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 B.G.A.L. and Landlord R.A.P.3 were represented at the hearing by M.D. legal counsel; D.M., resident property manager; K.M. vice-president construction; and, C.H., senior property manager.

No one attended the hearing for the Tenant.

Service of the Proceeding Package and Landlord's Evidence

The Landlord confirmed service of the Notice of Dispute Resolution Hearing and proceeding package to each Tenant either by posting to each unit door, by email to those Tenants who had provided their email address for purposes of service, or by personal service on March 6, 2025. The Landlord provided a statement from its representative D.M. 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. It was noted during the hearing that the representative's confirmation referred to a different address than those of the rental buildings at issue. Counsel elicited testimony from D.M. that her confirmation of service included a typographical error regarding the address and service had in fact been made as detailed in attached spreadsheets to the Tenants of the subject buildings.

Landlord's counsel stated that an estimated 20 Tenants accessed the on-line portal to review the Landlord's evidence, that the Landlord received no Tenant request for printed copies of the evidence, and no notice from a Tenant of difficulty accessing the on-line evidence. Counsel noted he had received email inquiries from a few Tenants with general questions regarding additional rent increases for capital expenditures.

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

Tenant M.S. submitted his objections to the Landlord's application on the date of the hearing. Although the Tenant's submission was not timely made, the Landlord's counsel was able to address several issues raised by Tenant M.S., set forth in greater detail below. With respect to service, Tenant M.S. stated in his submission he had been

served by email but had not authorized that manner of service. Counsel stated the Landlord had two emails from Tenant M.S. dated March 17, 2022, and June 20, 2018, authorizing the Landlord to communicate any issue concerning the tenancy to the Tenant by email. Counsel also stated the emails provided by the Tenant bore the same email address as did the submissions the counsel had received from Tenant M.S. earlier the day of the scheduled hearing. The Landlord submitted copies of these emails.

Tenants C.E. and K.A. also provided their written statement objecting to the Landlord's application and had provided a copy to the Landlord. These Tenants timely submitted their objection.

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 three buildings each constructed in 2017. The buildings are not connected to each other but form a U-shape with a courtyard in the center. Combined, there are a total of 126 rental units.

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

- Elevator modernization - $607,302.15, with last payment made by the Landlord for the work on October 2, 2024
- Exterior wood sealing - $67,250.40, with last payment made on November 15, 2023, for the work

The Landlord provided copies of invoices for each capital improvement as well as proof of payment for the capital improvement. The Landlord also submitted photographs of the exterior wood sealing work, together with evidence from third parties (engineers and project managers) attesting to the necessity for the work.

Evidence submitted by the Landlord establishes the elevators were original to the building. Prior to purchase of the rental property, the Landlord commissioned a condition inspection report. As part of that inspection, an elevator consulting and engineering firm was retained to inspect the elevator in each building. The firm

published its written findings in a report dated March 14, 2017. The report notes the installation of the elevators occurred in 1971 with updates to the system in 1997. The engineers recommended modernization of the elevators, at that time, in four to six years. The Landlord provided a copy of the relevant pages from the condition inspection report as well as a copy of the elevator consulting engineer report. The Landlord further submitted copies of maintenance records, invoices, testing records, logs and inspections of the elevators since at least from the time of the Landlord's ownership.

The Landlord's vice-president of construction standards K.M. testified the modernization of the elevators was necessitated by the age of the elevators and not as a result of lack of maintenance. K.M. also testified other factors in the Landlord's decision to replace the elevators were the difficulty in sourcing parts of the elevator, that elevator breakdowns were increasing and there had been a few instances of resident entrapment. As a safety concern, K.M. stated the elevators were "no longer to Code," for instance, there was no communication line in the elevators for an occupant to reach emergency services or similar.

The Landlord retained an elevator consulting firm to oversee and supervise the modernization work. K.M. testified the Landlord tendered the work on an open bid basis, receiving four bids, and from those selected the lowest bid. The modernization project was bid as a single project as opposed to a bid for each elevator in each building. K.M. further noted the modernization work also necessarily entailed electrical work. The elevator replacement work occurred during 2023 and 2024. The Landlord's position is this work is expected to last at least 5 years. The modernized elevators continue to be maintained on a monthly basis, and the Landlord submitted a copy of the maintenance contract for this work and a letter from the maintenance company confirming its maintenance of the elevators. Counsel stated there was no other source of funding available to the Landlord to pay for this work.

The exterior of the rental buildings is stucco with wood siding. The condition inspection report submitted by the Landlord also notes the deterioration of sealants in the windows, doors and at the stucco-wood siding junctures. The Landlord's vice-president of construction K.M. testified the exterior work undertaken included scraping down the paint on the wood siding and sealing the siding with two coats of paint. K.M. stated the paint quality used provided waterproofing for the wood. The remaining exterior sealant work was for the windows and the doors and the area where the wood siding met the stucco. The Landlord submits the exterior sealants had not been done since prior to the Landlord's ownership in 2017, as the deterioration was noted in the condition report. The Landlord's counsel stated the work for all three buildings was also bid as a single project. Upon inquiry as to whether the exterior work was maintenance as opposed to repair of a major component, Landlord's counsel took the position that maintenance is preventative work conducted on a routine basis; whereas, the exterior sealant work done by the Landlord for the rental buildings was an undertaking that occurs more infrequently, and at least no sooner than 5 years as this was the expected useful life of the sealant. It is further noted the work was required as a result of weather elements.

In addition to the condition report addressing this issue, the Landlord also submitted photographs of the completed exterior work to the rental buildings.

With respect to the allocation of the cost for the elevator modernization and exterior sealant work among the three rental buildings, each having a different number of units (1000 has 66 units; 995 has 36 units; and, 985 has 24 units), counsel stated the Landlord's position was the work undertaken was submitted for bidding as a single project and this resulted in lower costs and increased efficiency for both the contractor and the Landlord in administering the work. Therefore, to later apportion the cost among the buildings would lead to inequity as the work was the same but each contractor's bid was based on all three buildings without distinction. It was noted by K.M. the rental office for all three buildings is located in the 1000 building. The Landlord's position was fairness and administrative simplicity in the invoicing, taking into account cost savings, warranted that all units for the three buildings share the cost equally as if a single building.

Although Tenant M.S. did not timely submit his written objections the Landlord's counsel provided a response based upon the short notice and time available to counsel to review the Tenant's submission. Tenant M.S. raised an objection to the appropriate Landlord entity filing the application. Counsel stated section 1 of the Act defines "landlord" broadly to include not only the owner of the rental unit but also the landlord's agent or any entity authorized to act on the landlord's behalf. In this case, the Landlord submitted title documents and counsel explained the beneficial owner is a partnership and as a partnership cannot hold legal title to real property, B.G.C. held legal title to the property. Counsel also confirmed that all units (126) were included in the application, even though some of these units were vacant or occupied by employees. With respect to Tenant M.S. taking the position photographs of the work were necessary, counsel stated this was not a requirement under the Regulation.

Tenant M.S. raised objection to the Landlord's employment of an elevator consultant group to oversee the modernization of the elevators. Tenant M.S. referred to a prior arbitration decision (which is not binding) to support the view the supervising company was ancillary and those costs could not be included in the application. Tenant M.S. did not provide a copy of the decision which he referenced, thereby preventing counsel from addressing it. Nevertheless, in this case, counsel stated the Landlord's employment of the elevator consultant was reasonable given the nature and technicality of work involved in replacing an elevator system. Furthermore, counsel stated the additional rent increase regime does not permit for tenant objections on how the Landlord undertakes the capital improvement.

Lastly, Tenant M.S. objected to the exterior sealant work as minor and not involving a major component. Landlord's counsel explained the Regulation governing additional rent increases for capital expenditure includes repairs to major component or systems of a rental property.

Tenants C.E. and K.A. stated in their submission that the additional rent increase was financially burdensome as they had recently moved into the rental property in 2024.

In closing submissions, Landlord's counsel stated that for both the exterior sealant work and the elevator modernization, the necessity for the capital expenditure was to repair and replace a major component or system in the building as well as each had exceeded its useful life. Counsel explained the Regulation does not require the major component or system fail or break-down before the Landlord may make the repair or replacement. The elevator modernization was mandated by the age of the elevator, that it was no longer in compliance with current Code provisions and was beyond its useful life. The exterior sealant work was necessary repair to protect the envelope of the building and arose due to weather conditions and the detrimental impact of elements over time on building envelope.

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.

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. The Landlord's submissions note a prior application filed in 2022 for an additional rent increase for buildings 995 and 985. The Landlord provided a copy of the decision which outlined the work at issue was largely for roof repairs and/or replacement.

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

I accept the Landlord's position that having the work for the elevator replacement and the exterior sealant bid by the contractors as a single project rather than for each building had cost savings and efficiencies for the Landlord in administering the project. As the work for each capital improvement cannot readily be separated among the buildings, I accept the Landlord's position for purposes of this application that fairness to the Tenants warrants equally distributing the cost among all units in the three buildings as the Tenants benefit in the cost-savings and efficiencies which would not have been had in the event work for each was bid by contractors on an individual building basis.

5. Amount of Capital Expenditure

The Landlord claims the total amount of **$674,552.55** for the cost of the capital improvements as detailed in the Landlord's application and as itemized above.

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."

Elevator Replacement

I find the elevator in each rental building is a major component and major system of the rental building. I find the Landlord has provided sufficient evidence to establish the replacement was necessary as the elevators were at the end of their useful life as these were original to the building when constructed in 1971 and had last received upgrades in 1997. The Landlord provided extensive maintenance records, logs, inspection reports, and the maintenance contract for the elevators. This evidence establishes the replacement of the elevators was not a result of an alleged failure by the Landlord to maintain these major components. I further find, based upon the evidence presented, the replacement of the elevators with modernized equipment improves Tenant safety in their use of the elevator as the modernized elevators meet current building Codes which address safety standard and offer means of communication for users in the event of elevator malfunction or emergency.

The Landlord provided evidence the total cost for the elevator replacements was $674,552.55, payment was made by the Landlord, and there was no other source of payment. I accept the Landlord's evidence that final payment for the work was made on October 2, 2024, within 18 months of the Landlord making this application. I accept the Landlord's submission the elevators have an expected useful life of 20 to 25 years and this expense is thus not anticipated to occur within 5 years.

Exterior Sealant Work

I find the exterior sealant work to the envelope of the building, in particular the re-sealing of the wood siding, and the sealant of the windows and doors, is repair to a major component or system of the building. These components qualify as major components or a major system as these are "essential to support or enclose a building…" Policy Guideline 37C notes that siding, entry doors and windows all are examples of "major systems or major components" of a building.

I find the Landlord has provided sufficient evidence to establish that this repair work was necessary and not the result of the Landlord's lack of maintenance. The condition report commissioned by the Landlord in 2017 specifically references the sealant was deteriorating at the exterior of the windows and doors as well as at the juncture of the wood siding and stucco. The deterioration was caused by weather elements. I accept the Landlord's submission this work will not occur again for at least 5 years, and there was no other source of payment.

The Landlord provided the invoices and proof of payment for this capital expenditure totaling $67,250.40. I find based upon the Landlord's evidence that final payment for the work was made on November 15, 2023, within 18 months of the Landlord making this application on February 28, 2025.

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 replacement of the elevators and the exterior sealant repairs to the buildings to be necessary repairs of major components or major systems of the rental property. I have further found the Landlord's replacement of the elevators with modern equipment improves tenant safety and protection. 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 did not provide evidence, nor have I found evidence, that the Landlord's lack of maintenance or negligence was the causal factor necessitating the modernization of the elevators or the repairs to the exterior of the buildings. 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 $674,552.55 for the capital improvements set forth in the Landlord's application and as discussed herein.

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 **$674,552.55,** 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 126 specified dwelling units and the total amount for the eligible capital expenditure is $674,552.55.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **$44.61 per unit per month [($674,552.55 ÷ 126 specified dwelling units) ÷ 120 months = $44.61].** 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 repair, replacement or installation of major systems or major components to the rental property totaling **$674,552.55.** 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 22, 2025

Residential Tenancy Branch