M., S.R., C.M., J.T. and W.D. attended the hearing at the scheduled hearing time.

Service of Notice of Dispute Resolution Proceeding and Evidence

P.P. testified that the Landlord served the Notices of Dispute Resolution Proceeding and their first batch of evidence on February 17, 2025 and their second batch of evidence on March 27 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 17th, 2023.

All of the tenants who attended the hearing confirmed receipt of the Notices of Dispute Resolution Proceeding and the two batches of evidence.

Based on the testimony of the parties, I find the Landlord served the Notices of Dispute Resolution Proceeding and the two batches of evidence in accordance with the Act. Thus, I accept service of the Landlord’s first and second batch of evidence.

Given P.P. acknowledged receipt of evidence from Tenants K.B., J.M., J.H., J.M.2, C.M., J.T. and W.D., I have accepted their documentary evidence and will consider it when rendering this decision.

Issue to be Decided

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

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.

The Landlord is seeking an additional rent increase for a domestic water piping replacement in the total amount of \$2,176,261.14.

P.P. stated that the Landlord has incurred a total of \$2,176,419.64 for the entire project. However, they are willing to accept a lower amount of \$2,176,261.14 as it was stated in the Notices of Dispute Resolution Proceeding served on the tenants.

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.

The Landlord submitted that they did not submit any prior application for an additional rent increase for the capital expenditures within the previous 18 months.

Based on the Landlord's submissions, 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.

P.P. stated that there are 173 rental units within the building.

In accordance with section 21.1(1) of the RTR, I find that there are 173 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 6, 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 5, 2023 and February 5, 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.

The Landlord submitted that the final payment related to the capital expenditure was made to [redacted] Engineering Limited on November 1, 2023. In support, the Landlord submitted the following documents:

- A copy of cheque in the amount of \$5,322.22 payable to [redacted] Engineering Limited dated November 1, 2023;
- The Landlord’s internal account record with [redacted] Engineering Limited indicating an amount of \$5,322.22 was cleared on November 1, 2023;
- Certification of Substantial Completion issued by [redacted] Engineering Limited certifying the completion of the Domestic Water Piping Replacement; and
- Occupancy Completion Permit dated November 1, 2023.

P.P. explained that the Landlord made their last payment to [redacted] Engineering Limited on November 1, 2023 as soon as they obtained the occupancy permit from the City of Victoria as there was a required holdback.

I accept the Landlord’s submissions that they engaged [redacted] Engineering Limited to oversee the entire project, and that the final payment was made on November 1, 2023 upon the receipt of the occupancy permit. 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

The Landlord submitted that the expenditure is not expected to occur again for at least 5 years.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years.

Eligibility and Amount

The Landlord submitted that the domestic water piping system was original, and the building was built in 1973.

A domestic water piping/equipment assessment report prepared by P.Z. of [redacted] Engineering Ltd. dated July 31, 2021 (the Assessment Report) was submitted as evidence indicating the following:

Apartment Building Piping

[...] [The plumbing maintenance contractor] V.D. confirmed they replaced many short sections of the domestic cold water, hot water and hot water recirculation mains & risers piping (DCW, DHW & DHWR), especially the DHW & DHWR. This is due to many piping leaks & failures.

The existing plumbing drawings indicate the piping routing & sizing for the domestic cold water, domestic hot water & domestic hot water recirculation piping. We assume all of the DCW, DHW & DHWR piping is original & is copper, except some small sections of piping which have been replaced due to failure. This is based on our observations and also the comments we received from V.D.

It is not possible to see any of the existing domestic piping risers to the suites as all are concealed within walls and ceilings. It is possible to see small amounts of piping exiting the walls in the suites which are connected to the plumbing fixtures. This piping I observed in suites was copper.

Maintenance Records

[D.L. of V.D.] indicated his company has maintained the domestic water piping systems for 20+ years. He indicated his company has been required to replace many short sections of the domestic cold water, hot water and hot water recirculation mains & risers piping (DCW, DHW & DHWR), especially the DHW & DHWR. This is due to many piping leaks & failures. The frequency has increased in recent years.

V.D. also confirmed they have never been unable to find any riser shutoff valves for the building. Typically they have been required to freeze local sections of the

piping in order to complete the necessary repairs. This avoids having to shut down the water for large sections of the building. It also adds significant cost to each repair.

Recommendations

We recommend the domestic cold water, domestic hot water and domestic hot water recirculation (DCW, DHW & DHWR) piping mains and risers be scheduled for immediate replacement. We also recommend all of the piping in the suites be scheduled for immediate replacement. This is due to the significant age of the piping and the significant development of plumbing piping leaks. [redacted] Engineering Ltd. anticipates plumbing piping leaks will continue to occur in the future and increase in frequency. [...]

Policy Guideline #40 indicates the useful life of pipes is 30 years.

Based on the Landlord's submissions and the Assessment Report, I find the Landlord proved that they replaced the domestic water piping system because it was beyond its useful life and leaking.

Policy guideline #37C indicates that plumbing system is a major system.

I find the domestic water piping system is a major system as it is integral to the residential property per section 21.1 of the RTR and Policy Guideline #37C.

Considering the above, I find that the expenditure of \$2,176,261.14 to replace the domestic water piping system is in accordance with section 23.1(4)(a)(ii) of the RTR, as the Landlord replaced the domestic water piping system because it was beyond its useful life and malfunctioning.

The Tenants' submissions

Tenant K.B. stated that the Landlord's submitted evidence is insufficient to prove that the capital expenditures were incurred within 18 months prior to the Landlord making their application.

Tenant J.M. agreed with Tenant K.B. that the Landlord's evidence was not sufficient to prove that the final payments were made on September 19, 2023 and November 1, 2023 as claimed. He said that even if they were proven, none of the repair works was completed or invoiced within the 18-month period and that the only action taken by the Landlord was making their final payments. He said that the Landlord file their application 15 months after the final payment and that it was not the intention of the legislation to treat the 18-month period simply as a deadline to file an application.

Tenant J.H. submitted that as a senior pensioner, he is facing a significant hardship due to the proposed increase of \$104.93 additional rent per month. He said that the repair works had caused the tenants inconvenience and disturbance.

Tenants J.M.2., L.L., F.P., S.K., and D.M. submitted that the Landlord provided evidence indicating that they had invited four companies to submit their bids but only the bid from [redacted] Plumbing & Mechanical Systems Ltd. was provided. They said that in accordance with the RTB Policy Guidelines, a landlord should be prepared to demonstrate that the cost of the capital expenditure was reasonable and competitive. This may involve providing more than one quote for the work done. They further submitted that the Landlord has the capacity to absorb the capital expenditure from its existing assets rather than passing the cost onto the tenants as most of them are facing financial hardship because of the additional rent increase.

Tenant S.R. raised concerns over the Landlord's potential repairs and improvements to the building in the future and that the tenants may have to bear with other additional rent increases in the coming years.

Tenants C.M. and J.T. submitted that the Landlord's application should be dismissed due to the following reasons:

1. There is one floor consisting 12 commercial units in the building. As there were no specific works/costs separating the commercial and residential units, the tenants should not be responsible for the works that solely benefit the commercial units.
2. The domestic water piping system should have been replaced much earlier as they were almost 20 years beyond its typical lifespan and that the entire project was due to the Landlord's "deferred" maintenance as the Landlord failed to provide maintenance records.
3. The Certification of Substantial Completion was issued on April 30, 2023 and the Landlord made their final payment on November 1, 2023 demonstrates their attempt to extend the eligibility window by delaying their final payment and that Policy Guideline 37C does not allow extending eligibility based on delayed minor payments or final touches once substantial work has been completed.

Tenant W.D. submitted that he signed a fixed term tenancy agreement beginning on September 15, 2024, with an agreed to end of tenancy date of September 25, 2025. He stated that the Landlord should have brought his attention to this proposed additional rent increase when he signed the agreement and that he would have made a different decision back then.

As previously stated, Policy Guideline #37 specifically clarifies on when the capital expenditure is considered to be "incurred":

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.

I find that the date on which the replacement of the domestic water piping system was incurred is the date the **final** payment related to the project was made. As the Landlord has provided sufficient evidence to prove that their final payment related to the project was made on November 1, 2023, I find that the final payment for the project was incurred in the 18-month period pursuant to Policy Guideline #37.

I have thoroughly reviewed the relevant RTB Policy Guidelines. I find that the Landlord is not required to provide more than one quote for the work done as submitted by Tenants J.M.2., L.L., F.P., S.K., and D.M. Such requirement may be from another jurisdiction. Furthermore, based on the Landlord's submitted evidence, I find that the Landlord has demonstrated the cost of the replacement of the domestic water piping system was reasonable and competitive.

Regarding the submissions on the commercial units in the building, I note that the replacement work was a complete replacement of the domestic water piping system for the entire building. Despite the commercial units are part of the plumbing system and are benefited from the replacement work, I find that I do not have jurisdiction over commercial tenancies. I also find that this does not affect the Landlord's eligibility for capital expenditure rent increase under section 23.1 of the RTR.

I find the matters related to the Landlord's financial position, the future repairs and improvements, the Landlord's decision not to carry out the replacement work earlier, and the Tenants' financial hardship, do not affect the Landlord's eligibility for capital expenditure rent increase under section 23.1 of the RTR.

I note that the Landlord is bound by their tenancy agreement with Tenant W.D. regarding the monthly rent amount during the fixed term. Upon the expiry of the fixed-term tenancy, they are required to provide Tenant W.D. a three months' notice of a rent increase should they wish to impose the additional rent increase for the capital expenditure on him.

Conclusion

The Landlord has proven all the necessary elements for the capital expenditure.

I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditure of \$2,176,261.14. This is pursuant to section 43(1)(b) of the Act, and section 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 find there are 173 specified dwelling units, and that the total amount of the eligible capital expenditure is \$2,176,261.14.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditure of **\$104.83** ($\$2,176,261.14 \div 173 \div 120$) 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.

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 6, 2025

Residential Tenancy Branch