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 L.1.S. was represented by its operations manager R.L., property manager D.L., and assistant property manager C.D.

Tenant S.K., Tenant R.B., Tenant G.N., and Tenant C.B. through her representative L.B., attended the hearing. Tenant C.B. provided her written authorization for L.B. to act as her agent 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 April 4, 2025. The Landlord's representatives D.L. and C.D. confirmed at the hearing that each Tenant was served with the proceeding package, including copies of the Landlord's evidence together with a letter from the Landlord concerning the contents.

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

Tenant C.B. provided written submissions for this proceeding and the Landlord confirmed receipt as well as an opportunity to review prior to the hearing.

Tenant S.K. also submitted documents for consideration in this proceeding.

Preliminary Matters

At the outset of the hearing, representative R.L. stated the Landlord had determined it would withdraw from its application the cost for replacement of a pressure-reducing valve (PRV) on the incoming water line to the rental property. The Landlord's request for withdrawal of this capital expenditure was without objection and is granted. This withdrawal of the PRV capital improvement reduces the total claimed amount for capital expenditures by $5,969.25, resulting in a total requested amount in capital expenditures of $66,373.67 as subject to the additional rent increase.

The Landlord's representative R.L. further stated it would be imposing the additional rent increase only as to those Tenants whose rent was at least $150.00 below market value, the rationale being that rent imposed for more recent tenants included the cost of

these capital expenditures. The Landlord acknowledged that all specified dwelling units would be used for purposes of calculating any additional rent increase as required by the Regulation. Thus, only those Tenants who would be affected by the Landlord's application were served with proceeding package.

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 2014, consists of 9 storeys and has a total of 90 rental units. There is an amenity room on the 8th floor, as well as an underground parking garage.

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

- Carpet replacement in common areas - $41,028.75, payment made on November 4, 2024
- LED lighting replacement in common areas - $18,375.00, payment made on October 30, 2024
- Replacement of entry-phone - $6,969.92, payment made by the Landlord on December 18, 2023

The Landlord provided copies of invoices for each capital improvement and representative R.L. provided testimony of the Landlord's payment as well as date of payment. The Landlord also provided photographs of the components or systems repaired or replaced.

The Landlord submits the carpet in the common area was original to the rental property and thus approximately 10 years old at the time of replacement. The Landlord's representative explained replacement was necessary as the carpet in the common areas was subject to high traffic with evidence of wear patterns, and as the building is pet-friendly, there were pet odors and stains over time. The representative stated the carpet was maintained by professional cleaners during the year in addition to regular maintenance by the Landlord. Representative R.L. stated the Landlord had received complaints from Tenants regarding the condition of the carpet and he had received at least two verbal complaints from Tenants.

Landlord representative R.L. testified the Landlord has a green initiative for its rental properties. The Landlord replaced common area lighting, including a portion of the parking garage connection to the building, to energy-efficient LED lighting. The Landlord's representative R.L. testified the lighting change increases Tenant and occupant safety and security as the LED lighting is brighter than that provided by the replaced lighting.

The entry-phone system was approximately 10 to 11 years old at the time of replacement by the Landlord. Representative R.L. explained the entry-phone had required repetitive repair in the prior two-year period, and when it was vandalized, the Landlord determined it was less expensive to replace the system with an updated system that provided enhanced security. R.L. stated the prior system sometimes failed with its connection to the elevator. He explained that when a delivery was made, a tenant could allow entry to the delivery person using the entry-phone. The entry-phone was integrated with the elevator to allow the delivery person elevator-access to only the tenant's floor for door delivery of the package or parcel. R.L. stated the replaced system often required repair of this feature. The representative testified the new system installed has enhanced security features for Tenants as the entry-phone system now has a camera. Upon inquiry, the Landlord's representative stated the Landlord did not tender the cost for the replacement system to its insurer after it was damaged by vandals as the deductible was greater than the capital expenditure.

Tenant C.B.'s agent submitted that the Landlord's capital improvements were subject to payment from another source as the Landlord could recoup the cost through tax deductions. Tenant C.B. provided written submissions in support of this position. The Tenant's agent further stated the intent of the legislation permitting additional rent increases was to improve older housing that may have fallen into disrepair and require repair.

Tenant S.K. stated her concern with the application was the PRV capital expenditure but this cost had been withdrawn by the Landlord.

Tenant G.N. inquired as to the number of specified rental units and how the number of units factored into the calculation of an additional rent increase under the Regulation.

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.

The legislative history addresses Tenant C.B.'s position that the underlying intent of the legislation was for the repair of older rental housing. The Regulation is not limited to only older housing in need of repair, but is sufficiently expansive to include newer rental properties as well, provided the Regulatory criteria is established.

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.

3. Prior Application for Additional Rent Increase

In this matter, based upon the Landlord representative's testimony, 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 90 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 **$66,373.67** as detailed in the Landlord's application, evidence and as itemized capital expenditure set forth above (this amount includes the Landlord's withdrawal of its claim for pressure-reducing valve for the incoming water pipe in the amount of $5,969.25).

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.”

Carpet Replacement in Common Areas

I find the carpet, as the primary flooring in the common areas of the rental property, is a major component of the rental building. I find the replacement was necessary as the Landlord’s evidence established excessive wear, tear and pet-associated damage to

the carpet, despite maintenance of the carpet by the Landlord. I find carpet in the common areas was at or near the end of its useful life. The Landlord's representative testified regarding the Landlord's maintenance and cleaning of the carpet, but the high traffic and pets necessitated replacement. The total cost for the carpet replacement was $41,028.75, as evidenced by the invoice, with payment made by the Landlord on November 4, 2024, within 18 months of the Landlord's application filed March 27, 2025. I accept the Landlord's representation there was no other financial source available to the Landlord for this cost.

I find the Landlord has provided sufficient evidence to satisfy the requirements of the Regulation. I find it reasonable to conclude this capital expenditure will not occur again within five years as the expected useful life of carpet is 12 years as provided in Policy Guideline 40.

LED Lighting in Common Areas

Policy Guideline 37C states the 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 in the rental property is a major component or major system of the building. I accept the Landlord's evidence that the installation of LED lighting fixtures promotes energy efficiency.

I further accept the Landlord's representations that the original lighting was dimmer than the LED lighting, and the LED lighting thus increases Tenant safety.

The Landlord established the cost for this improvement to be $18,375.00, which the representative stated was paid by the Landlord on October 30, 2024, 18 months prior to the application filed March 27, 2025. I accept the representative's statement there was no rebate or other source of payment for this capital improvement. I accept this cost will not occur again within 5 years as the expected useful life for lighting fixtures is 15 years as provided for in Policy Guideline 40.

Replacement of the Entry-Phone System

The Landlord's evidence establishes the entry-phone was at or near the end of its useful life at the time it was vandalized. I find the entry-access system is a major system of the rental building that provides security to Tenants and occupants. I accept the Landlord's evidence the new system enhances security with a camera feature not present in the replaced system. The Landlord provided satisfactorily evidence that the cost of replacement system was $6,969.92 for which the Landlord provided a copy of the invoice, payment made on December 18, 2023.

Policy Guideline 40 provides that an intercom system has an expected useful life of 15 years. I accept that the entry-phone system would last for at least 5 years and thus this cost is not expect to occur again within 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.

Tenant C.B. contested the Landlord's application, in relevant part, on the basis that the Landlord could deduct each of the capital costs from its taxes. Policy Guideline 37C addresses payments from another source, and with regard to potential tax deductions, states:

> [L]andlords are not [considered to be] reimbursed by another party [for purposes of the Regulation] under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute 'payments from another source' because the landlord is not receiving payment by reducing their taxable income.

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 $66,373.67 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 **$66,373.67,** 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 90 specified dwelling units and the total amount for the eligible capital expenditure is $66,373.67.

I find the Landlord has established the basis for an additional rent increase for a capital expenditure of **$6.15 per unit per month [($66,373.67 ÷ 90 specified dwelling units) ÷ 120 months = $6.15].** 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. Pursuant to the Landlord's representations at the hearing, this amount is to be imposed only as to those Tenants identified by the Landlord whose monthly rent was $150.00 or more below market rate and were served with Notice of this application and hearing.

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 **$66,373.67.** 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 4, 2025

Residential Tenancy Branch