



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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A matter regarding Cycloe Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

The landlord seeks a rent increase for eligible capital expenditures pursuant to sections 43(1)(b) and 43(3) of the *Residential Tenancy Act*, SBC 2002, c. 78 (the “Act”) and section 23.1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003. The landlord filed the application for a rent increase on January 18, 2022, a preliminary hearing was held on June 27, 2022, and a hearing was convened on November 4, 2022.

Procedural matters covered at the preliminary hearing are outlined in my Interim Decision of June 27, 2022.

Attending the hearing on November 4 were an agent for the landlord (hereafter the “landlord” for brevity) and two tenants appearing on their own behalf. The agent was affirmed and neither party raised any issues regarding the service of documents.

### **Preliminary Issue: Service of Interim Decision and Notice**

As ordered on page two of the Interim Decision,

The landlord must serve a copy of the *Notice of Dispute Resolution Proceeding* (the “Notice”) and this Interim Decision to the tenants within 15 business days after receiving them from the Residential Tenancy Branch.

The landlord submitted into evidence various documentation, including Canada Post tracking numbers and a service history log showing when and how the various respondents were served with Notice and the Interim Decision. Based on this evidence, including the landlord agent’s affirmed confirmation of successful service, and in the absence of any information or evidence to the contrary, it is my finding that the landlord served the respondents in compliance with the order in the Interim Decision and in compliance with the Act.

### Issue to be Decided

Is the landlord entitled to impose an additional rent increase for capital expenditures?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to decide the outcome of the application and to explain the decision, is reproduced below.

There are a total of 44 rental units and there are 69 tenants (as of the date on which the landlord filed its application). The property is a three-storey building constructed many years ago.

The landlord has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application. And the landlord has not, based on the information before me, imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

The landlord testified that he was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to the residential property's aging handrails, hot water tank replacement, carpeting, and sewer line and pipe replacement. He testified that the handrails were not the correct height and need replacing to comply with the current building code and safety regulations. The hot water tank was very old and needed replacing. As was the carpeting, which the landlord believed to be the original carpeting in the building.

The sewer line throughout the building and into the street was problematic, old, and caused many backups. It therefore had reached the end (if not beyond) of its useful life and need an extensive replacement. The landlord testified that he expected all of the components to have a useful life of at least, if not more, than 20 years. He was not entirely certain as to the expected lifespan of the hot water tank, though it is expected not last more than 5 years.

A 31-page PDF document containing copies of invoices, quotes, proofs of payment, a carpet assessment and recommendations, a drain assessment and recommendation, a scope of work and quote, and related invoices and proofs of payment thereto, was submitted into evidence and considered.

(It should be noted that while the landlord referred to photographs in evidence, I was unable to find them; however, I do not find the absence of any photographs to be of any great significance or a decisive factor.)

A summary of the work done, the date of the invoice for the work, and the amount, is summarized below:

Description	Date	Amount
Replace aged stairwell railings and bring to height code requirement.	Oct 7, 2020	\$7,585.61
Hot Water Tank Replacement.	Jul 13, 2021	\$10,552.50
Supply and install 4,480 square feet of aged hallway and stairwell carpeting (inc removal, prep, materials, labour). 2 invoices (August 17 and Nov 24) from Journey Flooring	Nov 24, 2020	\$24,586.07
Excavate, remove, replace and regrade section of failing cast iron sewer pipe in common area hallway and exterior sidewalk to city main. 2 invoices from Pure Mechanical (August 27 and October 1, 2021)	Aug 31, 2021	\$20,632.50
Sewer Line regrade paving. 2 Invoices from General Concrete (August 10, 2021 and November 26, 2021)	Sep 29, 2020	\$6,615.00
Supply and replace carpet removed for lower hallway sewer regrade (materials and labour). 2 invoices from Journey Flooring (October 1, 2021 and October 18, 2021)	Aug 24, 2021	\$2,276.40
Total		\$72,248.08

The tenants did not dispute the cost of the work.

One tenant referred to a heat-and-hot water outage lasting 40 days during the last winter cold snap. The other tenant asked a few questions about the timing and amount of any possible rent increase, including a comment on how the landlord can write their expenditures off on their taxes. They also wanted to know what the landlord was going to do about a cockroach problem in the property. Last, one of the tenants asked why they should be subject to a rent increase for expenditures on handrails when their rental unit was on the ground floor and they did not use the stairwells.

### Analysis

#### ***Onus and Burden of Proof***

The landlord must establish on a balance of probabilities that the capital expenditures meet the requirements to be eligible for an additional rent increase.

#### ***Regulatory Framework***

Section 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount “ordered by the director on an application under subsection (3) of the Act. Subsection 43(3) of the Act, to which the above section refers, states that

[...] a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1)(a) by making an application for dispute resolution.

Section 23.1 of the Regulation sets out the criteria to be considered (excerpts only):

- (1) Subject to subsection (2), a landlord may apply under section 43 (3) *[additional rent increase]* of the Act for an additional rent increase in respect of a rental unit that is a specified dwelling unit for eligible capital expenditures incurred in the 18-month period preceding the date on which the landlord makes the application.
- (2) If the landlord made a previous application for an additional rent increase under subsection (1) and the application was granted, whether in whole or in part, the landlord must not make a subsequent application in respect of the same rental unit for an additional rent increase for eligible capital expenditures until at least 18 months after the month in which the last application was made.

- (3) If the landlord applies for an additional rent increase under this section, the landlord must make a single application to increase the rent for all rental units on which the landlord intends to impose the additional rent increase if approved.
- (4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:
  - (a) the capital expenditures were incurred for one of the following:
    - (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; [. . .]
  - (b) the capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application;
  - (c) the capital expenditures are not expected to be incurred again for at least 5 years.
- (5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
  - (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
  - (b) for which the landlord has been paid, or is entitled to be paid, from another source.

### ***Number of Specified Dwelling Units***

Section 23.1(1) of the Act 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 44 eligible dwelling units in the building.

Regarding the tenant's question about why they are subject to a rent increase for expenditures on a replacement handrail. The policy guideline (*Policy Guideline 37: Rent Increases*) requires that

A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property.

In other words, while the handrails might not ordinarily be used by a first-floor tenant, all rental units within the building (in which the handrails were installed) are subject to the specific dwelling unit inclusion in the application.

### ***Amount of Capital Expenditures***

The amount of the capital expenditures is \$72,248.08.

***Eligibility and Application of Subsection 23.1(4)(a)***

In this application, based on the undisputed oral and documentary evidence, it is my finding on a balance of probabilities that the capital expenditures were incurred for:

1. 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 (specifically, the sewer pipes and lines, and, stairwell railings), and
2. for 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 (specifically, the carpeting, the sewer pipes and lines, and the hot water tank), and

It is my finding that the capital expenditures were incurred in the 18-month period preceding the date on which the landlord made its application. Further, I find that all of the capital expenditures are substantive and not minor. Nor do I find that any of the work completed is purely for aesthetic or cosmetic purposes.

Further, again based on the evidence before me, I conclude that the capital expenditures are not expected to be incurred again for at least five years. There is nothing in evidence which would suggest that the life expectancy of the components replaced would deviate from the standard useful life expectancy of building elements set out at *Residential Tenancy Policy Guideline 40*. For this reason, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot reasonably be expected to reoccur within five years.

Both tenants who attended the hearing asked questions about various matters and made submissions on other matters. However, no respondent tenant subject to this application established either ground set out in subsection 23.1(5) of the Regulation which might give rise to the landlord's application being denied. For that reason, I need not consider whether subsection 23.1(5) might defeat the application.

To conclude: the landlord's application for an additional rent increase for eligible capital expenditures in the amount of \$72,248.08 pursuant to section 23.1 of the Regulation and section 43(1)(b) of the Act is granted.

Section 23.2 of the Regulation sets out the formula to be applied when determining the amount of the additional rent increase.

- (1) If the director grants an application under section 23.1, the amount of the additional rent increase that the landlord may impose for the eligible capital expenditures is determined in accordance with this section.
- (2) The director must
  - (a) divide the amount of the eligible capital expenditures incurred by the number of specified dwelling units, and
  - (b) divide the amount calculated under paragraph (a) by 120.
- (3) The landlord must multiply the sum of the rent payable in the year in which the additional increase is to be imposed and the annual rent increase permitted to be imposed under section 43(1)(a) of the Act in that year by 3%.
- (4) The landlord may only impose whichever is the lower amount of the 2 amounts calculated under subsection (2) or (3).

In this application there are 44 specified dwelling units. The calculation is thus:  $(72,248 \div 44 \text{ units}) \div 120 = \$13.68$ . From there, the landlord must then apply subsections 23.2(3) and (4) of the Regulation.

It is the landlord's responsibility to make the required calculations. The landlord must refer to *Residential Tenancy Policy Guideline 37*, section 23.3 of the Regulation, section 42 of the Act, and the additional rent increase calculator on the Residential Tenancy Branch website for guidance on how this rent increase made be imposed.

### Conclusion

**The landlord's application is hereby granted. I grant the application for an additional rent increase for capital expenditures of \$13.68. The landlord must, and may only, impose this increase in accordance with the Act and the Regulation.**

**I hereby order the landlord to serve the tenants with a copy of this Decision in accordance with section 88 of the Act within 15 business days of receiving a copy of this Decision.**



This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act.

A party's right to appeal this decision is limited to grounds under section 79 of the Act or by way of an application under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 5, 2022

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Residential Tenancy Branch