



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes ARI-C

Introduction

On May 17, 2023 (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. None of the Tenants named as Respondents by the Landlord attended the hearing.

Preliminary Issue – service and disclosure of evidence

The Landlord provided a Proof of Service showing the date of service, and the method of service, for each rental unit concerning this Application. The Landlord also provided photos showing individual service on select units where they attached the package containing the Notice of Dispute Resolution Proceeding Package to the door of the rental unit as indicated in the associated proof-of-service document.

In the hearing, the Landlord confirmed they served the Notice of Dispute Resolution Proceeding Package to 26 individual rental units.

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. I am satisfied that the Landlord completed this task fully and completely as required, in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Issue to be Decided

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

Background and Evidence

The rental property consists of 31 individual rental units; however, in the hearing the Landlord clarified that not all 31 units are included in this Application, and the number of rental units with tenants related to this Application is 26.. As noted in a contractor report the Landlord provided as evidence, "The existing apartment building, assumed to have been constructed around 1970 (Based on archive drawings) is a 31 Unit, 4 storey wood frame structure with flat roof."

The contractor finished a visual inspection prior to starting work, this "to determine the status of the decks and shingles and their current condition." They determined that several areas of the decks on the building had rotted, with some decks unstable. The wood railings were past their expected lifespan of 20 to 25 years. The floors on the decks were starting to crack and showed "visual signs of age and wear and tear." They recommended replacing the decks with aluminum railing and "Duradek flooring material" to prevent rotting in the future.

As well, the contractor noted the shingles were "[well] past their expected life span and showed holes in several areas." The wood required replacement. The Landlord replaced the shingles with asphalt shingles.

The Landlord presented each set of capital expenses that they submit are related to major systems or major components of the rental property:

	Description	invoice date	paid date	paid
1.	replacement of shingles – upper roof	Jun 15/22	Jun 27/22	\$33,033.00
2.	soffits upper roof, balconies – 3 new decks, patio doors - installation of new shed doors	Aug 17/22	Aug 17/22	\$28,539.00
3.	6 new decks, patio doors	Sep 13/22	Sep 13/22	\$39,438.00
4.	3 new decks, patio doors, - new fencing – new stair railings	Oct 3/22	Oct 3/22	\$24,339.00
5.	6 new decks, patio doors	Nov 4/22	Nov 4/22	\$40,215.00

6.	3 new decks, patio doors	Nov 29/22	Dec 5/22	\$19,719.00
7.	23 soffits installed	Feb 22/23	Feb 22/23	\$9,660.00
8.	2 new decks, railings, patio doors	Mar 11/23	Mar 11/23	\$13,146.00
9.	glass dividers between units	Mar 11/23	Mar 11/23	\$5,775.00
10.	cost for architect visit/assess/design – visit site to review progress of deck framing, finishes installed	Feb 21/23	Feb 21/23	\$8,964.39
Total				\$222,828.39

1. replacement of shingles – upper roof

The Landlord provided the invoice dated June 15, 2022, noting “upper roof replacement complete.”

The Landlord provided an excerpt from the *Residential Tenancy Policy Guidelines*, 40. Useful Life of Building Elements that shows the life cycle of “sloped (asphalt shingles)” to be 15 years.

2. soffits – 3 new decks, patio doors – installation of new shed doors

The Landlord provided an invoice dated August 17, 2022, noting a specific breakdown of costs:

- Soffits 400 x 2 = \$800
- Soffit upper deck 400 x 3 = \$1200
- Soffits upper building – \$600
- Torch on roofing front, back, entrance, roof - \$4,400
- New shed door - \$1,400
- 3 new patio doors - \$2,025 x 3 = \$6,075
- 3 decks - \$3,860 * 3 = \$11,580
- Additional framework – 3 x \$375 = \$1,125
- (Exterior Painting - \$6,085 – Not Included as part of the additional rent increase.)
- (Total Invoice - \$33,265 + \$1,663.25 GST = \$34,928.25)

The Landlord did not include exterior painting, as invoiced, thereby reducing the invoice total to \$28,539.00.

As per the guideline, the useful life for these materials, as provided, is 15 years for steel balcony railings, and 30 years for doors.

In the hearing, the Landlord there is a back part of the building that is a storage space, with those doors needing replacing.

3. 6 new decks, patio doors

As above, the Landlord provided an invoice dated September 13, 2022:

- 6 patio doors $\$2,025 \times 6 = \$12,150$
- 6 decks - $\$3,860 \times 6 = \$23,160$
- 6 extra framing - $\$375 \times 6 = \$2,250$
- *(Exterior Painting - \$15,821 – Not Included as part of the additional rent increase.)*
- *(Total Invoice - $\$53,381 + \$2,669.05 \text{ GST} = \$56,050.05$)*

The Landlord did not include exterior painting, as invoiced, reducing this invoice to \$39,438.00.

4. 3 new decks, patio doors, - new fencing – new stair railings

As above, the Landlord provided an invoice dated October 3, 2022, noting the breakdown:

- 3 patio doors - $\$2,025 \times 3 = \$6,075$
- 3 balconies - $\$3,860 \times 3 = \$11,580$
- 3 extra framing $\$375 \times 3 = \$1,125$
- New fencing and rear stair rails - \$4,400

In the hearing, the Landlord clarified that “fencing” refers to the fence around the perimeter of the building. The stair railings apply to the exit stairs and the back exit from the building.

5. 6 new decks, patio doors

The Landlord's invoice dated November 4, 2022 breaks down:

- Patio doors $\$2,025 \times 6 = \$12,150$

- Balconies – $6 \times \$3,860 = \$23,160$
- 4 extra framing $\$375 \times 4 = \$1,500$
- New framework and joist hangers with insulation – $\$745 \times 2 = \$1,490$

6. 3 new decks, patio doors

The Landlord's invoice dated November 28, 2022 breaks down:

- Patio doors $3 \times \$2,025 = \$6,075$
- Decks – $\$3,860 \times 3 = \$11,580$
- Extra Framing $\$375 \times 3 = \$1,125$

7. 23 soffits installed

A soffit is the material beneath the eave that connects the far edge of the roof to the exterior wall of the building.

The Landlord paid \$9,200 for 23 soffits at \$400 each. As described in the hearing, the Landlord noted these are a part of each deck installed.

8. 2 new decks, railings, patio doors

The Landlord's invoice dated March 11, 2023 shows the following work:

- 2 patio doors $\$2,025 \times 2 = \$4,050$
- 2 decks $\$3,860 \times 2 = \$7,720$
- 2 extra framing - $\$375 \times 2 = \750
- *(Exterior Painting - \$2,434 – Not Included as part of the additional rent increase.)*
- *(Total Invoice - \$14,954 + \$747.70 GST = \$15,701.70)*

The Landlord did not include exterior painting, thereby reducing the invoice to \$13,146.00.

9. glass dividers between units

The Landlord's invoice dated March 11, 2023 sets out the amount of \$5,500 for glass balcony dividers. The Landlord omitted exterior lighting costs, and the labour for installation from their total invoiced amount of \$5,600.

- Glass Balcony Dividers 3 = \$5,500
- (Exterior Lighting – Balconies – (23 * \$85 lights) = \$1,955 + (\$25 labour * 23) = \$575 *Not Included as part of the additional rent increase.*)
- (Exterior Accent Lighting – (7 * \$108 lights) = \$756 + (\$25 labour * 7) = \$175 *Not Included as part of the additional rent increase.*)
- (Total Invoice - \$8,961 + \$448.05 GST = \$9,409.05)

10. cost for architect visit/assess/design – visit site to review progress of deck framing, finishes installed

The Landlord provided a list of amounts they paid for the cost of an architect's input on this project. They listed the following amounts totalling \$8,964.39.

I.Riding Engineering – December 14, 2021

Deposit - \$2,500 + \$125 GST = \$2,625

II.Riding Engineering – March 26, 2022

\$2,660 + \$133 GST = \$2,793 – 139.65 2660

III.Riding Engineering – April 19, 2022

\$727.50 + \$36.38 GST = \$763.88

IV.Riding Engineering –August 4, 2025

\$895.00 + \$44.75 GST = \$939.75

V.Riding Engineering –August 26, 2022

\$465.00 + \$23.25 GST = \$488.25

VI.Riding Engineering – October 18, 2022

\$585.00 + \$29.25 GST = \$614.25

VII.Riding Engineering – November 15, 2022

\$352.50 + \$17.63 GST = \$370.13

VIII.Riding Engineering – February 21, 2023

\$352.50 + \$17.63 GST = \$370.13

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 26 eligible dwelling units, as specified by the Landlord in the hearing.

Eligibility and Amounts

For each of the Landlord’s submitted expenditures 1. through 10. above, I address whether each expenditure was *eligible*, and each expenditure *amount*.

As set out in s. 23.1(4) of the *Regulation*, I find the replacement of balconies, doors and windows at the rental unit property is replacement of a major system. As per the definition of “major system”, I find the balconies and railings are a structural system that is integral to the residential property.

Regarding patio doors’ installation, I find these are each a “major component” as defined in s. 21.1 of the *Regulation*, integral to the residential property. I make a similar finding for the dividers, and soffits installed.

I consider that the new fencing, new stair railings, and the storage space door are each major components that the Landlord had to replace to comply with health, safety, and housing standards.

I find the Landlord incurred the expenses associated with the consultation of an architect, was necessary for completion of the work in a safe and effective manner. The Landlord submitted invoices totalling the amounts they listed in their Application. As per s. 23.1(4)(a), I find the Landlord incurred these as a capital expenditure for the installation of a major system and major components. These are eligible expenses under this statutory framework.

Timing of the Capital Expenditure

I accept the Landlord's evidence that the first payment for the work was on June 15, 2022, and the final payment was incurred on March 11, 2023. Both of these dates are within 18 months of the Landlord's making this Application on May 17, 2023.

Life Expectancy of the Capital Expenditure

With regard to the Residential Tenancy Policy Guideline 40: Useful Life of Building Elements, I find all components are within 15 to 20 years.

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.

Outcome

The Landlord has proven all of the necessary elements for their Application.

I grant the Landlord's Application for the additional rent increase, based on the eligible capital expenditure of \$222,828.39. This is pursuant of 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 26 specified dwelling units, and that the amount of the eligible capital expenditure is \$222,828.39.

Therefore, the Landlord has established the basis for an additional rent increase for capital expenditures of \$71.42 ($\$222,828.39 \div 26 \div 120$) 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, calculated above, in a single year.

I direct the Landlord to the Residential Tenancy Branch Policy Guideline 37C 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 \$222,828.39.

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. I authorize the Landlord to serve each tenant by sending it to them via email where possible. Within reason, the Landlord must also be able to provide a copy to any tenant that requires a printed copy in person.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 20, 2023

Residential Tenancy Branch