

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)

I write this decision after the second hearing on June 20, 2025. I adjourned the first hearing on May 20, 2025, because of problems with service. I stated these problems were in my May 20, 2025, interim decision:

“Tenant T.B.3. testified that after asking the Landlord for paper copies of the Landlord’s evidence in late March 2025, they did not receive it until 4 days before the hearing (which would be May 16, 2025). The Landlord did not contest T.B.3.’s account.”

Other Tenants also had problems accessing the Landlord’s evidence through a file sharing website.

As a result, I adjourned the hearing to allow the following instructions:

“First, I order the Landlord to serve the Tenants a copy of this interim decision and [RTB-43s](#).[...]

I am granting the Tenants the ability to submit evidence after this interim decision[...]

Further to this, I order the Landlord to serve the Tenants an updated RTB-43 if additional evidence is added to the file sharing website.”

The first hearing was attended by:

T.B., K.C., A.A., D.P., G.W., and G.J. attended the hearing for the Landlord.

Tenant Z.R., Tenant K.G., and Tenant T.B.3 attended the hearing for the Tenant.

The second hearing was attended by:

D.P., K.C., and K.T. attended the hearing for the Landlord.

Tenant J.C. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

At the first hearing, the Landlord testified they served the Tenants their Proceeding Packages by posting it on the rental units' doors on March 21, 2025. The Landlord submitted a witnessed proof of service confirming their testimony.

I find that the Landlord posted the Proceeding Package on the rental units' doors on March 21, 2025, based on the Landlord's testimony and evidence.

Under section 90 of the Act, documents posted on the rental unit's door are considered received 3 days after they are sent.

Therefore, I find the Tenants are deemed to have received the Proceeding Package on March 24, 2025.

At the second hearing, the Landlord testified they served the Tenants the interim decision by posting it on the rental units' doors on May 23, 2025. The Landlord submitted a witnessed proof of service confirming their testimony.

I find that the Landlord posted the interim decision on the rental units' doors on May 23, 2025, based on the Landlord's testimony and evidence.

Therefore, I find the Tenants are deemed to have received the interim decision on May 26, 2025.

Service of Evidence

At the first hearing, the Landlord testified that they served their evidence using an instruction page in their Proceeding Package. The instruction page included a link to a file sharing site and offered to send paper copies of the Landlord's evidence upon request.

In the interim decision, I noted that evidence may be served through a file hosting site under the *Residential Tenancy Branch Rules of Procedure*. However, the Rules require the Landlord to include an RTB-43 when using this method. I issued additional instructions to the Landlord, quoted above, to address this issue.

At the second hearing, the Landlord testified that they sent the RTB-43 in the same package as the interim decision. I find the Tenants who did not request paper copies

are deemed to have received the Landlord's evidence on the same date as the interim decision, for the same reasons.

At the first hearing, Tenant T.B.3. confirmed they received the Landlord's evidence posted on their door. Therefore, I find that it was served using an accepted method mentioned in section 88 of the Act.

At the second hearing, D.P., an agent of the Landlord, testified that they served a physical copy of the Landlord's additional evidence to T.B.3. on May 17, 2025, by posting it on their door. They also testified to serving Tenant Z.R. on May 20 and A.B. on June 9. Based on D.P.'s testimony, I find each of these documents is deemed received 3 days after service.

At the second hearing, the Landlord testified that they received Tenant K.G.'s original evidence package, written submissions, and supplementary submissions by email. The Landlord's instructions gave the Tenant permission to serve them evidence by email. Therefore, I find that it was served under section 88 of the Act.

At the second hearing, the Landlord testified that they had not received any other evidence from the Tenants. K.G. was the only Tenant who provided proof of service to the Residential Tenancy Branch.

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

I am not satisfied that Tenants T.S.2. and R.S.T. properly served their evidence. As they failed to prove service, I will disregard their evidence.

Preliminary Issues

Landlord's Legal Name

In their written submissions, K.G. argued that the Landlord's name on the application differed from the name on their tenancy agreement. At the second hearing, the Landlord explained that the corporation named on some of the tenancy agreements is owned by the corporate Landlord. They also state in their written submissions "The Applicant [Landlord] is the registered owner of [redacted] [the residential property] and has been the registered owner since April 5, 2018." Based on these submissions, I find the Landlord is the registered owner of the residential property.

I find the Landlord is the Landlord for the purposes of the Act, as the owner of the residential property. Therefore, I find the application can proceed.

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.

This application is for a \$584,031.61 capital expenditure to upgrade the elevator. In their written submissions, K.G. stated that some expenditures relate to fire system upgrades. This they argued meant there were multiple capital expenditures

The following table is based on tables the Landlord included in their written submissions. The Landlord provided a breakdown of all invoices for each company. They also submitted invoices for each expense.

| | |
|-----------------------------------------|--------------|
| City Elevator Ltd | \$157,966.35 |
| Action Electric | \$57,031.94 |
| TK Elevator (Canada) Ltd | \$337,714.51 |
| Accurate Security (Accurate Alarm Ltd.) | \$3,123.75 |
| McCuaig & Associates Engineering Ltd | \$ 28,195.06 |
| Total | \$584,031.61 |

The Landlord also submitted cheques to show when each invoice was paid. The final payment was made to Action Electric on August 21, 2023.

At the second hearing, J.C. stated that some invoice charges were for other properties. They referred to a February 25, 2019, invoice from McCuaig & Associates Engineering Ltd. The Landlord stated this was true, as the Landlord owns and runs several properties. The Landlord stated that despite this they only claimed expenses related to the elevator project for the residential property in this application and excluded charges on invoices related to other properties.

The Landlord submitted a document prepared by McCuaig & Associates Engineering Ltd titled the Elevator Upgrade Planning Report (the "Elevator Upgrade Report"), dated May 2, 2019. It states that many elevator parts in the residential property are no longer supported. It also states that many elevator systems were broken or failing when the report was written.

The Elevator Upgrade Report explains that the elevator does not meet legal requirements for elevators. It notes the elevator lacked fire safety systems, such as a way for emergency personnel to speak to people inside and an emergency recall function. It recommends several upgrades, including fire safety and potential security upgrades like cameras

The Landlord also submitted a property condition assessment by Pinchin Ltd (the "Pinchin Report"), dated April 12, 2021. It states the elevator was installed in 1971 and

received partial upgrades in 1997. The Pinchin Report estimates that after the upgrades that are the subject of this application, assuming the Landlord maintains a full maintenance contract, the elevator should last 15-20 years.

At the second hearing, the Landlord testified that all claimed expenses were directly tied to the elevator. They stated that the fire safety expenses were required to complete the elevator upgrade. If these expenses were not made, installing the elevator would violate fire safety codes. Fire safety work outside the elevator was only done to ensure the elevator's new systems worked with the residential property's existing fire safety systems. The security camera mentioned in one invoice was installed inside the elevator.

Residential Tenancy Branch records showed the Landlord paid for the application on February 21, 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.

The Landlord claimed there was 1 capital expenditure for the elevator. K.G. argued there were at least 2: one for the elevator and another for fire safety system changes. This matters because a capital expenditure must be made within 18 months of the application. If separated, the final payment for all but the elevator project would fall outside the 18-month period.

Residential Tenancy Policy Guideline 37C implies that multiple payments can relate to the same project. It states that the final payment, not earlier ones, determines whether the expenditure was made within the 18-month period. Therefore, considering the wording of section 21.1 of the Regulation, I find that expenditures are part of the same project if they are all tied to the same purpose.

I find that all expenses were related to the elevator project. The Landlord testified that the fire safety upgrade was required to meet legal standards for the elevator. The reports also state that upgrading the elevator required fire safety improvements. The Landlord testified that all security camera expenses were for a camera inside the elevator. The Elevator Upgrade Report also mentions this camera. I find that the fire safety and security upgrades were all planned in the Elevator Upgrade Report support that all expenses were part of the same project.

I find the elevator project falls under purpose ii. Based on the Pinchin Report, the elevator was installed in 1971 and received some upgrades in 1997. Given its age, I find the Elevator Upgrade Planning Report’s claims about obsolete and malfunctioning systems to be credible. Residential Tenancy Policy Guideline 37C lists elevators as a major system. Therefore, I find the project involves replacing a malfunctioning major system.

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.

Under Rule 2.6, an application is made when the applicant pays the filing fee. Based on the Landlord’s testimony and payment cheques, I find the last payment for the elevator project was on August 21, 2023. This is less than 18 months before the Landlord applied on February 21, 2025.

Not required for another 5 Years

Based on the assessment in the Pinchin Report, I find the expenditure another expenditure for the same purpose will not be required for another 5 years.

Granted Rent Increase

Therefore, I find there is a \$584,031.61 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 104 specified dwelling units.

Therefore, I order the Landlord may raise the rent 3% of the current rent after the current yearly rent increase is added, or \$46.80 $[(\$584,031.61 \div 104) \div 120]$, whichever is lower.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for a capital expenditure in the amount of \$584,031.61. 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: July 03, 2025

Residential Tenancy Branch