Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding bcIMC Realty Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On August 11, 2022 (the "Application date"), the Landlord filed an Application pursuant to s. 43 of the *Residential Tenancy Act* (the "*Act*") and s. 23.1 of the *Residential Tenancy Regulation* (the "*Regulation*") for an additional rent increase for capital expenditures pursuant to s. 23.1 of the *Regulation*.

The Landlord attended the hearing at the scheduled hearing time. A number of tenants were present at the hearing on November 29, 2022. Collectively, I refer to the "tenants" listed as Respondents for this hearing as the "Tenant" in this decision.

Preliminary Matter – timeline for this decision

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision-maker, ss. (2) does not invalidate a decision that is given past the 30-day period. I reached this decision through review and evaluation of all witnesses' testimony, and hundreds of pages of evidence submitted by both parties for this hearing. The parties' right of due process, for a thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of the Landlord's right to compensation for capital expenditures and did not concern an eviction or end of tenancy that are matters of human consequence.

Preliminary Issue – service and disclosure of evidence

The Landlord had obtained an order for substituted service from the Residential Tenancy Branch on September 22, 2022 authorizing service by attaching documents to each door or placing documents in mailbox/mail slot.

The Landlord provided an Affidavit of Service, affirmed October 13, 2022 to show their method of service of the Notice of Dispute Resolution Proceeding; Respondent Instructions; a fact sheet; and an information on the concept of additional rent increases for capital expenditures. This attests to the Landlord's efforts at serving each tenant of the rental property either in person, by email, or by registered mail. The Landlord in this Affidavit particularized the method of service for each rental unit with the date for each.

The Landlord provided a second Affidavit of Service, affirmed November 14, 2022, attesting to the service of their written summary, with supporting documents, prepared for this dispute. The Landlord provided a particularized list of method of service for each rental unit, with the date for each.

In the hearing, the Tenant confirmed that they received the initial Notice of Dispute Resolution Proceeding and other documents. They also confirmed they received the Landlord's written submissions and supporting documents; however, some of these documents were served after the required time limit.

Given the number of separate tenants involved, I find there is no issue with the Landlord's service of the Notice of Dispute Resolution, and their written submissions to all tenants involved. It was quite a rigorous process to serve all parties involved and I am satisfied that the Landlord completed this task fully and completely as required. The Tenant took no serious issue with the Landlord's service, and I conclude the Respondents in this hearing were sufficiently served in accordance with the *Residential Tenancy Branch Rules of Procedure* and the Order for Substituted Service.

In the hearing, the Tenant who represents all other tenants provided proxies from as many tenants as possible. They provided copies of these to the Landlord. The Landlord confirmed service of the Tenant's written submissions and documentation provided to support those written submissions.

Issue(s) to be Decided

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

Background and Evidence

The rental property consists of two buildings joined by a central common area building. The rental property was constructed in 1994 and consists of 64 individual units. The title for the rental property was transferred to this Landlord on December 24, 2004, as provided for in the written submissions of the Landlord.

The Landlord presented each set of capital expenses – that they submit are related to major systems or major components of the rental property – as follows. The Tenant provided a response to each capital expense that the Landlord incurred. A date in brackets refers to the cashing of a cheque written by the Landlord for that particular payment.

	Description	invoice date	paid date	paid
A.	energy-reducing LED lighting upgrade	Oct 29/21	March 3/22	$27,193.95
B.	common area social kitchen – cabinets and appliances	May 11/21, Jun 22/21	June 18/21, Jul 9/21	$14,432.61
C.	boilers	Jan 27/21	Feb 19(22)/21	$7,117.54
D.	energy-savings additive	Nov 18/20	Mar 3(5)/21	$1,409.71
E.	recreational landscaped area	Apr 7/21 Aug 22/21	Apr 7/21 Oct 1/21	$20,576.85
F.	hot water piping	Dec 31/20 Aug 31/21	Feb 4(11)/21 Oct 13/21	$25,033.00
G.	ventilation	Apr 30/21	May 18/21	$54,862.50
			Total	**$150,626.16**

A. energy-reducing LED lighting upgrade

The Landlord had in place a proposal from April 16, 2021, with the aim of "improving overall energy efficiency" by reducing the amount of hydro energy used. The Landlord upgraded the lighting in October 2021 in the parking and common areas. The Invoice, with evidence of the Landlord's payment on March 3, 2022, in the Landlord's evidence shows the amount of $27,193.95.

The Landlord also submits that this can be considered a major system/component where it enhances security at the rental property.

The Landlord submits this is within 18 months of the Application date, and this expenditure is not expected to recur for at least 5 years where the proposal notes that equipment and fixtures are “rated to last up to. . . (10 years) . . .”

The Tenant responded by counting the number of lighting fixtures in the rental property. Four of the fixtures in question are in “the social room” which is controlled only by management, “not freely available to the tenants.”

The Tenant responded with detailed calculations to show the Landlord is recouping the cost for this project through a rebate/incentive (shown as $1,469 in the Landlord’s provided proposal), energy/maintenance savings, and increased parking stall rent. Each of these means “the Landlord is receiving long term financial benefits which are already paying off the cost of the investment.” The Tenant submits “this cost should be covered by the Landlord, who receives the economic benefit of this upgrade over the lifetime of the asset.”

B. common area social kitchen

There is a common area kitchen that, according to the Landlord, “can be accessed and used by any of the Tenants.” The Landlord submits this is a major system/component that is “integral to the functioning of the Rental Property as it, in and of itself, constitutes a service or facility (common recreational facility).”

The Landlord received a quote on November 6, 2019 for an upgrade to the kitchen cabinets; these are “integral to the functioning of this common recreational area.” In May and June 2021, the Landlord replaced the cabinets and the appliances. The total amount of this expenditure was $14,432.61, with payments on June 18, 2021 and July 9, 2021. The Landlord submits that this work was within 18 months of the Application date, and this expenditure is not expected to recur for at least 5 years.

The Tenant responded to say the kitchen is a “stand-alone building” that is “strictly accessible by the . . . rental office staff and is adjacent to their office.” Tenants previously had free access to this space, with their own key; however, during the public health events of the last couple of years the space was rekeyed, and management now requires a deposit for use of the space. Moreover, it appears that the space is used by management as a meeting space. The Tenant submits it is wrong to pay for work in this space where access is now restricted. Further, cabinets and appliances in the kitchen were “gently used”, in contrast to individual rental units that have these features that remain in their original state, not being replaced.

The Tenant also reduced the amount of GST from the Landlord's provided invoice, making the total amount $13,617.50.

In sum, the Tenant submits this portion of the Landlord's claimed amount should be dismissed, being "neither a major system or major component that the tenants utilize", existing as "management space, with heavily restricted tenant access."

C. boilers

The Landlord presents this is "a major system that is integral to the functioning of the Rental Property as it pertains to utilities and related services". This is hot water throughout the rental property. In the hearing the Landlord reiterated the importance of this system, re-stating it is "integral".

The Landlord presented that the boilers – as installed/upgraded in 2016 – had deficiencies, meaning they malfunctioned or were otherwise inoperative. Here, "the Boilers suffered from failures which could not be sufficiently addressed by interim preventative maintenance measures." This was from "the ignition and ionization electrodes, recirculation pump, pressure reducing valves, pressure gauges and condensation trap." This meant the boilers were "malfunctioning, failing and/or rendered inoperative."

On January 15, 2021 a maintenance firm attended and replaced key components. For this service, the Landlord paid $7,117.54 on February 19, 2021. This date was within 18 months of the Application date, and the Landlord stated this work was not expected to recur for at last five years.

The Tenant submits this expenditure claim from the Landlord should be dismissed, with this cost being "in the nature of ordinary repairs and maintenance". This is in contrast to the major work of the four boilers being replaced in 2016. The relatively low cost for the work involved shows the "minor nature of the replacements made" for the key components. These pieces were not a major component; rather, they are "more akin to repairing a leaky faucet or pipe under a sink." Further, the Landlord did not provide evidence showing the useful life of these key components, nor their original installation date.

The Tenant also reduced the amount of GST from the Landlord's provided invoice, making the total amount $6,778.61.

With reference to the invoice provided by the Landlord, the Tenant submits that the work involved, with specific parts, is repairs and maintenance (*i.e.*, a "routine expenditure"), or the

items purchased are neither capital items nor pieces that are a major system or major component of the boiler system. The Tenant further differentiated between pieces listed as being “consumable”, and not integral to a major system or component. Based on this analysis, the Tenant submits the cost to them should be $1,837.62, and not the amount claimed by the Landlord.

D. energy-savings additive

The Landlord claims for the additive used for their hydronic-based heating system. This improves the water used, increasing heat transfer, thus producing natural gas savings. This reduces the amount of natural gas used to heat water throughout the rental property.

The Landlord approved work by a firm and paid the invoice for $1,913.71 on March 3, 2021.

The Landlord submits this is still eligible for expense recovery where this work reduces energy or greenhouse gas emissions, even if the work was not required. The fact that a grant exists in the form of a rebate from the natural gas provider establishes that this expenditure “will result in a reduction in energy use or greenhouse gas emissions.”

The Landlord received a rebate from the natural gas provider on May 31, 2021, for all rental properties they manage. Calculating this rental property as being 4% of all the Landlord’s properties for which they completed this work and received a rebate, they accounted for $504 as a reduction. Subtracting this reduction, the Landlord claims $1,409.71 for this expenditure. Documents showing their payment and the rebate are in the Landlord’s evidence.

The Tenant submitted the Landlord will recoup the cost of this project through the savings as outlined in the expert report the Landlord provided. Adding this to the rebate amount means the Landlord will have recovered this cost within the first year.

As well, the Tenant noted the Landlord made the installation on November 18, 2020 which is outside the 18-month period. Because of this timeline, the additive has “already paid for itself” after 21 months of using the additive. A payment delayed by four months (invoice November 11, 2020 and payment March 3, 2021), thereby falling within the 18-month timeframe, in this instance cannot be recovered by the Landlord. This is an “incidental cost” that the Landlord in any event already recovered by the time of their Application.

E. recreational landscaped area

There is a landscaped area that, according to the Landlord, "provides Tenants with a common recreational space where they can use, amongst other things, a barbeque and a gazebo." The Landlord submits this is a major system/component where it "constitutes a service or facility (common recreational facility)."

The Landlord paid for upgrades to the landscaped area and remediated the gazebo. In total this cost $20,576.85. (The Landlord incorrectly provided the amount of $20,486.85 in their written summary.) The Landlord paid the invoice on October 1, 2021. The Landlord provided the invoices for this work, one showing "landscape upgrade" for $14,700, and one showing pressure washing/painting of the gazebo with an installation of a new barbeque for $5,876.85. The Landlord also provided photos showing the completed work. They referred to the *Residential Tenancy Branch Policy Guideline* on Useful Life of Building Elements to show this work would not recur for at least 5 years.

The Tenant raised their concerns over certain aspects of the Landlord's claim:

- there was a lack of upkeep and maintenance since 2016, where the work used to be completed on a daily basis, as recalled by different tenants
- there was previous balcony work that significantly damaged a portion of the property, from 2015, with this repair work only now coming in 2021
- mulch material used in areas that were previously gravelled will not last the projected five years – since work was completed the mulch used is already decomposing, and this "defeats the purpose of this claim".
- the Landlord did not maintain the gravelled area, as was the practice every 2 years or so, prior to 2016
- the barbecue and gazebo were not original to the property as the Landlord stated in their submission (the barbecue was previously replaced in 2017 (*i.e.*, less than five years old), and the gazebo was moved in 2014) – this inaccuracy from the Landlord's account casts doubts on other parts of the Landlord's submissions. In the hearing, the Landlord stated they did not have records specific to the age of these pieces; however, based on the condition, they felt it was likely original with the building's construction.

The Tenant also provided an alternative discounted recovery chart. This is based on the increased likelihood that mulch will not last 5 years, and the previous recent replacement of the barbecue. This reduced amount, in total from the Tenant's perspective, is $11,500.

F. hot water piping

The Landlord submitted that the rental property uses a "closed loop hydronic heating system that circulates hot water." This includes copper piping that was part of the rental property's original construction. Through two payments – dated February 4, 2021 (cashed February 11, 2021) and October 13, 2021 – the Landlord paid $25,033.00.

The Landlord notes specifically that February 11, 2021 was the date of processing of the February 4, 2021 payment; this is within 18 months the August 11, 2022 Application date.

With payments made beyond the 18-month period before their filing of this Application, the Landlord submits these are interim payments (or interim invoices). At the time of an interim payment, the repair/installation/replacement of a major system/component is "incomplete, but in progress." The Landlord submits that finding interim payments are eligible capital expenses on large scale projects (which may exceed the five-year recurrence period) is in line with encouraging landlords to re-invest in properties, and in line with the purpose of a legislated rental increase for eligible capital expenditures.

As set out in paragraph 89 of the Landlord's summary of dispute:

> The Landlord therefore respectfully submits that the fair and intended interpretation of the 18month limitation period is intended to start from the date that the last invoice for the capital expenditure in question was incurred, thereby ensuring that Landlords can seek full recovery for the totality of the project expenses incurred.

The Landlord also submits that a payment is incurred, for the purposes of the legislation, when a cheque is deposited by the recipient, not when the Landlord issued it. This is a simple banking concept of approval by the bank of the deposited cheque, and finalizing the transaction. The Landlord states ". . .one should look to the debit date of a cheque, not the date on which the cheque was issued."

The Tenant submitted, in response, that only a part of the whole system of water pipes was replaced, and the Landlord did not provide proof of the entire system being replaced. Additionally, the work involved was outside the allowed 18-month period. Also, the invoice presented by the Landlord is for two people who replaced a segment of the plumbing in the parking area only. This is "a one-off cost incurred to replace a sector of the infrastructure", being "repairs and maintenance and limited to a small area."

In more detail, the Tenant described the building as aging and subject to a number of issues on which the Landlord is not proactive. They provided examples of pipes breaking on the premises, in both individual rental units and common areas, with the Landlord seemingly not taking the same level of care for both.

A separate written submission from another rental property tenant included their messages to the Landlord about plumbing issues. They described "multiple water shutdowns that occur every year". The Landlord's response to them, in their description, was that pipes were old. The Tenant submitted: "When material deteriorates past its normal life span any responsible manager would allocate funds for replacement but that does not appear to be the [Landlord's] approach." This tenant provided a manager's response from December 3, 2020: "We have only been shutting the water down for essential repairs such as parkade leaks that don't have isolation shutoffs . . ."

This tenant isolated one of their particular responses to the Landlord in order to highlight it: "To put it as simply as possible, I suggest the necessary, costly replacement of plumbing has been refused over the years to the detriment of the tenants who are repeatedly paying in loss of quiet enjoyment." As well, they describe this system as "obviously beyond further patchwork."

In the hearing, the Landlord described a number of pinhole leaks in this particular hot water recirculation line, for pipes that were in place since the building's original construction. With smaller leaks continually needing to be patched, the Landlord concluded the pipes were near the end of their life cycle and needed to be replaced.

G. <u>ventilation</u>

The Landlord described each building having a "rooftop make-up air unit that provides tempered air" throughout the rental unit property. These have not been replaced since the buildings' original construction; however, some components were replaced. The Landlord obtained a quote for replacement of these units because the heat exchanges failed.

The Landlord submits these units constitute a major system/component; they are "akin to plumbing and/or electrical systems or components."

The Landlord paid the amount of $54,862.50 on May 17, 2021, for the air units' replacement in April 2021. This is within 18 months, and the Landlord does not expect a replacement to occur again within 5 more years.

The Tenant responded to say they were not sure what this work was, with the Landlord providing an "inadequate description." They submit there is a lack of evidence containing specific information from the Landlord; therefore, this piece of the Landlord's claim should be dismissed. Alternatively, they provided an appropriate calculation of the expense, excluding the sales tax.

Tenant's further submissions

The Tenant made specific responses to points raised by the Landlord's description of "large scale capital improvements" that meet or exceed the 18-month timeline. Fundamentally, they see this as a disingenuous move by the Landlord to delay payments in order to proceed with another ARI claim. They submit the Landlord has no evidence that any project was actually greater in length than 12 – 15 months, with an example of more timely work, though still large in scale, being the roof replacement taking a couple of months in duration.

Also, the sales tax – as added by the Landlord to all separate pieces of their claim – is not "incurred" by the Landlord, and not levied as part of any tenant's rent. The Tenant submits this portion of expenditures requested by the Landlord should be excluded, both GST and PST. They cited the example in part E above, for the $14,700 amount. The $700 is "actually collected on behalf of the Government by the supplier."

The Tenant also illustrated the decrease in quality and timeliness of the Landlord's response to issues commonly faced by tenants. This has been occurring since the current Landlord started managing the property in 2017. They refer to the current property management as "off-site staff." They also point to the apparent contradiction of an experienced and reputable property manager who should not be "unaware of the nature of the age of capital infrastructure and its need to be replaced", as well as being "unable to adequately manage their funds to ensure the appropriate upkeep of the building."

Analysis

The *Residential Tenancy Regulation* (the "*Regulation*"), s. 23.1 sets out the framework for determining if a landlord can impose an additional rent increase. This is exclusively focused on eligible capital expenditures.

Statutory Framework

In my determination on eligibility, I must consider the following:

- whether a landlord made an application for an additional rent increase within the previous 18 months;
- the number of specified dwelling units in the residential property;
- the amount of capital expenditure;
- whether the work was an *eligible* capital expenditure, specifically:
    - to repair, replace, or install a major system or a component of a major system; and
    - undertaken:
        - to comply with health, safety, and housing standards;
        - because the system/component was either:
            - close to the end of its' useful life, or
            - failed, malfunctioning, or inoperative
        - to achieve either:
            - a reduction in energy use or greenhouse gas emissions; or
            - an improvement in security at the residential property

      and
    - the capital expenditure was incurred less than 18 months prior to the making of the landlord's application for an additional rent increase
      and
    - the capital expenditure is not expected to be incurred again within 5 years.

The Tenant bears the onus to show that capital expenditures are not eligible, for either:

- repairs or replacement required because of inadequate repair or maintenance on the part of the landlord;

or

- the landlord was paid, or entitled to be paid, from another source.

Prior Application for Additional Rent Increase

In this case, there was no evidence that the Landlord made a prior application for an additional rent increase within the previous 18 months.

Number of specified dwelling units

For the determination of the final amount of an additional rent increase, the *Regulation* s. 21.1(1) defines:

> "dwelling unit" means:
>
> (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.

I find there are 64 dwelling units, of which all 64 are eligible. The Tenant did not submit or state otherwise in their response; therefore, the Landlord's indication of 64 individual dwelling units is undisputed evidence.

Eligibility and Amounts

For each of the Landlord's submitted expenditures *A.* through *H.* above, I address whether each expenditure was *eligible*, and each expenditure *amount* . I also make findings on whether each expenditure will be incurred again within 5 years.

A. energy-reducing LED lighting upgrade

I find this work was an upgrade in the buildings' lighting system. The Landlord stated this was to improve overall energy efficiency; I find there is no evidence to the contrary on this individual point. As well, this amounts to significant components of a major system, which cause them to be major components as defined in the *Regulation* s. 21.1.

I find the reason for this work was to achieve energy efficiency, as set out in s. 23.1(4)(iii)(A) of the *Regulation*.

I find the work also improves security in the rental property; however, this is a more tangential point. This is not the deciding factor in the case of this particular expenditure.

The Tenant submitted that a certain portion of the lighting fixtures were in "the social room" that is controlled by management. The Tenant provided no account of an absolute bar to entry

in that area by any of the building tenants, and no evidence that management communicated that the area was for the exclusive use of management, or otherwise an area to which tenants are not allowed. There is no evidence that efforts at entry were stymied by management. I find this submission is more in the nature of a separate grievance over the policy regarding access and use of this common area. I find there is no evidence on the non-accessibility of this common area space to all of the tenants in the rental property.

The Tenant presented that the Landlord is recouping the cost through a rebate or incentive. The Landlord responded to say they never received a rebate or other incentive for this particular work and the Tenant provided no evidence of that. The proposal lists a rebate amount in its final project cost summary. There is no evidence the Landlord applied for this particular rebate. In raising this point, I find the Tenant has shown that the Landlord was entitled to be paid from another source for at least a portion of the final tally, as per s. 23.1(5)(b) of the *Regulation*. I reduce the expenditure amount by $1,469 accordingly, based on the balance of probabilities that an expert provided that estimated amount, based on their knowledge and experience.

The Tenant also presented that the Landlord is recovering the cost through additional savings in energy and maintenance. I find this submission from the Tenant is not valid, referring only to the intent or overarching purpose of the *Regulation*, but not to any specific provision therein. I find any long-term savings – which remain hypothetical and cannot possibly account for fluctuations in energy costs or other financial variables – do not constitute the Landlord having "been paid, or entitled to be paid, from another source."

The Tenant also presented another option wherein the Landlord is recovering costs through their increases in parking fees to the residents. The Tenant did not present that parking is being paid as part of any of the tenants' tenancy agreements, rather than a separate parking agreement. I accept the Landlord's response in the hearing that it would refer to a separate agreement about parking. Additionally, there was no evidence from Tenant to show that parking is included in the basic rent amounts paid by tenants; therefore, I find it more likely than not that parking is *not* included in the rent. The *Act* s. 43 and *Regulation* s. 23.1 are specific to rent amounts only.

As in each of the expenditures A. through H. listed above, the Tenant submitted that sales tax is not "incurred" by the Landlord. I find the Tenant has not provided sufficient evidence to show that GST or PST should not be considered an "expenditure incurred", not demonstrating through what scheme a landlord could otherwise recoup these amounts. Here, the onus is on the Tenant to prove that a capital expenditure is *not* eligible for a reason set out in the *Regulation* s. 23.1(5). Additionally, the figure that the Tenant provided in their submission is

assumed as an example at $500. I cannot make a finding about tax credits the Landlord here may be collecting, without substantive information on the credit scheme, or the Landlord's eligibility for that, or details that can show definitively that the Landlord collects GST from renting commercial real estate.

I accept the Landlord's evidence that the first payment for the work was incurred on March 3, 2022 when their issued cheque was cashed. That finalizes the transaction as per the *Residential Tenancy Policy Guideline 27: Rent Increases*. In simple terms, I find the expense, in the form of a finalized payment, occurred when the cheque was cashed. This was a period of 5 months and 8 days to the Application date of August 11, 2022, within 18 months.

Given the nature of the work involved, I find this work will not reoccur, and there will be no expenditure incurred again within 5 years. This is with regard to the type of lighting installed, rated at 10 years' lifetime, as set out in the proposal that the Landlord provided in their evidence.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of $25,724.95.

B. common area social kitchen

I find the Landlord did not provide sufficient evidence to show the need to install, repair, or replace the cabinets and appliances in this common area kitchen. The Landlord described the cabinets as being past their useful life cycle, being installed originally with the construction of the building. This is not ample evidence to show the need for replacement of a major system/component that failed or was beyond the end of its useful life. The Landlord obtained a quote from a contractor for the work involved; however, this is not sufficient evidence to show the need for replacement. There were no photos showing deteriorating cabinets in the kitchen area, and in this instance a simple reference to the cabinets being in their original state from the time of the building's construction does not suffice.

Similar to the above, the Landlord did not show the need to replace the appliances in that kitchen area. Factoring in the function of the common kitchen area, and its value as a facility to all tenants, I am not satisfied of the need for appliances' replacement. There was no evidence on the age, make or model of the original appliances in place that needed to be replaced.

Additionally, I find the kitchen cabinets and appliances are not a major system/component as specified in s. 21.1 of the *Regulation*. While s. 21.1 defines "major component" as "a significant component of a major system", the term "major system" itself is confined to

electrical, mechanical, structural, or *similar* system that is integral to providing services. I find the facility that is a common area kitchen is not similar in kind to an electrical, mechanical, or structural system. I find it is not integral to the residential property; nor is it integral to providing services to the tenants and/or occupants of the residential property.

To be clear, the Landlord has not met the burden of proving this critical piece of the defining feature of s. 23.1(4)(i). I do not accept the Tenant's submission that the area is no longer accessible or used by tenants without any proof that the Landlord positively prevented the use of that area. I do not accept that this area is reserved for management only, without evidence.

Because the Landlord did not adequately prove the need for replacement of cabinetry and appliances, and I find they are not major system/component pieces, I find the expenditures they incurred are not eligible as per s. 23.1(4) of the *Regulation*.

C. boilers

The Landlord presented that the boilers were replaced fully in 2016. These boilers then received maintenance on a quarterly basis. The Landlord described how "their utility suffered" for various reasons. A specialist attended on January 15, 2021 and made installations of certain parts of the boiler.

While the Landlord submitted that "the boilers suffered from failures which could not be sufficiently addressed by interim preventative maintenance measures", I find the evidence they provided is not sufficient to delineate further preventative maintenance from what is set out in s. 23.1(4)(ii) of the *Regulation*: either a failure, a malfunction, or an inoperative major component.

As above, I find the Landlord has not provided sufficient evidence to show the need for installation of specific boiler parts. This likely would take the form of maintenance records for past visits, or other claims from tenants that hot water being provided by the boilers was inadequate or non-existent. There is no evidence of this, and as such I have difficulty seeing this January 2021 visit with some parts installations as anything but maintenance on a boiler that otherwise had not outlived its useful life cycle. The Landlord did not provide sufficient evidence on the boilers' failures that necessitated these parts' installations.

With reference to s. 21.1 of the *Regulation*, I am not satisfied the work involved equates to "a significant component of a major system", minus evidence showing that specifically. I accept the Tenant's submission on this point: there is no description of how the replaced parts were a major component, or even "a significant component of a major system", as per the s. 21.1

definition of “major component”. The Landlord, who bears the onus, did not show how the boiler couldn’t function properly without these components; there was no evidence of a failure or malfunction necessitating this type of work.

In sum, I am not satisfied of the need for the work involved where the boilers were replaced more recently in 2016. I find this work was in line with routine replacements on a boiler of that age. The Tenant mentioned this specifically in their response where they described the work in total.

For the reasons above, I find this expenditure is not eligible as per s. 23.1(4) of the *Regulation*.

D. energy-savings additive

I find this work was not an installation, repair, or replacement of a major system/component in the rental property. The Landlord did not provide sufficient evidence to show this to be the case for this additive. This was 10 litres of a liquid additive, with work completed on November 18, 2020.

I accept the Tenant’s description that this is an “incremental cost”, merely taken to reduce energy costs. Its purpose is similar to the intent and purpose of one part of s. 23.1(4) – particularly, (iii) – yet the work involved is not that of installation, repair, or replacement.

I find this expenditure is not eligible as per s. 23.1(4) of the *Regulation*.

E. recreational landscaped area

This capital expenditure consists of two pieces, that of the landscaping upgrade, and the gazebo/barbecue.

I find the landscape upgrade qualifies as work that was repair or replacement of a major system/component, as per the *Regulation* s. 21.1 definition of “major system”. The definition of “service or facility” in s.1 of the *Act* refers to “(i) common recreational facilities”. I find the rental property grounds are agreed to be provided by the Landlord to the Tenant for their entertainment, relaxation, social activity, and other leisure needs. The area is a recreational area that is part of the residential property.

With reference to s. 23.1(4)(a) of the *Regulation*, I find that the expenditure was not incurred for either compliance with health/safety standards or achieving energy reduction or added

security. The remaining consideration – as per subsection (4)(a)(ii) – is whether the expenditure was incurred because of the system failure/malfunction/end-of-lifecycle.

The Tenant made extensive submissions on the Landlord's record of upkeep and landscaping over the past few years, both with regular maintenance and care, and in light of a specific other construction project that damaged a certain part of the landscaped area.

I find the Tenant made this submission based on informed observations directly from the rental property residents. They described work that was previously undertaken on a daily basis, and a significant delay in rectifying landscape damage outside of the units that had balcony repair in late 2015. They noted specifically that since 2016 the level of care and maintenance for landscaped common areas dropped considerably, stating "the non-resident staff struggle to maintain the assets of the property."

I find the Tenant has met the onus – on a balance of probabilities – that this capital expenditure is ineligible for reimbursement. Applying s. 23.1(5)(a) of the *Regulation*, I do not grant this portion of the Landlord's Application because of inadequate maintenance on the part of the Landlord. The Tenant provided abundant detail and examples of inadequate maintenance over the past few years that the Landlord now seeks to rectify. Maintenance would not necessarily equate to having an adequate upgrade in place over the last few years; however, the nature and detail of the evidence provided by the Tenant on this point establishes that ongoing maintenance had dropped off to a noticeable degree. In determining the useful life cycle of landscaping – normally set at 15 years – I must consider the regular upkeep and maintenance that is integral to the nature of that rental property feature.

I find the Tenant also provided an accurate and detailed description of their knowledge of the barbecue's previous replacement in 2017. Again, I accept this as informed evidence on a balance of probabilities. There is no set expected life cycle for a barbecue set in the policy guideline; however, there is no evidence from the Landlord to establish that the barbecue purchased in 2017 had expired or was unusable. This cost to the Landlord as shown in their invoice was $2,397. I find this amount is not eligible for reimbursement, not being a valid replacement of a major system/component that failed, was malfunctioning, or otherwise inoperative.

I find what the Landlord presents on work for the gazebo – that is pressure washing, roof de-mossing, and repainting – is not installation, repair, or replacement of a major system/component. The Landlord similarly did not prove that this piece either failed or was malfunctioning. In simple terms, I find what the Landlord paid for was simple maintenance on that gazebo.

In sum, I find this piece of the Landlord's Application is ineligible, as set out above.

F. hot water piping

The invoice provided by the Landlord in their evidence for this work states: "Repipe all horizontal domestic copper hot recirculation lines in parkade." I find this is clear evidence, with no dispute from the Tenant, that the work was for a replacement of all piping that is situated in the parkade area.

I find this is the replacement of a major system/component, integral to the functioning of the rental property. This involves the circulation of hot water throughout the entire rental property. I find, with reference to the definition of "major system" and "major component" as per s. 21.1 of the *Regulation*, that the piping here is "a significant component of a major system". I rely on the common-knowledge definition of "component" as being a 'part' of a major system.

In paragraph 54 of their written summary, the Landlord set out that they hired a firm to replace the piping. At paragraph 132, the Landlord noted the piping had "exceeded its useful life", and the policy guideline "suggests that the piping has a useful life of between 20 and 25 years." The Landlord states in summary paragraph 134: "The Landlord submits that, as the piping was being used past its useful life, it must qualify for an [additional rent increase]."

I find the evidence in sum shows the need for replacement of the piping. Another tenant provided submissions that show positively that issues with the piping disrupted water service; I find this is to a significant degree as to constitute a failure, or ongoing malfunction, as per s. 23.1(4)(a)(ii).

I accept the Landlord's evidence that the payment was incurred on February 11, 2021 when their issued cheque was cashed. That finalizes the transaction, and this is 18 months – to the day – in advance of their Application on August 11, 2022.

Given the work involved and the materials, I find this work will not occur again within 5 years. I give credence to the Landlord's submission on the "suggested life cycle" of pipes which is at least 20 years.

For this piece of the Landlord's Application, I grant $22,919.35 for the replacement of hot water pipes.

The remaining piece was the work on August 31, 2021, amounting to $2,113.65 in the Landlord's evidence. I find this work stemmed from preventative maintenance and was part of that maintenance. I find this subsequent expenditure is not eligible as per s. 23.1(4) of the *Regulation*.

G. ventilation

The Landlord provided in their written submission, via the Technical Services' Manager's affirmed affidavit, that "the make up air units' heat exchanges failed". In the evidence, the Landlord provided a quotation dated October 2, 2020 that set out three separate options. The third option refers to the "existing failed Modine furnace section from Make up air units."

I find the ventilation system is a major system/component, integral to the rental property. I find this evidence in the form of the quotation verifies that there was a failure in this system. The quotation exists as independent verification of a failure, and I can therefore conclude it is fact.

I also find as fact that the Landlord completed payment on May 18, 2021 as shown in the evidence. I also find it more likely than not that any replacement will not occur within 5 years.

The Tenant called into question the level of detail present in the Landlord's submissions, citing the Landlord's own record-keeping on things being problematic. I find the Tenant has not shown either inadequate repair/maintenance, or a separate source of payment to the Landlord for this major system/component. As such, I find the Landlord has met the burden of proof on this piece, based on a balance of probabilities.

In conclusion, I grant this portion of the Landlord's Application for the capital expenditure of $54,862.50.

re: Tenant's further submissions

The Tenant separately raised the issue of the "parking stall rent increase". I find the matter is separate and distinct from the Landlord's Application for a rent increase to recover capital expenditures. It appears there are 30 parking stalls available to all building residents. This does not apply to each rental unit in the rental property, as does the Landlord's Application. I exclude the Tenant's submissions on this issue from consideration and find they are not relevant.

The Tenant also raised issues of the Landlord's availability and attentiveness to the duties of building upkeep, cleaning, and responsiveness to Tenant queries or requests. I have considered this in the scope of the landscaping piece outlined above, and made a finding based on the relevant points therein. The matters described are those which must be addressed through each individual tenant's application for dispute resolution, under specific grounds for relief under the *Act*. These submissions had relevance to the matter of landscaping, as set out above. Aside from that, the description of difficulties that tenants face with management or the Landlord more generally do not form a basis to dispute the Landlord's present Application.

I apply this same rationale to the further submissions of the Tenant wherein they stated their reluctance to dispute matters, or raise separate issues fearing further rent increases. As well, they described the current economic climate affecting the tenants financially. Any tenant may apply to the Residential Tenancy Branch to formally dispute any other rent increase they feel was illegally imposed. As I stated immediately above, other issues involving maintenance or other fees/charges imposed on tenants may be the subject of separate dispute resolution process via the Residential Tenancy Branch. These matters do not for a basis to dispute the Landlord's present Application.

Outcome

The Landlord has proven all of the necessary elements for three pieces of their Application, that of the energy-reducing LED lighting upgrade, ventilation, and hot water piping.

I grant the Landlord's Application for the additional rent increase, based on eligible capital expenditures of $27,193.95 (the energy-reducing LED lighting upgrade), $54,862.50 (ventilation), and $22,919.35 (hot water piping). This is pursuant to s.43(1)(b) of the *Act*, and s. 23.1(4) of the *Regulation* referred to above.

The *Regulation* s. 23.2 sets out the formula to be applied when calculating the amount of the additional rent increase as the amount of the eligible capital expenditures, divided by the number of dwelling units, divided by 120. In this case, I found there are 64 specified dwelling units, and that the amount of the eligible capital expenditure is $104,975.80.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of $13.67 ($104,975.80 ÷ 64 ÷ 120) per month, per affected tenancy. This is as per s. 23.2 of the *Regulation*. Note this amount may not exceed 3% of any tenant's monthly rent, and if so, the landlord may not be permitted to impose a rent increase for the entire amount in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37, page 11, to properly calculate the rent increase in accordance with the *Regulation* s. 23.3. This is positively the Landlord's responsibility and obligation. As well, I direct both parties to s. 42 of the *Act* that sets out annual rent increases, which the Landlord is still entitled to impose.

Conclusion

I grant the Landlord's Application for an additional rent increase for the capital expenditure of $104,975.80.

I order the Landlord to serve all tenants with this Decision, in accordance with s. 88 of the *Act*. This must occur within two weeks of this Decision. As per the Landlord's request in the hearing, I authorize the Landlord to serve each tenant by posting a copy of the decision to each rental unit door. Within reason, the Landlord must also be able to provide a copy to any Tenant that requests a copy via email.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 10, 2023

Residential Tenancy Branch