Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 310 E 2ND STREET APARTMENTS HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

On February 22, 2022, the Landlord applied for a Dispute Resolution proceeding seeking a rent increase pursuant to 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*"), B.C. Reg. 477/2003. A preliminary hearing was held on June 28, 2022.

This hearing was the final, reconvened hearing from the original Dispute Resolution preliminary hearing set for June 28, 2022. The original preliminary hearing was adjourned as per an Interim Decision dated July 14, 2022, and then subsequently adjourned again as per an Interim Decision dated October 24, 2022. The final, reconvened hearing was set down for December 9, 2022, at 9:30 AM.

M.D., S.M., L.M., K.M. and L.Z. attended the final, reconvened hearing as agents for the Landlord. Tenant T.H. attended the hearing as well, with N.S. attending as an advocate for the Tenant. In addition, a resident from another building attended the hearing; however, as this hearing did not pertain to that person's tenancy, they were asked to disconnect from the teleconference.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of

the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of M.D., provided a solemn affirmation.

M.D. advised that since the last hearing, there have been some Tenants that have given up vacant possession of the rental unit. As such, the Style of Cause on the first page of this Decision has been amended accordingly.

M.D. also advised that the Notice of Dispute Resolution Proceeding and evidence packages were served on all Tenants between October 24 and 28, 2022, in accordance with the October 24, 2022, Interim Decision. Proof of service was submitted to corroborate this service. N.S. confirmed that the Tenant received this package, and that he did not have any issue with respect to service. Based on the evidence before me, I am satisfied that the Tenants were sufficiently served with the appropriate documentation necessary for them to participate in the Dispute Resolution process. As well, I have accepted the documentary evidence and will consider it when rendering this Decision.

N.S. confirmed that there was no documentary evidence submitted by the Tenant for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and/or arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this Decision. Only relevant oral and documentary evidence needed to resolve the issue of this Application, and to explain the Decision, is reproduced below.

M.D. advised that the Landlord was abandoning claims for the breaker panel upgrade in the amount of $2,638.00, for replacement of deteriorating bricks in the amount of $15,739.50, and for the replacement of broken fitness equipment in the amount of $2,125.83. These totalled $20,503.33, and thus reduced the Landlord's original claim in the amount of $151,940.05 down to **$131,436.72**. As such, the amount of the rent increase being sought per unit would have been **$22.81**. N.S. confirmed that the Tenant understood this reduced claim and took no issue with it.

M.D., on behalf of the Landlord, gave the following oral and documentary evidence:

1. This is the Landlord's first Application for a rent increase under subsection 23.1(1) of the *Regulation*;
2. The capital expenditures were in the amount of $131,436.72;
3. The 4 capital expenditures were incurred for the replacement of what the Landlord alleged were major components of the residential property;
4. The capital expenditures were made between August 22, 2020, to February 22, 2022, and thus incurred within the 18-month period preceding the date on which the Landlord made this Application (the Application was made on February 22, 2022); and,
5. The capital expenditures are not expected to be incurred again for at least 5 years.

Submitted into documentary evidence were proof of the capital expenditures, proof of installations and replacement, and proof that the work was completed.

The Landlord submitted that the residential property is a four-storey, low-rise apartment building that was built in 1969, and the Landlord purchased it in June 2017. This building contains 48 separate rental units. All 48 units are occupied, and all the Tenants, with the exception of what is noted above, are named as Respondents to this Application. A copy of the tenancy agreements for each unit was not submitted into evidence.

M.D. advised that the Landlord has not imposed an additional rent increase pursuant to Sections 23 or 23.1 of the *Regulation* in the last 18 months, and the Landlord was

seeking to impose an additional rent increase for what was deemed to be capital expenditures incurred to pay for 4 items (collectively, the “Work”).

1. **Replacement of controllers and cab fixtures in an aging elevator.**
2. **Replacement of components to the boiler and heating system servicing building.**
3. **Installation of security cameras to enhance security at building.**
4. **Installation of new weather stripping and window screens on suite windows for heat retention and sound attenuation purposes.**

Elevator Modernization (Capital Expenditure 01)

K.M. testified that the elevator is original from 1969, and as the cylinder was full of oil, it was replaced by the previous owner in 2013. However, at the time the building was purchased by the Landlord, an elevator consultant recommended that the controller be replaced. Given that the elevator is over 50 years old, there are no parts, and it is at the end of its useful life.

M.D. referenced the consultant’s *Elevator Condition and Planning Report*, that was submitted as documentary evidence, and K.M. confirmed that the recommendations made in this report were necessary and were addressed. M.D. advised that this was a major component that was necessary to be repaired. He and K.M. referred to other documentary evidence submitted to support the position that the lowest bid was chosen to effect these repairs, and that no future elevator modifications will be required in the next five years. The Landlord submitted invoices into evidence relating to this item.

Boiler and Heating Repairs (Capital Expenditure 03)

K.M. testified that the heating boiler did not have a feeder or filter, and this was installed as a matter of good practice to maintain the quality of the heating circulation lines. This work will not only extend the life of the boiler, but will also reduce the number of required repairs. This will not require replacement within the next five years.

M.D. advised that this was a major component of a major system, and he reiterated that all parties benefited from this repair. He submitted that the filtration system extends the useful life of the boiler, and this is a one-time cost to house the filtration system.

The Landlord submitted invoices into evidence relating to this item.

Cameras and Fobs (Capital Expenditure 04)

K.M. testified that two cameras were installed to improve and enhance security as a result of a few break-ins that occurred in the garage. These will not require replacement within the next five years.

M.D. reiterated that this was installed to improve the overall security of the building.

The Landlord submitted invoices into evidence relating to this item.

Weatherstripping Replacement (Capital Expenditure 06)

K.M. testified that the weatherstripping has never been replaced, so this was necessary to reduce drafts and heat loss, and this will also increase the overall comfort of the Tenants in the building. In addition, this will address the Tenants' complaints of drafts and rattling of windows. He stated that this will not require replacement within the next five years.

M.D. advised that this was completed because the weatherstripping failed due to being past the end of its useful life. He reiterated that all parties benefited from this repair.

The Landlord submitted invoices into evidence relating to this item.

N.S. posed questions to K.M. about his role in the purchase of the property, and he suggested that at the time of purchase, the Landlord would have been aware of the need for impending and required modernization of the property. As such, he questioned whether the purchase price of the property was negotiated lower to account for the upcoming and necessary expenses. As such, by the Landlord now making this Application, the Landlord is essentially double dipping.

In addition, he noted that the claim for an additional rent increase should be ineligible as the Landlord has the expectation to act as a reasonable homeowner. The Landlord had a clear idea of the cost of modernizing the elevator, that this would have been anticipated, and that this would have been factored into the purchase price of the property. Either the Landlord acted unreasonably by not accounting for this in the purchase price, or factored this anticipated cost in and paid a reduced price for the property.

M.D. advised that K.M. was not involved with the negotiation of the price of the property, so no one knows if this was factored in or not. He submitted that the *Act* and *Regulation* permit an additional rent increase for capital expenditures under a specific set of criteria, and that the Landlord has the burden to prove that the claimed expenditures meet those criteria. Alternately, the Tenant has the burden to prove that the capital expenditures were incurred for repairs or replacement required because of inadequate repair or maintenance on the part of the Landlord, or for which the Landlord has been paid from another source. However, the submissions made by N.S. are mere speculation, and there has been no documentary evidence provided to support these submissions. Moreover, the initial preliminary hearing would have been the opportunity for the Tenant to have raised this concern.

He submitted that there is no "unreasonableness" concept in the *Act* or *Regulation*, and this argument cannot be imputed in this instance. Furthermore, the burden for which the Tenant has to prove that payment was received from another source would not apply to the purchase price of the property.

Analysis

1. 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. I will not reproduce the Sections here but 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 Tenants may defeat an Application for an additional rent increase for capital expenditures if they can prove on a balance of probabilities that 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 their evidentiary burden and the Tenants fail to establish that an 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*.

2. Prior Application for Additional Rent Increase

I accept that the Landlord has not imposed a prior rent increase for capital expenditures in the last 18 months.

3. 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.

Based on the consistent and undisputed evidence before me, I find that there are 48 specified dwelling units in the residential property.

4. Is the Work an *Eligible* Capital Expenditure?

As stated above, in order 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.

a. Type of Capital Expenditure

Residential Tenancy Branch Policy Guideline # 37 states the following:

> Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. 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.

With respect to these claims, I accept that these would qualify as repairs to a component of a "major system" and an installation of a "major system" as defined by the *Regulation*. Accordingly, I find that the Work was undertaken to repair and/or install a "major system" of the residential property.

b. Reason for Capital Expenditure

For these claims, I accept the Landlord's evidence and testimony that the elevator was 50 years old and required modernization to render it safe and accessible by the Tenants. I also accept that the filtration system of the boiler was necessary, that the weatherstripping had exceeded its useful life, and that these repairs will benefit all parties. Finally, I agree that the installation of the security cameras will improve the overall security of the property. Such reasons proposed by the Landlord are consistent with the *Regulation's* requirements for an eligible capital expenditure.

c. Timing of Capital Expenditure

The Landlord made this Application on February 22, 2022. 18 months prior to that date was August 22, 2020. As such, any capital expenditures incurred prior to this date are ineligible to be recovered by an additional rent increase.

Residential Tenancy Branch Policy Guideline # 37 states:

> A capital expenditure is considered "incurred" when payment for it is made.

In this Application, based on the evidence before me, it is my finding that the accepted capital expenditures were incurred in the 18-month period preceding the date on which the Landlord made this Application.

d. Life expectancy of the Capital Expenditure

I allow the Landlord's evidence that the life expectancy of the accepted capital expenditures is more than five years. Additionally, 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 Policy Guideline # 40 (if noted). For this reason, I find that the life expectancy of the components replaced will exceed five years and that the accepted capital expenditures to replace them cannot reasonably be expected to reoccur within five years. For the above-stated reasons, I find that the accepted capital expenditures incurred to undertake the Work are eligible capital expenditures, as defined by the *Regulation*.

5. Amount of Capital Expenditure?

Given the above, I grant the Landlord's Application for the rent increase based on capital expenditures calculated as illustrated below, and it is so Ordered, pursuant to Section 43(1)(b) of the Act.

Elevator modernization	$92,108.88
Boiler and heating repair	$2,100.00
Security system installation	$5,607.84
Weatherstripping replacement	$31,620.00
TOTAL	**$131,436.72**

6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a Tenant may raise to oppose an additional rent increase for capital expenditures. 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.

I acknowledged that N.S. has raised some concerns with a belief that the Landlord has already recovered these costs by virtue of a reduced purchase price of the property; however, this is mere speculation and the Tenant has not provided any documentary

evidence to substantiate this suggested claim. As such, I reject this submission in its entirety.

As none of the Tenants made any valid submissions to refute the Landlord's evidence and testimony, I am satisfied that the Tenants have failed to discharge their evidentiary burden to prove either of these points above.

7. Outcome

Based on a review of the evidence before me, I find that the Landlord has been successful and has proven, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for the accepted capital expenditures. Section 23.2 of the *Regulation* 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 specific dwelling units, divided by 120. In this case, I have found that there are 48 specified dwelling units, and that the amount of the eligible capital expenditure is **$131,436.72**.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of $22.81 ($131,436.72 ÷ 48 units ÷ 120). 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.

The parties may refer to Residential Tenancy Branch Policy Guideline # 37, 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 Residential Tenancy Branch website for further guidance regarding how this rent increase made be imposed.

Conclusion

The Landlord has been successful, and the Landlord's Application is hereby granted in part. I grant the Application for an additional rent increase for capital expenditures of $22.81. The Landlord must impose this increase in accordance with the *Act* and the *Regulation*.

A copy of this Decision must be served by the Landlord upon each affected Tenant within 2 weeks of the Landlord receiving a copy of this Decision from the Residential Tenancy Branch. I **Order** that this Decision be served by the Landlord in a manner in accordance with Section 88 of the *Act*.

This Decision is final and binding on the parties, 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 provided under Section 79 of the *Act* or by way of an Application for Judicial Review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: January 11, 2023

Residential Tenancy Branch