

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- An order for a capital expenditure rent increase under section 23.1 of the *Residential Tenancy Act Regulation*, B.C. Reg. 477/2003 (the Regulation).

Landlord D.M., Landlord C.G., Landlord J.F., Landlord D.W. attended the hearing for the Landlord.

Tenant D.L., Tenant M.M., Tenant C.L., Tenant F.K.2, Tenant G.M., M.M., and M.M. 2. attended the hearing for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord testified that they registered mailed the Proceeding Package to the Tenant on March 19, 2025, to the rental unit's address. The Landlord provided tracking numbers for all of the Proceeding Package's they mailed.

Based on the Landlord's testimony, and the tracking information, I find the Landlord proved that they served the Tenant in accordance with section 89(1).

Section 90(a) of the Act provides that a document served by mail is deemed to be received on the fifth day after it is mailed.

I find the Tenant is deemed to have received the Proceeding Package on March 24, 2025, per section 90(a) of the Act.

### **Service of Evidence**

The Landlord testified their first evidence package was served in the same package as their Proceeding Package.

Therefore, for the same reasons I found the Proceeding Package deemed received on March 19, 2025, I also deem the Landlord's first package evidence received on that date per 90 of the Act.

The Landlord testified that they registered mailed their second evidence package to the Tenant on April 14, 2025, to the rental unit's address. The Landlord provided tracking numbers for all the evidence packages they mailed.

Based on the Landlord's testimony, and the tracking information, I find the Landlord proved that they served the Tenant in accordance with section 89(1).

I find the Tenant is deemed to have received the second evidence package on, April 19, 2025, per section 90(a) of the Act.

The Landlord confirmed receipt of the Tenant's evidence through email and that they had enough time to review it.

Section 71 (2)(c) of the Act allows arbitrators to find a document was sufficiently served.

Due to this confirmation, I find the Tenant's evidence sufficiently served under section 71 (2) of the Act.

## **Issues to be Decided**

Is the Landlord entitled to an order allowing them a Capital Expenditure Rent Increase?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord testified they have not successfully applied for a capital expenditure rent increase in the last 18 months.

The Landlord testified there were 30 specified dwelling units in the residential property affected by the capital expenditure.

The Landlord initially claimed \$136,972.81 for costs incurred due to the replacement of many of the parts on the residential property's elevator.

The Landlord provided the following cost breakdown:

5/31/2024	Falcon Engineering Ltd. (falconeng)	\$ 2,857.05	engineer elevator HVAC systems - mechanical
9/27/2024	Westway Plumbing & Heating(2011) Inc	\$ 4,330.20	install fan & ducting for elevator electrical room cooling

9/15/2023	TK ELEVATOR (Canada ) Ltd (thyssen)	\$23,370.52	Elevator Mod - Progress Billing Draw: 1
4/12/2024	TK ELEVATOR (Canada ) Ltd (thyssen)	\$23,370.52	Elevator Mod - Progress Billing Draw: 2
5/16/2024	TK ELEVATOR (Canada ) Ltd (thyssen)	\$40,891.01	Elevator MOD - progress bill Draw #3
6/5/2024	Westway Plumbing & Heating(2011) Inc. [...]	\$533.03	build louvre, install in elevator shaft
6/12/2024	Crawford Electric (2009) Ltd. (crawford)	\$5,487.53	complete work w/ TKE, install electrical for elevator & hall lights x3
6/17/2024	Apex EHS Services Inc (apexehs)	\$5,460.00	hazardous material & asbestos management survey
6/12/2024	TK ELEVATOR (Canada ) Ltd (thyssen)	\$5,850.02	Elevator MOD - progress bill Draw #4 final
10/17/2024	Bridgeport The Floor Store Ltd. [...]	\$622.26	elevator - install skyline vinyl, floor patch, & adhesive
10/31/2024	Falcon Engineering Ltd. (falconeng)	\$840.00	balance owed - elevator HVAC systems - mechanical upgrade
11/22/2024	TK ELEVATOR (Canada ) Ltd (thyssen)	\$23,360.67	Interior elevator upgrade
	Total	\$136,972.81	

The Landlord provided invoices for each of these expenditures. The Landlord testified they had paid the last invoice for the project in November 22, 2024.

During the hearing the parties agreed the Apex EHS Services Inc expenditure was unrelated to the capital expenditure and the Landlord withdrew the amount from their claim.

The Landlord testified they believed many of the parts of the elevator needed to be replaced if it was to continue to function safely. The elevator has been operating in the residential property since 1972, and the Landlord had a standing agreement with a company called KONE to maintain it. The capital expenditure did not replace all the parts of the elevators system, but several major parts such as the elevator's cab, electrical system, HVAC, and lighting has been replaced. Currently the Landlord contracts with TK Elevator to maintain the elevator.

The Landlord stated they are confident that they will not have to make this expense again for at least another 5 years.

The Landlord provided its maintenance contract with KONE.

The Landlord also provided a letter from KONE dated August 04, 2006. In it KONE states they installed the residential property's elevator in 1972. KONE also notes that there are several safety risks to the elevator and offers a proposal for bringing the elevator up to current CSA B44 Elevator Code standards.

The Landlord provided a letter from TK Elevator dated July 12, 2023. The letter is part of a proposal for the elevator's modernization. The letter offers a 20 year warranty on all the TK Elevator parts manufactured and installed by TK Elevator if the Landlord used them as the maintaining operator for that period.

The Landlord provided a list of what was and was not retained of the elevator from TK Elevator. This included many elements of the door mechanism.

Tenant C.L. testified at the hearing. They testified that some time in May 2024 Tenant C.M. was trapped in the elevator for half an hour. The elevator's doors had to be pried open to let them out.

M.M. who represented some of the Tenants, pointed to how elements of the renovation not carried out by TK Elevator were not covered by their warranty. They argued the incident Tenant C.L. testified to provided reasons to doubt the effectiveness of the elevator's renovation.

Residential Tenancy Branch records show the Landlord made their application on March 5, 2025.

## **Analysis**

For the Landlord's application for a capital expenditure rent increase to be successful they must prove all of the following on a balance of probabilities:

1. That they have not made a successful application for an additional rent increase for capital expenditure in relation to the same rental units for at least 18 months;

2. That the capital expenditure was made for one of the reasons explained in section 23.1 (4) (1) of the Regulation;
3. That the capital expenditure was made within 18 months of making their application; and
4. That a capital expenditure for the same purpose is not expected to occur again for at least five years.

### *Application*

Based on the Landlord's uncontradicted testimony, I find that the Landlord did not successfully apply for a capital expenditure rent increase within 18 months of this application.

### *Purpose*

According to section 23.1 (4) (1) of the Regulation the following are the legally permissible purposes to apply for a capital expenditure rent increase:

“(i)the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) [*landlord and tenant obligations to repair and maintain*] of the Act;

(ii)the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;

(iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:

(A)a reduction in energy use or greenhouse gas emissions;

(B)an improvement in the security of the residential property;”

Under section 21.1(1) a major system is a system integral to the residential property or is integral to providing services to occupants of the residential property. A major component is a component integral to the residential property or a major system.

Residential Tenancy Policy Guideline 37C also suggests that cosmetic upgrades connected to an eligible capital expenditure can be included in it.

Residential Tenancy Policy Guideline 37C lists elevators in its examples of major systems. I find based on the invoices that the items the Landlord was replacing in the elevator (such as the electrical system and HVAC) are major components of the elevator.

Based on how TK Elevator offers a twenty-year warranty on the parts of the elevator they installed, I find the useful life of elevator parts to be 20 years. Based on the letter from KONE I find the elevator has been in operation since 1972. It follows from these findings that these elevator parts were past their useful lifespan. Therefore, I find the

Landlord has proven their capital expenditure is for a purpose allowed by the Regulation.

*Made within 18 months of the Application*

Residential Tenancy Policy Guideline 37C suggests what determines if the capital expenditure was made within 18 months of the application, is when the final payment for the capital expenditure was made.

Based on the Landlord's testimony, and the invoices they provided, I find the Landlord made their last payment for this capital expenditure on November 22, 2024. As this was less than 18 months from March 22, 2025, I find the Landlord made this application in time.

*Not required for another 5 Years*

The Landlord argued that all of the elevator parts installed by TK Elevator should last for at least 5 years. The parts that were not installed by TK Elevator are the HVAC system, the vinyl flooring, and the electrical work. While regular maintenance and repairs may be required during this period, full replacements shouldn't be.

The Tenant argued that given the elevator had such a major breakdown in May 2024, major repairs may be required within 5 years.

I note that Residential Tenancy Policy Guideline 40 gives the following useful life periods for electrical work:

<b>Electrical</b>	Panel	30
	Wiring aluminum	19
	Wiring Copper	24
	Switches and outlets	25
	Light fixtures	15
	Generator	20

The Guideline also gives an estimated useful life of 20 years for an HVAC system, and a 20-year useful life for vinyl flooring. I note I am not bound by these estimates, and they may vary by the actual item, and usage. I noted these estimates in the hearing and asked if there were any objections to adopting them in this case. Neither party offered any objection or alternative estimate for the items in question. Therefore, I find the useful life of the vinyl flooring is 20 years, the useful life of the electrical work is 15 years, and the useful life of the HVAC system is 20 years.

Based on the warranty provided by TK Elevator, and the useful lifespan of the other parts, I find the work is unlikely to occur again for at least 5 years. I find that the situation that Tenant C.L. testified to does not show another capital expenditure is needed. I base my finding on how the parts are new, the absence of an expert opinion or documentary evidence on the cause of the incident, and how in TK Elevator's proposal they state tests would be performed to ensure the elevator met the applicable codes. I note again the Landlord has the burden of proof, but I find the evidence they have provided meets this burden when weighed against the Tenant's evidence.

### *Due to Repairs or Inadequate Maintenance*

The Tenant argued that this project was required in part due to inadequate maintenance. They pointed to the malfunction incident Tenant C.L. described. I note the Tenant has the burden to prove on a balance of probabilities that this is true.

The Landlord has provided that they previously had a contract to maintain the elevator with KONE and now have a contract with TK Elevator.

I find the Tenant has failed to prove this project could have been avoided by regular maintenance. I base this on the elevator's age and that the Landlord contracted with professional companies to maintain the elevator.

### *Granted Rent Increase*

Therefore, I find there is a \$131,512.81 eligible capital expenditure. I note the amount for Apex EHS Services Inc was taken out of this calculation.

Falcon Engineering Ltd. (falconeng)	\$	2,857.05
Westway Plumbing & Heating(2011) Inc	\$	4,330.20
TK ELEVATOR (Canada ) Ltd (thyssen)	\$	23,370.52
TK ELEVATOR (Canada ) Ltd (thyssen)	\$	23,370.52
TK ELEVATOR (Canada ) Ltd (thyssen)	\$	40,891.01
Westway Plumbing & Heating(2011) Inc. [...]	\$	533.03
Crawford Electric (2009) Ltd. (crawford)	\$	5,487.53
TK ELEVATOR (Canada ) Ltd (thyssen)	\$	5,850.02
Bridgeport The Floor Store Ltd. [...]	\$	622.26
Falcon Engineering Ltd. (falconeng)	\$	840.00
TK ELEVATOR (Canada ) Ltd (thyssen)	\$	23,360.67
Total	\$	131,512.81

The additional rent increase the Landlord can impose this year, is either 3% of the current rent combined with the yearly permitted rent increase, or the  $[(\text{total eligible capital expenditure} \div \text{the number of specified dwelling units}) \div 120]$  whichever is *lower*.

A specified dwelling unit, as defined by section 21.1(1) of the Regulation, is a living accommodation (whether or not it is vacant) located in a building (or residential property) that is impacted by the eligible capital expenditure. I find there are 30 specified dwelling units based on the Landlord's uncontradicted testimony.

Therefore, I order the Landlord may raise the rent 3% of the current rent after the current yearly rent increase is added, or \$36.53  $[(\$131,512.81 \div 30) \div 120]$ , whichever is lower.

Should \$36.53 be more than 3% of the current rent after the current yearly rent increase is added, the Landlord may impose another additional rent increase for up to 2 more phases. During each phase the Landlord must deduct the previous rent increase for the capital expenditure from \$36.53. The Landlord may then impose the lesser amount of

either the remainder or 3% of the current rent after the current yearly rent increase is added. Each phase must take place at least 12 months after the previous one. The Landlord must serve the Tenant an RTB-7 Notice of Rent Increase at least 3 months before a new rent increase is imposed. This is all required under section 23.3 of the Regulation.

## **Conclusion**

The Landlord has been successful. I grant the application for an additional rent increase for a capital expenditure in the amount of \$131,512.81. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to serve the tenants with a copy of this decision in accordance with section 88 of the Act.

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 08, 2025

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Residential Tenancy Branch