

## **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 T.V.L. attended the hearing for the Landlord.

Tenant H.C., Tenant S.F. 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 Tenants on May 15, 2025, to the rental unit's address. The Landlord provided Canada Post registered mail receipts dated May 15, 2025.

Based on the Landlord's testimony, and the receipts, I find the Landlord proved that they served the Tenants 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 Tenants are deemed to have received the Proceeding Package on May 20, 2025, per section 90(a) of the Act.

### **Service of Evidence**

The Landlord testified their evidence was served the same time using the same method as their Proceeding Package.

Therefore, for the same reasons I found the Proceeding Package deemed received on May 20, 2025, I also deem the Landlord's evidence received on that date per 90(a) of the Act.

The Landlord testified they did not receive any evidence from a Tenant for this application. While Tenant T.N. submitted evidence to the Residential Tenancy Branch, they did not provide any evidence that it was served to the Landlord.

Under rule 3.16, the respondent must be able to show they properly served their evidence. If they cannot, an arbitrator may refuse to consider said evidence or adjourn the hearing.

I find Tenant T.N. has failed to satisfy me that their evidence was properly served. As I have found T.N. has failed to prove they their evidence was served I will disregard it.

### **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 is claiming \$147,357.78 for replacing the residential property's staircases.

The Landlord provided the following invoices for the capital expenditure:

Name	Detail	Transaction Date	Amount
Stellar Architectural Consulting	Professional fees - architect	24/05/2022	\$ 9,626.72
District of Saanich	BP for phase 1	26/05/2022	\$ 266.00
GC Engineering Ltd	Professional fees - engineer	31/05/2022	\$ 5,880.00
Boonpro	Soft costs & prep Inv 2022-24 cap ex portion only	22/06/2022	\$ 610.05
District of Saanich	BP fee BP for phase 2	04/07/2022	\$ 796.00
Abortek Landworks	Excavation for W footings	12/07/2022	\$ 2,572.50
Stellar Architectural Consulting	Professional fees - architect	08/08/2022	\$ 146.92
CleanLine Enterprises Ltd	Contractor	30/09/2022	\$ 19,231.02
CleanLine Enterprises Ltd	Contractor	30/09/2022	\$ 8,423.21
GC Engineering Ltd	Professional fees - engineer (inv 2)	12/10/2022	\$ 420.00
GC Engineering Ltd	Professional fees - engineer (inv 3)	20/10/2022	\$ 420.00
CleanLine Enterprises Ltd	Contractor	04/11/2022	\$ 11,565.12
Stellar Architectural Consulting	Professional fees - architect	18/11/2022	\$ 1,050.00
GC Engineering Ltd	Professional fees - engineer (inv 4)	18/11/2022	\$ 630.00
Taproot Holdings	2023-17 Cap ex portion only Misc construction costs	31/03/2023	\$ 1,643.07
CleanLine Enterprises Ltd	Contractor	23/05/2023	\$ 33,057.57
Taproot Holdings	Misc construction costs Vinyl, tippage, stucco, scaffold	01/06/2023	\$ 8,582.07
CleanLine Enterprises Ltd	Contractor	30/06/2023	\$ 33,459.07
CBS Electric	Electric work d/t wall tie-ins	07/01/2023	\$ 165.90
Protec Integrated Security	Coax cable repair (damaged during construction)	05/07/2023	\$ 175.00
Crescent Moon Forge	Parking lot bollard	17/07/2023	\$ 252.00
GC Engineering Ltd	Professional fees - engineer (inv 5)	18/07/2023	\$ 420.00
Abortek Landworks	Construction fencing, paver stones	19/07/2023	\$ 656.25
Pacific Coast Floors	Staircase nosings	24/07/2023	\$ 985.72
CBS Electric	Exterior light reinstall	08/01/2023	\$ 210.00
GC Engineering Ltd	Professional fees - engineer (inv 6)	29/09/2023	\$ 1,050.00
Stellar Architectural Consulting	Professional fees - architect	14/11/2023	\$ 1,050.00
B McDonald Drywall	Drywall in units 3, 7, for staircase tie-ins	12/12/2023	\$ 650.00
CleanLine Enterprises Ltd	Contractor	10/01/2024	\$ 1,726.74
CBS Electric	Fire alarm pull stations d/t staircase work	19/08/2024	\$ 1,636.83
Cantec	Annual fire inspection w acceptance of ground fault (R&M)	03/02/2025	\$ -
Total			\$147,357.76

The Landlord testified to the following:

- The project involved replacing 2 staircases in the residential property. These staircases provide access to the upper levels and are needed as fire exits.
- The need to replace the staircases became clear when the Landlord tried to have them repaired. The architect hired to obtain building permits advised that the stairs needed full replacement for legal reasons. To the Landlord's knowledge, the stairs were original to the building, which was built in 1964. The railing was falling off, and the stairs had suffered significant water damage before the project.
- The Landlord expected the new staircases to last at least 20 years.

The Landlord provided photos of the staircase before and after the repairs were done.

None of the Tenants made submissions against the application. S.F. asked a question about how much the Landlord can raise the rent for a capital expenditure.

The Landlord testified that 9 specified dwelling units in the residential property were affected by the capital expenditure. The ground-floor units were not included because they are not impacted by the staircases.

H.C. initially objected to their rental unit being included. Their reasoning was that they could access their rental unit through the parking garage. However, they agreed with the Landlord that the staircases were necessary for providing a safe exit in case of an emergency.

Residential Tenancy Branch records show the Landlord made their application on April 17, 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.

I find that the staircases are major systems, as they provide Tenants with access to the upper floors and emergency exits. This finding is based on the Landlord’s uncontradicted testimony. I find the staircases were severely damaged and breaking down. I base this on the Landlord’s testimony and the photos they provided. I find these conditions fall under “malfunctioning” for the purposes of section 23.1(4)(1)(i). Therefore, I find that replacing the staircases falls under the purpose of section 23.1(4)(1)(i).

#### *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.

I find the final payment for replacing the staircase was made on February 3, 2025. I base this on the Landlord’s testimony and the invoices they provided. Therefore, I find the Landlord made their application within 18 months of the capital expenditure.

#### *Not required for another 5 Years*

I find the capital expenditure will not be required again for at least 5 years. I base this on the Landlord’s uncontradicted testimony.

#### *Granted Rent Increase*

Therefore, I find there is a \$147,357.78 eligible capital expenditure.

The additional rent increase is the lesser of 3% of the current rent combined with the yearly permitted rent increase, or the  $[(\text{total eligible capital expenditure} \div \text{the number of specified dwelling units}) \div 120]$  under section 23.2 of the Regulation.

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 9 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 \$136.44  $[(\$147,357.78 \div 9) \div 120]$ , whichever is lower.

Should \$136.44 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 \$136.44. 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 \$147,357.78. 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: June 18, 2025

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Residential Tenancy Branch