



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 1.H.S.H.I. and Landlord V.N.1A.P. were represented by legal counsel B.L. and property manager N.L. at the hearing.

Tenant J.E. attended the hearing and submitted written authorization to represent several other Tenants at the hearing.

The Landlord confirmed service of the Notice of Dispute Resolution Hearing and proceeding package to each Tenant by posting to each unit door on March 5, 2025. The Landlord provided a statement from its representative confirming 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. Landlord's counsel stated at the hearing that paper copies of the Landlord's evidence were also available to Tenants upon request, and counsel was unaware of any Tenant notifying of difficulties in accessing the Landlord's evidence on-line.

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

Tenant J.E., on his own behalf as well as those Tenants who provided their written authorization, submitted evidence for this hearing. Landlord's counsel confirmed receipt of the Tenants' submissions by email on April 24, 2025, and confirmed an opportunity to review the Tenants' evidence prior to this hearing.

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, is 9 storeys and a total of 61 units.

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

- Hot water boilers and Building Automation System - \$215,460.95, with last payment made by the Landlord for the work on July 31, 2024
- Window sealers and rollers - \$47,602.45, with last payment made on November 12, 2024 for the work
- Renovations to common areas - \$80,663.38, last payment for the work made by the Landlord on March 6, 2024

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 (property inspectors, engineers and/or project managers) attesting to the necessity for the work.

The Landlord's evidence establishes the replaced hot water boiler system – which provides both domestic hot water and heat to the rental property – was estimated to have been installed in 2005 and was thus 19 years old when replaced in 2024. The boilers were replaced as these had exceeded their useful life. The boilers installed by the Landlord were energy efficient. The Landlord provided evidence of decreased gas consumption from the time the boilers were replaced to establish their energy efficiency. The Landlord provided a copy of the maintenance contract for the newly installed boilers. Property manager N.L. testified the warranty on the heat exchanger was 10 years and 2 years on the equipment. The Landlord anticipates the boilers are expected to last at least 5 years.

The building automation system sets the temperature in the building automatically based upon the outside temperature and weather conditions. The Landlord's representative explained the building automation system works from real-time data in adjusting the temperature within the building and thereby promotes energy efficiency. Correspondence from M.K., director, building systems, further notes the system has a "custom written computer program which retrieves information from the Environment Canada Weather Service. The BAS uses this data to ensure that energy usage is optimized in the building." Counsel noted M.K.'s statement that the estimated useful life of the system is approximately 20 years. Landlord representative M.K. states that, in combination with the newly installed boilers, the building automation system has demonstrated increased energy efficiency in lower gas usage from November 2023 through November 2024. The Landlord submitted a bar graph depicting the decreased gas consumption which it attributed to the new boilers and building automation system.

The Landlord's application requests an additional rent increase for capital improvements consisting of window seals and roller replacement, including windows in common areas and in all rental units. The Landlord presented evidence the windows are single pane and over time the seals wear down to a degree that the windows do not align properly within the frame and gaps are present, allowing for loss of heat. The Landlord's property manager testified the window seals used for the replacement were mohair and thus offered significant insulation. Landlord's counsel submitted the cost to replace the window seals and rollers, thus reducing drafts and loss of heat from the building, improved energy efficiency and was less expensive than replacing the single-pane with double-pane windows throughout the building. The Landlord's submissions are the seals were installed prior to the Landlord taking ownership of the building in 2021. Counsel further submitted the windows are a major system of the rental building and the repair was not maintenance. She stated the replaced seals and rollers would last for 5 to 10 years.

The Landlord also requests an additional rent increase for the expenditure of \$80,663.38, for a number of renovations it made to the rental building. Counsel stated these renovations included the following items:

- Replacement of common area light fixtures with LED light fixtures and lighting – counsel stated these are energy efficient units and the Landlord provided general documentation of the energy efficiency of LED lights, as well as correspondence regarding the specifications of the lighting installed in the building. The common areas included the lobby, hallways, stairwells and laundry rooms on each floor.
- Door hardware – counsel stated these included door stops and door closures at stairwells, which the property manager stated were the metal arms at the top of the door which ensure proper closure and operate as fire seals. Counsel noted the actual cost for these items was less than set forth in estimates provided to it for this work. The property manager testified he was uncertain whether the upgrade in the metal arm door closure system was required by the fire department or fire code, stating the doors may have been grandfathered-in. However, this door closure was a fire-safety measure.
- Signage – this included rental unit numbers, exterior signs for the building, and emergency exit signs and signs for common areas, mechanical rooms and the like.
- Painting – this included patching and painting of walls and ceilings, laundry rooms but not the mechanical rooms of the building. Counsel urged the painting was not maintenance but rather a repair to a major component as the paint offered a protective covering to drywall. She stated the painting in the rental property common areas pre-dated the Landlord's purchase of the building in 2021.
- Carpets – the hallway carpets required replacement as it was estimated the carpets had last been replaced in 2009. Counsel stated the useful life of the

carpet – 10 years – had been exceeded. Counsel further stated the carpet replacement was similar to the paint covering as the carpet provided cover to the flooring which in turn extended the underlying floors useful life. Upon inquiry, the replaced carpet was not identified by the Landlord to have posed any trip hazards.

Tenant J.E., who represented several Tenants in this proceeding, acknowledged the hot water boiler was faulty prior to the Landlord's purchase of the property. He noted that several Tenants had stated the boiler system was not working properly. Tenant J.E. did not attribute neglect by the current Landlord for the condition of the boiler. However, Tenant J.E. stated that with the new boiler, Tenants had noted the heat was inconsistent throughout the building. Further, Tenant J.E. stated the poor condition of the boiler known to the Landlord at the time it purchased the building would have afforded the Landlord an opportunity to lower the purchase price to account for the need for a new boiler.

In response, Landlord's counsel stated the Landlord was not obligated to replace the boiler at an earlier time if the boiler was still operating adequately. She stated, with regard to the reliability of the boiler system, the Landlord had received one complaint on September 16, 2024, and had made the repair that day. Additionally, property manager M.L. stated there were currently no outstanding requests for repair from Tenants. He also noted it was a high priority of the Landlord to replace the boiler prior to the winter months. Lastly, counsel stated that under the Policy Guideline, any reduction in purchase price does not constitute a "payment from another source" for purposes of tenant objection to a capital expenditure.

Tenant J.E. stated the windows in the rental building were single pane, and probably original to the building's construction in 1969. He stated, however, the windows were more difficult to open and close since the work had been completed. Counsel agreed that the windows were single pane, and more than likely original with the building. She noted the property condition report indicated these windows had a 10-year life span and the upgrade of the seals and rollers allowed for an extended period of use. Counsel further noted there were no outstanding repair requests from Tenants regarding problems with the windows opening and closing. Tenant J.E. stated there were low-interest loans available to landlords to upgrade windows.

Tenant J.E. objected to the common area renovations on behalf of the Tenants he represented as non-essential upgrades. He stated the Tenants were not consulted by the Landlord and there was no evidence the renovations were required as none of the improvements were found to be failing in the first instance. Tenant J.E. referred to videos submitted by the Tenants to establish that the fire doors were cut shorter at the bottom edge and do not hang properly. Furthermore, he stated the painting in the common areas was not done in a professional manner. The work, overall, took 2 to 4 months to complete. Tenant J.E. stated he had no comments regarding the LED lighting or the signage.

Landlord's counsel stated the painting was not simply a cosmetic repair but the paint was a protective component of the walls. She stated the Landlord adopted a reasonable approach to the cost of the renovations included in the application, pointing to the Landlord's purposeful omission of the cost of the millwork from its application. She reiterated that the LED lights were not simply for lightbulbs but for the retrofitting of the fixtures as well.

Tenant J.E. further acknowledged the carpet replacement may have been necessary but the product installed was done improperly. He again stated the fire doors had been structurally altered when the Landlord made the improvements.

In closing, Landlord's counsel stated the application for capital expenditures was for both components and systems that were either beyond their useful life or were installed to promote energy efficiency. As to the former, counsel explained the common area improvements were largely required because the painting, carpeting and signage were beyond useful life; whereas, the LED lighting promoted energy efficiency. The same applied for the window seals and rollers as these also promoted energy efficiency within the building as the seals were an insulator and the rollers aided in the proper functioning of the windows within the frames. Counsel stated the regulation provided limited grounds for tenants to object: namely, payments available from other sources such as rebates; and, objections that the repair was necessitated by inadequate landlord maintenance. She stressed the Tenants had not provided evidence of meeting either of these objections. Counsel reviewed the legislative history (set forth below in greater detail) and that the application for additional rent increase replaced a prior system of simply allowing landlords to raise rents without allocating the funds toward capital improvements.

Tenant T.E. stated the boiler and windows were aging systems.

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 (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:
 - 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));
- 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 of the subject rental property.

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 61 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 **\$343,726.78** as detailed in the Landlord's itemized capital expenditures set forth 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."

Hot Water Boiler Replacement and Building Automation System

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 and the common areas of the building. I find the replacement was necessary as the replaced boilers were at the end of their useful life. The Landlord submitted maintenance records for the boilers as well as a condition report regarding the boilers at the time of Landlord's purchase of the property. The Landlord provided sufficient evidence to establish the boiler was at the end of its useful life. The Landlord also provided sufficient evidence to establish the building automation system promotes energy efficiency of the boilers. I find the Landlord has provided sufficient evidence to satisfy the requirements of the Regulation for these capital improvements.

The Landlord provided evidence the total cost for the boiler replacement and building automation system totaled \$215,460.95, with payment made by the Landlord, there being no other financial source available to the Landlord for this cost.

I accept the Landlord's evidence that final payment for the work was made on July 31, 2024, within 18 months of the Landlord making this application on February 28, 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.

Window Seals and Roller Replacement

I find the windows are a major component or system of the structure as these are “essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property.” I find the installation of new sealers and rollers are necessary for the proper operation of the windows. I further accept the Landlord’s uncontested submission that the sealant it selected, a mohair-based sealant, offers superior insulation and thereby increases energy efficiency in the building.

The Landlord provided evidence the total cost of repair totaled \$47,602.45, with last payment made by the Landlord on November 12, 2024, there being no other source of payment available to the Landlord.

Therefore, I find the Landlord has provided sufficient evidence to establish its application for a rent increase for this capital expenditure. I further accept the Landlord’s submission this repair cost to the major component of the building is expected to last at least 5 years.

Common Area Renovations

Policy Guideline 37C provides that an installation, repair, or replacement of a major system or major component may be eligible for an additional rent increase if it reduces energy use or greenhouse gas emissions or improves the security of residential property.

I find the lighting in the common areas of the rental property are a major component or major system of the building. I accept the Landlord’s evidence that the retrofitting and installation of LED lighting fixtures promotes energy efficiency. I further find the signage in the building improves resident safety as it permits first responders to find individuals and access important areas (such as maintenance areas) in the event of emergency. The signage also enhances resident safety for exiting the building in the event of emergency.

The carpets in the common area required replacement due to the end of the component’s useful life. I find carpeting in common areas to be a major component of the building as it is the primary flooring in the rental property, and replacement promotes resident safety. I accept that in this case the carpeting may not have posed a trip hazard, but further degradation to carpeting increases that probability.

Finally, I find the hinge hardware placed at the top of the fire doors that operate to close the doors to be a repair to a major component of the rental building. The hinges promote safety by insuring the fire doors close properly.

However, I do not find the remaining door hardware to meet the criteria of the Regulation. The Landlord did not provide evidence to establish that the repair with the addition of these items was necessary for the doors, or how the prior hardware had failed.

Similarly, I do not find the Landlord presented sufficient evidence to establish that painting the common areas is a repair to a major system or component in the building. Although the walls are a major component of the building, as are other building elements such as windows and doors, painting the walls is maintenance, akin to fixing nail pops on roofs. I am not persuaded by the Landlord's argument that an item such as paint that adheres to a major component or system is, for that reason, a capital expenditure under the Regulation. I am not satisfied by the Landlord's evidence that paint offers a protective coating to interior walls. Policy Guideline 37C states that "routine wall painting" is an "expenditure[]" that would **not** be considered an installation, repair, or replacement of a major system or major component that has failed, malfunctioned, is inoperative or is close to the end of its useful life." (emphasis in original).

Therefore, I find the Landlord has provided sufficient evidence, including invoices and payments therefor, all last made within 18 months of the Landlord's application, for the for these capital improvements. The Landlord's application requested \$80,663.38 in expenditures. Based upon the Landlord's evidence, I reduce this amount by \$22,960.00 for painting and an additional \$1,000.00 for the cost of the door hardware which I have not accepted as a capital expenditure authorized under the Regulation. Although the door hardware was not a line-item cost on the installation quote, and was part of a group of improvements, I find a reduction of \$1,000.00 to be reasonable absent evidence to the contrary. Therefore, I find the Landlord has incurred \$56,703.38 in approved common area renovations, and the last payment was made on March 6, 2024.

I accept the Landlord's submission that each of these capital improvements is expected to last at least 5 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 replacement of the boilers, installation of the building automation system, repair to the building windows, and installation of LED lighting and other repairs set forth above to the common areas to be necessary repairs of major components or major systems of the rental 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 did not provide evidence that the Landlord's lack of maintenance or negligence was the causal factor necessitating the capital expenditures set forth above which I have found meet the criteria of the Regulation. Tenant J.E. did agree with the necessity of replacing the boiler, although he noted there had been temperature disparities experienced by some Tenants since installation of the new system.

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 \$319,766.78 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 **\$319,766.78**, 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 61 specified dwelling units and the total amount for the eligible capital expenditure is \$319,766.78.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **\$43.68 per unit per month $[(\$319,766.78 \div 61 \text{ specified dwelling units}) \div 120 \text{ months} = \$43.68]$** . 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 **\$319,766.78**. 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 18, 2025

Residential Tenancy Branch