



## **DECISION**

### **Introduction**

On March 27, 2025, the Landlord filed an application pursuant to section 43 of the Residential Tenancy Act (the “Act”) and section 23.1 of the Residential Tenancy Regulation (the “RTR”) for an additional rent increase for the capital expenditure.

The Landlord, the Tenant and B.H. attended the hearing at the scheduled hearing time.

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

The Tenant acknowledged receipt of the Proceeding Package and raised no concerns regarding service. I find the Proceeding Package duly served on the Tenant in accordance with the Act, and the hearing proceeded as scheduled.

### **Service of Evidence**

Both parties acknowledged receipt of the documentary evidence and raised no concerns regarding service. I find the documentary evidence before me duly served on each party in accordance with the Act and accepted it for consideration.

### **Issue to be Decided**

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

### **Preliminary Matter – Leasehold Property**

Both parties confirmed that this tenancy started on May 1, 2019, with a current monthly rent of \$1,660.

The Landlord submitted that they are a leaseholder of the rental unit located in a leasehold building owned and managed by S. Investments Ltd.

Section 1 of the Act provides a broad definition of “landlord” which includes a person, other than a tenant occupying the rental unit, who (i) is entitled to possession of the

rental unit, and (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.

Based on the Landlord's submissions, I find the Landlord meets the definition of landlord set out in section 1(c) of the Act.

## **Background, Evidence and Analysis**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the Landlord's claim, and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlord is seeking an additional rent increase for their proportionate share of a domestic water and sanitary drainage systems re-piping project in the total amount of \$23,522.04.

Section 23.1 of the RTR sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

### Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
  - to repair, replace, or install a major system or a component of a major system; and
  - undertaken:
    - to comply with health, safety, and housing standards;
    - because the system/component was either:
      - ❖ close to the end of its' useful life, or
      - ❖ failed, malfunctioning, or inoperative
    - to achieve either:
      - ❖ a reduction in energy use or greenhouse gas emissions; or
      - ❖ an improvement in security at the residential property
- and
- the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase

- and
- the capital expenditure is not expected to be incurred again within 5 years.

The Tenants bear the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;  
or
- the landlord was paid, or entitled to be paid, from another source.

Policy Guideline #37C states that an example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life. However, if the extent of the repairs or replacement necessary is due to a landlord's inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.

#### Prior Application for Additional Rent Increase

There was no evidence that the Landlord made a prior application for an additional rent increase affiliated with the capital expenditures within the previous 18 months.

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

Based on the Landlord's submissions, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the Landlord submitted this application, per section 23.1(2) of the RTR.

#### Number of specified dwelling units

For the determination of the final amount of an additional rent increase, section 21.1(1) of the RTR defines:

"dwelling unit" means:

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit.

"specified dwelling unit" means

(a) a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred,

or

(b) a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

The Landlord submitted that the capital expenditure benefits the entire building, including the rental unit.

In accordance with section 21.1(1) of the RTR, I find that there is 1 dwelling unit to be used for calculation of the additional rent increase.

*Expenditures incurred in the 18-month prior to the application*

The Landlord submitted this application on March 27, 2025

Section 23.1(1) of the RTR states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied.

Thus, the 18-month period is between September 26, 2023 and March 26, 2025.

Based on the Landlord's submitted documentary evidence, I find that the first payment for the work was incurred on March 1, 2024 and the final payment was made on February 1, 2025. I find the expense occurred within 18 months prior to the Landlord making their application.

*Expenditure not expected to occur again for at least 5 years*

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

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

*Eligibility and Amount*

The Landlord submitted that the building was built in the 1960s, the domestic water piping system was replaced more than 20 years ago, and the sanitary drainage system was original. On January 15, 2024, they received a letter from S. Investments Ltd. stating the following:

*We are the owner and manager of the [redacted] apartment building in which you are the leaseholders/residents. As you were previously informed, [S. Investments Ltd.'s] professional consultants recommended that the domestic water system at [redacted] be re-piped with an estimated Opinion of Probable Cost ("OPC") of \$1,500.000 as of November 2018. This letter is to notify all leaseholders and residents that [S. Investments Ltd.'s] professional consultants have recommended that the sanitary drainage system at [redacted] also be replaced/re-piped at the same time as the domestic water system (the "Re-piping Project").*

Both parties agreed that there had been constant major leaking problems in the building.

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

Based on the Landlord's documentary evidence, the testimony of the parties, and on a balance of probabilities, I find the Landlord proved that the domestic water and sanitary drainage systems were replaced because they were beyond or close to the end of their useful life and leaking.

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

I find the domestic water and sanitary drainage systems are major systems as they are integral to the residential property per section 21.1 of the RTR and Policy Guideline #37C.

Considering the above, I find that the expenditure to replace the domestic water and sanitary drainage systems is in accordance with section 23.1(4)(a)(ii) of the RTR, as they were beyond or close to the end of their useful life and malfunctioning.

### The Tenant's submissions

The Tenant submitted that one of the reasons for the failure of the plumbing system in the building was due to years of differed maintenance. However, they did not provide any details on repairs that were not done or examples of repairs that had been ignored. In the absence of any corroborating evidence, I find the Tenant failed to sufficiently argue that the failure of the plumbing system was due to the inadequate repair or maintenance on the part of the Landlord or S. Investments Ltd.

## **Conclusion**

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

I grant the Landlord's application for the additional rent increase, based on the eligible capital expenditure of \$23,522.04. This is pursuant to section 43(1)(b) of the Act, and section 23.1(4) of the RTR referred to above.

Section 23.2 of the RTR sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I have found that there is 1 specified dwelling unit, and that the amount of the eligible capital expenditure is \$23,522.04.

Therefore, the Landlord has established the basis for an additional rent increase for a capital expenditure of \$196.02 ( $\$23,522.04 \div 1 \div 120$ ) per month. This is as per section 23.2 of the RTR. Note this amount **may not exceed 3% of the Tenant's current monthly rent**. If this amount represents an increase of more than 3%, the additional rent increase must be imposed in accordance with section 23.3 of the RTR.

The parties may refer to RTB Policy Guideline #37C, sections 23.2 and 23.3 of the RTR, section 42 of the Act (which requires that a landlord provide a tenant three months' notice of a rent increase), and the additional rent increase calculator on the RTB website(<http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1>) for further guidance regarding how this rent increase may be imposed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 5, 2025

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Residential Tenancy Branch