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).

Landlords 8.S.S.H.I. and V.N.1.A.P. (hereinafter referred to in the singular) were represented at the hearing by its legal counsel B.L., and property manager N.L.

Tenant J.G.2 attended 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 20, 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's counsel with instructions on accessing and downloading the Landlord's evidence submitted with in support of its application or requesting a printed copy. The Landlord's counsel stated that no Tenant contacted their office regarding difficulty in downloading the evidence or requesting a printed copy of the Landlord's evidence.

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

No evidence was submitted by a Tenant for consideration in this proceeding.

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 residential rental building was constructed in 1959 and consists of 22 units. The Landlord purchased the property on April 13, 2021. Prior to purchase, the Landlord

retained an engineering firm to conduct an inspection. A copy of the relevant portions of the condition inspection report were submitted in evidence by the Landlord.

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

- Installation of a building automation system (BAS) - $37,148.30, with last payment made by the Landlord for this work on February 14, 2024.
- Replacement of heating boiler and hot water storage tanks - $152,885.08, the Landlord making final payment for this work on January 17, 2024.
- Replacement of toilets in each rental unit - $8,426.30, last payment made by the Landlord on April 4, 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 (engineers and project managers and contractors) attesting to the necessity for the work. The Landlord's counsel and property manager in attendance at the hearing confirmed the Landlord had not filed an application for additional rent increase in the 18 months preceding this application. Additionally, the Landlord's representative confirmed there were no rebates or other source of payment available to the Landlord for each of these major components or systems.

The Landlord provided a copy of correspondence from the Landlord's director of building systems regarding the building automation system (BAS) which described how the system operates. Essentially, the building automation system sets the temperature in the building automatically based upon the outside temperature and weather conditions as well as establishing the water temperature for domestic hot water use. 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. The Landlord's representative's letter provides as follows with respect to the building automation system installed by the Landlord:

I am the Director of Building Systems for the Landlord. I have many years' experience and expertise in designing, installing, and managing various Building systems, including hot water, heating, HVAC, and Building Automation Systems.

The Landlord installed a Building Automation System ("BAS") at the Building in December 2023.

The BAS is a centralized system that controls and monitors space heating, domestic hot water, ventilation system, and natural gas consumption. For space heating and domestic hot water, the BAS uses sensors and actuators to regulate the temperature and flow of water to maintain a comfortable and efficient environment. The system can be programmed to adjust setpoint temperatures based on occupancy schedules, weather conditions, and any other factors that are expected to affect heating requirements. It also optimizes the operation of boilers, pumps and other heating equipment by providing real-time data on equipment performance and system faults, allowing the Landlord to identify and address issues quickly

The BAS takes into account a variety of variables, such as sun intensity, wind speed and direction, and outside air temperature. Additional data is obtained through 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 at the Building. Water and gas usage data at the Building show that actual usage of water decreased 44.09% and actual usage of gas decreased 20.49% in 2024 compared to 2023.

The benefits of the BAS are that Building equipment is being controlled efficiently and equipment operations can be closely monitored. This translates to energy savings and an associated reduction in greenhouse gas emissions, as noted above. In addition, the BAS alerts staff to problems with the operations of various Building systems, allowing for problems to be identified and solved more quickly, decreasing down time for repairs and associated inconvenience for Building residents.

I anticipate that the BAS system will not need to be replaced for at least 20 years.

The Landlord submitted a chart comparing gas consumption for the property in the year prior to installation of the BAS and the first year after its installation. The Landlord's property manager stated the data was compiled by the Landlord's senior property manager and utilities team. The Landlord submitted photographs of the BAS system and the property manager testified there was a 2-year warranty provided with the system. The Landlord's property manager confirmed the system is expected to last more than 5 years.

The Landlord incurred a further capital expenditure set forth in its application for the replacement of a boiler and storage tank system for the building's heat and domestic hot water. The condition inspection report for the property at the approximate time of the Landlord's purchase of the rental building in 2021 noted that the boiler system was past its useful life at that time and the engineers conducting the inspection recommended replacement. Although still operational (the Landlord provided maintenance invoices for the system dated 2022 and 2023) at the time of replacement, Landlord's counsel noted the Landlord was not obligated under the Regulation to wait until the system was irretrievably broken before it could replace it as the boiler was already beyond it useful life. Furthermore, counsel noted the Landlord wanted to avoid a catastrophic failure of the heating system, which may occur during fall or winter months, leaving Tenants without heat and hot water while repairs were undertaken. The Landlord provided a copy of the contract dated July 2023, for the boiler replacement as well as photographs of the replaced boiler and the new boiler. The property manager testified the heat exchanger for the boiler had a 10-year warranty and the remaining parts had a 2-year warranty.

The Landlord provided a copy of a letter from the plumbing and mechanical installation company representative that detailed the scope of the work involved. The contractor determined the existing boiler system was approximately 25 years old; he detailed the new system installed, including storage tanks, as well as the necessary electrical work for the installation; and stated the replacement work was not a result of lack of maintenance by the Landlord. The contractor stated in his letter the new boiler system is expected to have a useful life of more than 20 years. The system is also energy efficient as documented by the contractor's letter. The Landlord provided a gas utility efficiency report outlining anticipated financial savings from the installation of an energy-efficient boiler system as opposed to a traditional boiler heating system.

Lastly, the Landlord's application for an additional rent increase includes the cost for the replacement of the older toilets in each unit with a water-efficient toilet. The Landlord also provided a year-to-year comparison of the water usage in the building comparing the older to the newer toilets, although admittedly the water consumption was not broken-down into details of all the systems that use water in the building, including the boiler system. Nevertheless, there was a decrease in water consumption. The Landlord provided a letter from the contractor who installed the water-efficient toilets and who further stated the toilets were not replaced due to a lack of maintenance. regarding the water conservation offered by the new toilets. The Landlord's property manager testified, consistent with the contractor's statements in the letter, the older toilets used approximately 5 to 6 litres of water per flush whereas the water-conservation toilets used 3 litres of water per flush. The Landlord provided a photograph of the new toilet with the energy conservation sticker on it. Counsel stated it was impossible to determine the age of the replaced toilets as there are no maintenance records for this component. However, it was estimated the toilets may have been original to the building.

Upon inquiry, the Landlord's representatives take the position the low-water usage toilets installed use less energy as water circulates through the building by means of pumps and motors in order to maintain a certain level of water pressure. The Landlord's argument is that the less water used by these toilets results in decreased energy consumption by the pumps and motors employed to maintain the water pressure in the building. The Landlord did not provide direct quantification of the decreased water usage by the toilets and decreased energy consumed.

Tenant J.G. inquired whether the Landlord anticipated further rent increases and whether the cost-savings the Landlord benefits from would be passed onto Tenants. The Landlord's representatives at the hearing stated they were unaware of any future rent increases and thus not able to rule this out. It was noted that an additional rent increase is limited to 3 percent of a tenant's monthly rent; and Landlord's counsel stated that any rent increase, including the additional rent increase, goes into effect on the annual anniversary of the prior rent increase in accordance with the regulations. Furthermore, any rent increase must be upon proper 3-month notice to tenants as required by the Act and regulations.

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 and counsel's submissions during the hearing 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 preceding the Landlord filing this application.

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 22 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 **$198,459.68** as detailed in the Landlord's itemized capital expenditure 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 boiler system was at the end or past the system's useful life. The Landlord submitted maintenance records for the boiler system as well as a condition report regarding the boilers at the time of Landlord's purchase of the property noting that replacement was required at that time. 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 boiler system that was installed is energy efficient and the building automation system promotes energy efficiency of the boilers and domestic hot water. The Landlord's established by use of comparable utility data for the building the energy efficiency of the building automation system and the boiler. Furthermore, the Landlord provided evidence from the gas utility company regarding the energy efficiency of the new boiler system. I find the Landlord has provided adequate evidence to satisfy the requirements of the Regulation for these capital improvements and meet its burden of proof that the BAS and the boiler for heat and domestic hot water are both energy efficient systems.

The Landlord submitted satisfactory evidence the total cost for the boiler replacement and building automation system totaled $190,033.38, with payment made by the Landlord within 18 months preceding the application (January 17 and February 14, 2024, respectively for each system), and there was no other financial source available to the Landlord for this cost.

The Landlord provided the invoices and proof of payment for this capital expenditure. I accept the Landlord's property manager's testimony that the boiler system and building automation system are anticipated to last more than 20 years, which supports a finding that neither capital expenditure will occur again within five years.

Water-Efficient Toilets

I find toilets to be a major component of a major system; namely, the plumbing and sanitary system. The Landlord provided the receipts for the capital expenditure, and I find the final payment was incurred less than 18 months prior to making the application and I find it is reasonable to conclude that this capital expenditure will not be expected to incur again within five years. I further accept the Landlord's confirmation there was no other source of payment for this improvement.

The Landlord takes the position the water-efficient toilets are an eligible capital expenditure under the Regulation as the toilets qualify as energy efficient based upon the energy used by pumps and motors in the building to maintain water pressure; the reduced amount of water is contended to lead to lower energy consumption.

The reduction in energy use is not defined but the terms have a plain, unambiguous meaning. Energy efficiency is qualified by the subsequent terms relating to the reduction in greenhouse gas emissions. Policy Guideline 37C provides:

> Greenhouse gas means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and another substance prescribed in the regulations to the *Climate Change Accountability Act.*
>
> Any reduction in energy use or greenhouse gas emissions established by a landlord will qualify the installation, repair, or replacement for an additional rent increase. Some examples of installations, repairs, or replacements of major systems or major components that may reduce energy use or greenhouse gas emissions include:
>
> - replacing electric baseboard heating with a heat pump,
> - installing solar panels, and
> - replacing single-pane windows with double-paned windows

In this case, the toilets installed by the Landlord conserve water by reducing the number of litres used per flush based upon the design and increased velocity on the flush of the newer toilet. The toilet does not consume energy as it does not require an energy source (such as, a fossil fuel or electricity) to operate nor does it use heated water that would require the expenditure of energy necessary to raise the water temperature (as with domestic hot water systems). Rather, gravity and velocity of water make the toilet functional. While the toilets installed by the Landlord are water-efficient, this efficiency is not equivalent to a reduction in energy. It is noted that energy is traditionally measured in kilowatts, joules, degrees or similar units; whereas, in contrast, water usage is measured volumetrically. Additionally, insofar as the reduction in water usage may be attributed to lower energy consumption as less energy may be expended in acquisition and/or transportation of the water, I find these factors too tangential and indirect to support a finding that the toilets are energy efficient as the term is used in the Regulation.

Therefore, I decline to accept the Landlord's position that water-efficient toilets qualify as energy-efficient under the Regulation. I decline to include this capital expenditure in the amount of $8,426.30 for purposes of an additional rent increase.

Tenant Objections to the Capital Expenditures

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 find the Tenant's objections, set forth above, do not address the issues provided for under the Regulation to object to the Landlord's application. I find there has not been provided by the Tenants sufficient evidence to support a dismissal of the Landlord's application for an additional rent increase for the capital expenditure associated with the installation of new hot water tanks and boiler system to provide domestic hot water and heat to the rental property and building automation system.

Based on the above, I find the Landlord is entitled to recover for the hot water tanks and boiler system and building automation system in the amount of **$190,033.38.**

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 **$190,033.38,** 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 22 specified dwelling units and the total amount for the eligible capital expenditure is $190,033.38.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **$71.98 per unit per month [($190,033.38 ÷ 22 specified dwelling units) ÷ 120 months = $71.98].** 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 **$190,033.38.** 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: June 8, 2025

Residential Tenancy Branch