Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

# 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 0.B.L. and Landlord R.A.P.I. were represented by its legal counsel M.D., property manager C.H., district manager B.L., and vice-president construction and property standards K.M.

Tenant M.P., Tenant B.P., Tenant P.P., Tenant Y.P. attended the hearing.

The Landlord confirmed service of the Notice of Dispute Resolution Hearing and proceeding package to each Tenant either by posting to each unit door or emailing to those Tenants who had provided their email address for purposes of service, on February 25, 2025. The Landlord provided a statement from its representative who confirmed service to each Tenant, 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.

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

No evidence was submitted by any Tenant to this proceeding.

### Preliminary Matters

At the outset of the hearing, counsel stated the Landlord had determined it would withdraw from its application the repair/replacement of a fire door. The withdrawal request was without objection and is granted. Counsel stated the amount for this work was $5,507.25, and was to be deducted from the total amount of capital improvements in the amount of $330,972.80 as stated in its application, resulting in a requested amount of $325,465.55 for the additional rent increase.

### 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 consists of two buildings: the first was constructed in 2005 and the second building was completed in 2018. The buildings are connected to each other. Combined, there are a total of 194 rental units.

The Landlord's application requests an additional rent increase for the following capital expenditures:

- Hot water boiler - $221,341.20, with last payment made by the Landlord for the work on April 18, 2024
- Garage membrane repair - $78,249.69, with last payment made on October 18, 2023 for the work
- Repair of elevator pit cracks - $16,928.10, last payment for the work made by the Landlord on November 10, 2023
- Installation of three additional security cameras - $8,946.56, the last payment for this work paid by the Landlord on October 2, 2023

The Landlord provided copies of invoices for each capital improvement as well as proof of payment for the work. The Landlord also provided photographs of each component or system repaired or replaced, together with evidence from third parties (engineers and project managers) attesting to the necessity for the work.

The Landlord submits the boiler was more than 10 years old and had failed, requiring replacement. The Landlord's representative K.M. testified there are two heating boilers, both original to the building. The heat exchanger on one boiler had failed and the other boiler unit had totally failed. The representative explained the Landlord looked first at repair and retained an engineering firm for their opinion. After consulting with the engineering firm and determining the heat exchanger on the one unit could not be repaired, the second boiler then failed. K.M. stated at this juncture the Landlord was informed it would be more expedient to order new replacement boilers as there was a 4-month wait for the heat exchanger. He further testified this proved correct advice as the replacement boilers came sooner allowing the Landlord to complete replacement prior to the winter season. Counsel noted the Landlord had submitted the annual maintenance agreement it had for the boiler system, which applied to both the boilers that failed as well as for the new replacement boilers. The Landlord also submitted copies of the 10-year warranties issued for each new boiler. The Landlord's representatives stated the boilers provided heat not only to rental units in one building but also provided for heat in the common areas of the other building. Counsel noted

that for this reason, the Landlord's position was the cost of the replacement boilers should be allocated to tenants of both buildings as an allocation to one building would result in a disproportionate burden on those rental unit residents although all tenants benefitted.

With respect to the replacement of the parking membrane and overlay, representative K.M. testified that a 2-level parking structure is attached to one of the rental buildings. He stated the repair was to ground level only where all vehicles passed through. He stated the garage roof top was not used for parking. The Landlord submitted an engineering report recommending repair to the membrane and overlay in order to preserve the concrete floor. The Landlord's representative K.M. noted the repair was to the drive aisle of the parking level, not the parking spots which did not undergo significant wear-and-tear from vehicles. K.M. stated the Landlord had the repair work open to bid, selecting the lowest of the three bids it received. It is expected the repair work will last more than 5 years. Counsel and K.M. both stated the garage building was integral to the rental property structure. The parking structure was described as part of the rental building structure, and was not a separate, free-standing parking structure. Upon inquiry, representative B.L. stated parking spots in the parking structure are available to all residents. Additionally, he further stated there are uncovered outside parking spaces and covered parking is also available to residents on the rental property.

The elevator cracks were the result of high pressure groundwater infiltration into the sub-ground concrete box. Water in the pit was found during a monthly inspection, and had accumulated notwithstanding a drain in the pit. K.M. testified the presence of water is detrimental to the elevator operating equipment as it would cause the equipment to rust, thus damaging the equipment. K.M. stated the repair consisted of injection of epoxy sealant into the cracks to prevent water intrusion. The Landlord's representative explained epoxy sealant is the preferred repair method as it flows into and thus better fills the cracked area. The Landlord provided documentary evidence that the sealant will last beyond five years.

Lastly, the Landlord installed three additional security cameras: at the back of the building, directed toward a lane; at the front door access to the building; and, at the back door by the parking garage. The installation was done to increase tenant security at the rental property. The Landlord submitted correspondence from its resident building manager outlining the camera installation at the building, together with documentation regarding the type and capabilities of the security cameras installed. The cameras have an expected useful life of at least 5 years.

Tenant B.P. explained she had moved into the rental property in October 2023, and had done so because she is retired, on a fixed income, and had moved out of her strata unit into a rental unit as she found the strata fees and assessments "very onerous." Tenant B.P. stated when she viewed the rental property, she was not advised by the Landlord's representatives that an additional rent increase was expected. Counsel replied the legislation only states that all tenants in a rental property at the time of the application are subject to the additional rent increase. He opined this promotes fairness of the law as it allowed for no discretion that some tenants not receive a rent increase while others

are subject to the additional rent increase, when all tenants benefit from the capital improvement.

Tenant P.B. stated she had several objections to the Landlord's application. First, she stated the buildings are joined, but the replaced boilers are in the building that was first constructed in 2005. She inquired as to which elevator was repaired, and Tenant P.B. also inquired as to the Landlord's responsibility for budgeting for capital improvements rather than resort to the additional rent increase.

Landlord representative C.H. stated the two buildings are "joined and fully connected." She stated the elevators service all tenants. Similarly, the replaced boilers in the one building provide heat to the common areas in both buildings. Counsel responded to the Tenant's inquiries that the additional rent increase allocation for a capital improvement is allocated only to one building, in situations where there are more than one rental building at issue, when that improvement serves only one building. In this case, as the boilers provide heat throughout the common areas of both properties, the allocation would be to all tenants, not just the building where the boilers were located. Counsel elicited the testimony of K.M. that the elevators can be used by all tenants residing in both buildings.

Tenant Y.P. stated she moved into her unit in 2015. She stated she was surprised by the expense and noted, in particular, the parking spaces are assigned and paid for by individual tenants (as opposed to all tenants being able to park wherever a spot was available at any given time). Counsel stated the parking garage was integrated into the rental property building and thus was considered part of its structure.

Tenant M.P. raised issues pertaining to his use of outdoor space due to a door squealing. He stated it had once been repaired in December 2023, but had since started again. He found the issue aggravated his hearing and prohibited his use of his unit's balcony. Representative B.L. stated he would contact Tenant M.P. directly about the issue.

Legal counsel presented legal submissions regarding the application of the additional rent increase regime for each of the capital expenditures set forth in the Landlord's application. With regard to the parking structure repairs, counsel noted the replacement was not a result of Landlord's lack of maintenance, which was supported by an engineer's report provided by the Landlord in support of its application. Counsel further stated that repair was not a viable option and replacement of the parking membrane and top-coat for the heavily trafficked drive area was necessary. Similarly, with regard to the boiler replacement, he reiterated the boilers had failed and were replaced as these were at the end of their useful life (one completely and one heat exchanger that was more effectively replaced with a new boiler entirely to ensure continuous heat to residents throughout the winter months).

The additional security cameras he noted were a permitted capital improvement under the regulation as enhancing the security of the building and tenants residing therein. The repair of cracks at the below-grade elevator shaft were necessary as well as, the elevator being a major component or system of the rental property.

## 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 to the detriment of its residents.

The legislative history addresses Tenant B.P.'s inquiry regarding the necessity of landlord's budgeting for capital improvements.

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:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - 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));
    - the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
    - 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.

As a preliminary matter, I accept the Landlord's evidence to establish it meets the definition of "landlord" as provided in section 1 of the Act. The Landlord provided documentary title and ownership evidence as well as a legal explanation of the relationship between the entities to establish it met the criteria of "landlord" set forth in the Act.

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 194 specified dwelling units to be used for calculation of the additional rent increase.

5. Amount of Capital Expenditure

The Landlord claims the total amount of **$325,465.55** as detailed in the Landlord's itemized capital expenditure set forth above (this amount includes the Landlord's withdrawal of its claim for the fire door replacement in the amount of $5,507.25).

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 expenditures 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 Replacement*

I find the hot water boilers are a major component and major system of the rental buildings as these provide heat throughout the rental units of one building and the common areas of both buildings. I find the replacement was necessary as the replaced boilers were at the end of their useful life. The Landlord provided the maintenance contract for the old boilers (that carries forward for the new boilers) as evidence the replacements were not a result of alleged failure to maintain these major components by the Landlord. The Landlord provided evidence the total cost for the boiler replacements was $221,341.20, with payment made by the Landlord, there being no other financial source available to the Landlord for this cost.

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 April 18, 2024, within 18 months of the Landlord making this application on February 25, 2025.

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

*Parking Garage Membrane Repairs*

Policy Guideline 37C states that a major component or major system includes "pavement in parking facilities." I accept the Landlord's representation the parking garage structure is integral to, and integrated into, the rental property building. I find, based upon the evidence from the project manager, the necessity for the repair was due to the wear and tear from vehicular traffic on the drive portion of the parking garage floor and not from negligence of the Landlord in maintaining the concrete flooring. Additionally, the Landlord's representative testified that inspections of the garage were routinely conducted.

I find the Landlord has established with sufficient probative evidence the concrete garage floor required repair of its membrane and top-coat. The Landlord provided photographs in addition to documents to establish the need for and completion of the repair work. I further find the repairs totaled $78,249.69, and the last invoice for the work was paid by the Landlord on October 18, 2023. I accept the Landlord's representation there was no rebate or other source of payment for some or all of this capital improvement. I further accept the Landlord's representation the repair will last for at least 5 years.

*Elevator Pit Cracks*

I find, consistent with the Policy Guideline, the elevator is a major component or system of the rental property. The Landlord established the elevator cracks at the bottom of the shaft were the result of the intrusion of high pressure groundwater. The project manager submitted a letter dated February 6, 2025, confirming the cracks in the elevator pit occurred over time and were caused by high pressure groundwater against the concrete, and not from the Landlord's neglect or failure to maintain.

The Landlord submitted evidence to establish it paid $16,928.10 for the repair work; the last invoice paid on November 10, 2023 (within 18 months of this application). I accept the Landlord's position there were no other financial sources for payment for this expenditure. I find the work was not required due to inadequate maintenance by the Landlord but rather due to the high pressure of the groundwater into the elevator shaft pit as presented in the evidence.

I accept the Landlord representative's statement that the repair undertaken for the elevator cracks is expected to last at least 5 years.

*Installation of Additional Security Cameras*

I find the additional security cameras installed by the Landlord at the rear of the property, the front access and the parking garage improves the security of the rental property, in satisfaction of the Regulation. I further find, based upon the evidence, the cameras are anticipated to have a useful life of at least 5 years, and the total cost was $8,946.56. The Landlord provided evidence of payment, and represented it had no other source to off-set some or all of the cost of this enhancement to security of the rental property. I find the last invoice for this work was paid by the Landlord on October 2, 2023, within 18 months of the Landlord's application.

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 replacement of the boilers, and repair to the elevator crack and parking garage membrane to be necessary repairs of major components or major systems of the rental property. I have found the additional security cameras installed by the Landlord enhance the tenants' security at the property. I find the Landlord's application

for additional rent increase for the capital expenditures was made within 18 months of this application, are expected to last five years or more, and there were no other sources of payment available to the Landlord for payment of these improvements.

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 Landlord's notice of a potential rent increase and/or provided submissions concerning the underlying policy of the additional rent increase provision. The Tenants did not provide evidence, nor have I found, that the Landlord's lack of maintenance or negligence was the causal factor necessitating any repair to the elevator cracks, the parking garage membrane or the replacement of the boilers, or necessitating installation of additional security cameras.

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 the amount of $325,465.55 for the capital improvements.

**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 **$325,465.55,** for the major components or major systems 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 194 specified dwelling units and the total amount for the eligible capital expenditure is $325,465.55.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **$13.98 per unit per month [($325,465.55 ÷ 194 specified dwelling units) ÷ 120 months = $13.98].** 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 expenditures incurred by the Landlord for major systems or major components to the rental property totaling **$325,465.55.** The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord 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 11, 2025

Residential Tenancy Branch