Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Application Code ARI-C

Introduction

Landlord Amstar 1126 Rockland Apartments Ltd applied for an additional rent increase for capital expenditure under section 43(3) of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation) due to a boiler replacement.

I conducted hearings on December 20, 2024 and March 26, 2025 and issued interim decisions on December 30, 2024 (the December Decision), January 17, 2025 (the January Decision) and March 5 (the March Decision). This decision should be read in conjunction with all the interim decisions.

Attendance of the March 26, 2025 hearing

Rule of Procedure 7.1 states: “The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.”

The parties listed on the cover page of this decision attended the hearing on March 26, 2025, which started at 9:30 AM (the scheduled time) and concluded at 2:02 PM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The teleconference line remained open until 9:40 AM when I locked it because multiple parties joining the hearing late created difficulties in conducting the hearing. The parties must join the hearing at the scheduled time, in accordance with Rule of Procedure 7.1.

Around 11:12 AM counsel DKI affirmed that 3 other tenants represented by him tried to join the teleconference but had technical difficulties, they emailed him at 9:40 AM and 9:50 to inform him of these difficulties, but DKI only read the emails at a later time.

Counsel BIS stated he is not aware of difficulties in joining the teleconference.

The March Decision states:

> Conclusion
> Based on the above, I order:
> […]
> 2. Only the Landlord's agents, the Tenants represented by counsels BIS and DKI, and the parties' counsels can join the teleconference oral hearing at the start of the hearing. The parties must be available from 9:30 AM to 4:00 PM.
> 4. The Landlord must serve a copy of this decision to all the Tenants, and the notice of hearing only to the Tenants represented by counsels BIS and DKI, including the counsels, by the 5th calendar day after the date of this decision.

Rule of Procedure 7.9 states:

> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
> • the oral or written submissions of the parties;
> • the likelihood of the adjournment resulting in a resolution;
> • the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> • whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> • the possible prejudice to each party.

The parties did not request an adjournment.

I find there was no reason to adjourn the hearing, as the tenants not represented by counsels BIS and DKI had to submit written submissions, and the tenants represented by DKI who allegedly had difficulties attending the hearing were represented in the hearing by their legal counsel.

Service

The Landlord submitted 106 pages of evidence and written submissions, and counsel DKI submitted 56 pages of evidence and 10 pages of written submissions.

The Landlord submitted a proof of service letter and photos indicating service of the March Decision on March 7, 2025 by attaching individual packages to the rental unit's front doors.

The attending parties confirmed receipt of the evidence and did not raise any issues with service of the evidence, submissions and the March Decision.

Application for Additional Rent Increase

The Landlord is seeking an additional rent increase due to capital expenditure for a new boiler system (the expenditure) in the amount of $116,693.06. This amount is after receiving a rebate from Fortis BC.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Regulation section 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.

Regulation section 23.1(1) and (3) require the landlord to submit a single application for an additional rent increase for eligible expenditures "incurred in the 18-month period preceding the date on which the landlord makes the application."

Per Regulation section 23.1(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."

Regulation section 23.1(4) states the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all 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;
(iii)the installation, repair or replacement of a major system or major component that achieves one or more of the following:
(A) a reduction in energy use or greenhouse gas emissions;
(B) an improvement in the security of the residential property;
(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.

Per Regulation section 23.1(5), an additional rent increase cannot be granted for 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.

If a landlord discharges their evidentiary burden and the tenant fails to establish that an additional rent increase should not be imposed for the reasons set out in Regulation section 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

Regulation section 21.1 defines major component and major system:

"major component", in relation to a residential property, means
(a)a component of the residential property that is integral to the residential property, or
(b)a significant component of a major system;
"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral
(a)to the residential property, or
(b)to providing services to the tenants and occupants of the residential property;

I will address each of the legal requirements.

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the Landlord’s claim and my findings are set out below.

Number of specified dwelling units and benefited units

AAG testified the expenditure benefits all 35 rental units located in the building completed in 1962.

Regulation section 21.1(1) states that a specified dwelling unit is:

(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 AAG's convincing testimony, I find the rental building has 35 rental units and that they all benefit from the expenditures, in accordance with section 21.1(1) of the Regulation.

Prior application for an additional rent increase and application for all the tenants

AAG said he did not submit a prior application for an additional rent increase and that he named as respondents in this application all the tenants that he intends to impose the additional rent increase.

Based on AAG's convincing testimony, I find that the Landlord has not submitted a prior application for an additional rent increase in the 18 months preceding the date on which the Landlord submitted this application, per Regulation section 23.1(2).

Based on AAG's convincing testimony, I find the Landlord submitted this application against all the Tenants on which the Landlord intends to impose the rent increase, per Regulation section 23.1(3).

Expenditures incurred in the 18-month prior to the application

The Landlord submitted this application on October 9, 2024.

Regulation section 23.1(1) states the Landlord may seek an additional rent increase for expenditures incurred in the 18-month period preceding the date on which the landlord applied. Thus, the 18-month period is between April 8, 2023 and October 8, 2024.

The Landlord submitted four invoices for the new boiler:

Invoice number	Date (all in 2023)	Amount $
57956	June 30	37,732.52
58110	July 14	37,732.52
58228	July 28	37,732.52
59261	November 8	12,577.50
Total		**125,775.60**

AAG affirmed that he paid the last invoice for the expenditure (number 59261) on February 26, 2024, and submitted the cheque for paying that invoice and the statement indicating the cheque was cashed on March 6.

Policy Guideline 37C states: “capital expenditure can take more than 18 months to complete. As a result, costs associated with the project may be paid outside the 18-month period before the application date. For clarity, the capital expenditure will still be eligible for an additional rent increase in these situations as long as the final payment for the project was incurred in the 18-month period.”

Furthermore, Policy Guideline 37C explains: “If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be “incurred” is the date the landlord issued the final cheque. If a landlord pays for the capital expenditure using a post-dated cheque, the date the capital expenditure is considered to be “incurred” is the date the post-dated cheque is dated.”

Based on the Landlord’s convincing testimony, the invoices and the cheque, I find the Landlord incurred the expenditure in the 18-month period, per Regulation sections 23.1(1) and 23.1(4)(b), as the invoices for the expenditure were issued within that 18-month period and the last one was also paid within this period.

Quotations

GWI stated the Landlord received 4 quotations from contractors for the new boiler.

DKI inquired why the 4 quotations were not submitted into evidence, as landlords can seek an ARI-C to properly maintain the rental building but cannot complete upgrades or improve the rental building and seek an ARI-C, especially if the upgrade reduces the operating costs for the landlord and the tenants do not benefit from the improvement.

BIS agreed with DKI's submissions regarding the quotations and said that landlords do not have a 'blank cheque to contract uneconomical luxurious improvements' and that the quotations are relevant to determine if the Landlord 'operated within the guardrails'.

AAW argued this application is under sections 23.1(4)(a)(ii) and (iii), and the request for quotations is not relevant.

In the March Decision I carefully analyzed the written request for summons submitted by the Tenants' counsels DKI and BIS to receive from the Landlord some documents, including the quotations, the response from the Landlord's counsel AAW, and explained why I denied this request.

Counsel DKI and BSI reinstated their request for summons in the hearing.

I emphasize this decision must be read in conjunction with all the prior decisions. For convenience of the parties, I highlight the conclusion of the March Decision denying the request for summons:

> The legislation does not require landlords to hire the cheapest quotation company. Essentially, it is up to the landlords to choose whichever company they want to complete the renovations. Thus, the quotations submissions from other companies for the boiler replacement are not relevant documents.
> DKI argues that section 23.1 of the Regulations only allows for comparable and reasonable replacements of major components. The legislation does not have the alleged limitation. Section 23.1(4)(a)(i), (ii) and (iii) allow for 'installation' and 'replacement' of major components, implying that an installation is something new, and a replacement is installing something to replace a prior system. Policy Guideline 37C provides the following explanation about the installation of new equipment as examples for additional rent increase:
> […]
> Thus, I find the quotations are not relevant documents for this matter.

The parties did not provide new facts during the hearing to change the March Decision.

I informed the parties during the hearing that the March Decision is confirmed for the same reasons explained in that decision.

DKI sustained the information in the quotes would allow him to make the argument necessary pursuant to section 23.1(5), and the onus for this section is on the Tenants.

DKI explained that it is procedurally not fair to deny the summons for the quotations, because the tenants cannot make their argument without the information in the quotations.

DKI is not correct, as he was allowed to make all his submissions and arguments, despite not having the quotations. Furthermore, I addressed DKI's arguments in the March Decision, and DKI chose not to submit an application for judicial review.

Gas bills

DKI argued the new boiler reduced the gas bills for the rental building, which is paid by the Landlord, and the unredacted gas bills could prove the Landlord is entitled to recover the money spent for the new boiler with the lower gas bills.

Policy Guideline 37C states:

> To be considered a "payment from another source," a landlord must be reimbursed by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

BIS sustained it is not possible to prove that the Landlord is entitled to be paid from another source without the unredacted gas bills, and that policy guideline 37C has not been tested in the courts.

DKI argued that Policy Guideline 37C does not exclude a reduction in the utility payments as payment from another source and that it would be unfair to not consider the lower utility payments as payment from another source, as the Landlord benefits from this lower payment.

DKI also argued that the Landlord could get a 'double compensation', by receiving an additional rent increase and benefiting from the lower utility payment due to an energy efficient boiler.

AAG submitted the gas bills have been addressed in the March Decision, the request for the unredacted gas bills is a ‘fishing expedition’, and the lower amount of gas bills paid by the Landlord is not payment from another source.

Sections 23.1(4)(a)(ii) and (iii)(A) of the Regulations allow landlords to claim for an additional rent increase if the expenditure was to replace a major system that is close to the end of its useful life or if the expenditure reduces energy use or greenhouse gas emissions.

British Columbia has one of the strictest rent control legislations in Canada, if not the strictest one. Section 23.1 of the Regulations seeks to reach a balance between rent control (which benefits tenants) and the landlords’ obligations to maintain and upkeep the rental properties.

While policy guideline 37C and section 23.1 have not been analyzed by the Courts, I find that policy guideline 37C is completely logical, fair and in accordance with section 23.1 by indicating examples of payment from another source as “For grants, rebates, subsidies, insurance plans, and claim settlements.” and alleged savings of lower utility bills.

Furthermore, a reduction in a utility bill is similar to a deduction scheme or reduction in taxable income, and this is an example in Policy Guideline 37C of what is not considered payment from another source. The Landlord is not being reimbursed by another source when there is a lower utility bill, but simply paying less to a third party.

I find the argument that the Landlord could get a ‘double compensation’ by receiving an additional rent increase and benefiting from the lower utility payment due to an energy efficient boiler is not a relevant argument to dismiss this claim. The legislator would have expressly stated that a lower utility payment prevents a landlord from receiving an additional rent increase. However, the legislator chose not to consider lower utility bills as payment from another source.

I find that considering lower payments by the landlords for gas bills as payment from another source is completely against the purpose of section 23.1, unfair and inadequate, as the Regulation would not have approved section 23.1 if landlords could not get an additional rent increase due to new energy efficient boilers. I note that section 23.1(4)(a)(iii)(A) allows landlords to seek an additional rent increase if the expenditure reduces energy use or gas emissions. If the intent was for reduced operating expenses to be a relevant consideration, this would be expressed in the Regulation.

Furthermore, the issue of gas bills was analyzed in the March Decision and counsels DKI and BIS merely reiterated their arguments during the hearing.

Gas Rates

Counsel BIS asked tenant HAS (represented by himself) to read the rates for natural gas from Fortis BC website since 2023 during the hearing. HIS read the gas rates and provided the URL from the website.

I asked BIS what is the relevance of reading this information, and why this information was not provided in writing as evidence.

Counsel BIS explained the Landlord's savings with the new boiler will be over $41,000.00 over the lifetime of the new boiler, and that he is confident that this amount must be considered as payment from another source, due to the 'double compensation' argument.

I informed BIS that I had already orally addressed this issue, and explained my reasons in this decision's topic 'Gas bills'. BIS argued that it was important to allow tenant HAS to further provide information about the gas rates from Fortis BC website, and I allowed her to do so.

If the gas rates reduce, regardless of a capital expenditure, the Landlord would not have to reduce the rent and would have smaller expenses with the gas bills.

Parties engaging in litigation should disclose relevant information prior to the hearing in order to allow the opposing party to be prepared for the arguments.

AAG affirmed that not submitting the gas rates as part of the evidence was not fair. BIS stated the legislation does not require him to read the information about gas rates during the hearing.

I find BIS' ambush litigation strategy of asking his client HAS to read information easily available online during the hearing, rather than serving this document as part of the evidence, was unfortunate and inadequate, as it would have been more time efficient and fair to serve as evidence the Fortis BC rates. I caution counsel BIS to avoid engaging in this kind of unfair practice in the future, as this could be an abuse of the dispute resolution process.

Prior Decision

Counsel DKI submitted a decision from another application under section 23.1 of the Regulation dated August 16, 2024 (pages 34-43 of DKI's submissions). I will refer to this decision as the 'Prior Decision'.

DKI said the Prior Decision is regarding a similar building, owned by another corporate landlord, who purchased that building and requested the additional rent increase. DKI stated that section 23.1 of the Regulation is for very limited circumstances, and that it is not fair to grant an additional rent increase for circumstances that landlords are aware of when they purchase the building, when there is a reduction in utility costs and the double recovery would also be an unjust enrichment for the Landlord.

The parties made submissions on 3 topics: (1) Policy Guideline 40 and foreseeability, (2) Fairness of section 23.1, and, (3) ambiguity and unjust enrichment. These topics were addressed in the Prior Decision.

Under section 64(2) of the Act, the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions from other arbitrators. I am analyzing the arguments made by the parties during the hearing in this application.

1. Policy Guideline 40 and Foreseeability:

DKI explained in the Prior Decision the application was denied because the expenditure was foreseeable, as explained in Policy Guideline 40, dated March 2012:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases[1] and determining damages[2] which the director has the authority to determine under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Applications for additional rent increases

A landlord may apply for an additional rent increase in an amount greater than the basic Annual Rent Increase in extraordinary circumstances. One of those circumstances is when a landlord has completed significant repairs or renovations that could not have been foreseen under reasonable circumstances and that will not recur within a reasonable time period[3]. When reviewing applications for additional rent increases, the director may use this guide to determine whether the landlord could have foreseen the repair or renovation.

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

---

[1] Residential Tenancy Regulation, s. 23; Manufactured Home Park Tenancy Regulation, s. 33.
[2] *RTA*, s. 67; *MHPTA*, s. 60.
[3] Residential Tenancy Regulation, s. 23; Manufactured Home Park Tenancy Regulation, s. 33.

Policy Guideline 40, published in March 2012, and referred to in the Prior Decision, refers to foreseeability for applications under section 23 of the Regulation. Section 23.1 of the Regulation, the legal basis for this application, was only enacted in July 2021.

I find that foreseeability of the capital expenditure is not relevant under section 23.1 of the Regulation.

2. Fairness of section 23.1:

Prior to July 2021, section 22(2) of the Regulation stated:

> For the purposes of section 43 (1) (a) of the Act [amount of rent increase], a landlord may impose a rent increase that is no greater than the percentage amount calculated as follows: percentage amount = **inflation rate + 2%**
>
> (emphasis added)

On July 1, 2021 (when section 23.1 was enacted), section 22(2) of the Regulation was repealed, and section 22(3) was enacted:

> For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2019, a landlord may impose a rent increase that is no greater than the amount calculated as follows: **percentage amount = inflation rate.**
>
> (emphasis added)

Due to the Covid-19 pandemic, rent increases were banned in British Columbia from March 2020 to December 31, 2021.

I find the historical context of section 23.1 of the Regulation further demonstrates the intention of the legislator was to balance the rights of landlords and tenants regarding rent increases. Put it simple, prior to section 23.1 landlords were authorized to increase rent at the inflation rate, plus 2%. After section 23.1, landlords are authorized to increase rent only at the inflation rate and can make additional rent increase applications under section 23.1 of the Regulation.

Section 32(1) of the Act states: “A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Private landlords are the main providers of rental housing in British Columbia. There is no discussion about the importance of providing rental house, and that if private landlords decide not to engage in the business of providing rental housing, the supply of housing will reduce, and this will negatively impact and harm tenants.

I find section 23.1 provides an important stimulus for landlords to upkeep the rental units (as required by section 32(1) of the Act) and further invest in rental housing. Tenants unhappy with additional rent increases have the right to terminate their tenancy and seek other housing options. Landlords, in order to continue to comply with their

obligations under section 32(1) of the Act, have to make capital investments not covered by rent or the yearly rent increase limited to the inflation rate.

Another relevant point about the fairness of section 23.1 is that older rental buildings (such as the one in this matter) usually have more affordable rental units and are near the end of their functional life. It is in the Tenants' best interest that these buildings are upkept, rather than redeveloped, to maintain lower rents. Section 23.1 provides Landlords with the possibility of receiving nominal recovery for capital expenditures that are essential to upkeep affordable rental units on the rental market.

3. Ambiguity and unjust enrichment:

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the Court stated:

> [11] I start from the accepted rules of statutory interpretation. I conclude that the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See (Canada Attorney General) v. Abrahams, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2: Henricks v. Hebert, [1998] B.C.J. No. 2745 (QL)(SC) at para. 55:
>
> > I think it is accepted that one of the overriding purposes of prescribing statutory terms of tenancy, over and above specifically empowering residential tenants against the perceived superior strength of landlords, was to introduce order and consistency to an area where agreements were often vague, uncertain or non-existent on important matters, and remedies were relatively difficult to obtain.

I find that in this matter, section 23.1 of the Act does not have any ambiguity and the Landlord's application has very compelling evidence regarding section 23.1, as demonstrated in this decision.

I find there is no unjust enrichment for the Landlord in this matter, as the Landlord claims the additional rent increase under a solid legal basis: section 23.1 of the Regulation.

DKI reinstated his arguments about double compensation and argued that policy guidelines and other decisions from this tribunal are not binding, it was patently unfair to deny the summons for the unredacted copies of the gas bills.

BIS argued that he agrees with DKI's submissions, as allowing the double recovery would be an unjust enrichment for the Landlord. BIS stated that if this application is granted, it should be limited to the amount requested, minus the $41,000.00 the Landlord will save in the utility bills over the life span of the boiler.

AAG sustained the arguments of DKI and BIS are illogical and patently unreasonable.

For all the reasons explained in this decision, and considering the holistic approach and historical context, I find that the double compensation argument sustained by the Tenants' counsels is entirely illogical, unreasonable and unfair.

Counsels DKI and BIS received the March Decision on March 5, 2025. Instead of submitting an application for judicial review before the Supreme Court of British Columbia regarding the March Decision, they preferred to attend the hearing on March 26 to, for the most part, reinstate their arguments about the gas bills, the quotations and the denied summons.

Expenditure not expected to occur again for at least 5 years

AAG affirmed the expenditure is not expected to occur again for at least 5 years as the life expectancy of the expenditure is 25 years.

GWI stated he is a specialist in energy management and the new boiler system is expected to last 25 years.

Based on the Landlord's agents AAG and GWI convincing testimony, I find that the life expectancy of the expenditure is at least 5 years, and the expenditure is not expected to occur again for this period of time. Thus, I find that the expenditure incurred is an eligible expenditure, and it satisfies Regulation 23.1(4)(c).

Expenditure because of inadequate repair or maintenance

AAG stated he properly maintained the previous boiler, but it was from 1963 and beyond its useful life when it was replaced.

The Landlord submitted an inspection report dated April 20, 2021 signed by two project managers. I will refer to this report as the Pinchin report. It states:

> Heating throughout the Site Building is provided by perimeter hydronic baseboard heaters which are supplied with hot water from a dual fuel oil/natural gas-fired heating boiler. The heating boiler consists of an "Cleaver Brooks" unit which was manufactured in approximately 1963 (i.e., ~ 58 years old) with an approximate input heating capacity of 2,092,000 British Thermal Units per Hour (BTUH). [page 19 of the report]
> Major deficiencies/findings: The heating boiler is approximately 58 years old and read reached its PUL. Recommendations: An allowance for replacement of the boiler has been carried in the early portion of the term of the analysis. [page 20 of the report]

I find the convincing testimony under oath provided by the Landlord's agent AAG and the Pinchin report prove the boiler did not need to be replaced due to inadequate repair, as the prior boiler was from 1963 and functional in 2021. Thus, I find the expenditure was not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).

ZBR testified that as the prior boiler was over 25 years old there was negligence in not replacing it earlier.

I find the fact the prior boiler was over 25 years old does not mean there was negligence from the prior landlord. The Pinchin report indicates the prior boiler was at the end of its useful life, not that it was broken.

Payment from another source

AAG said the amount requested for the rent increase is $116,693.06 because he received a rebate from Fortis BC in the amount of $9,082.00, and the claimed amount is the post-rebate total. The Landlord submitted the rebate cheque and a letter from Fortis BC: "We have received all required documentation and information to approve your rebate. Therefore, we are pleased to provide the enclosed cheque."

The Landlord said that he is not entitled to be paid from another source for the expenditure claimed, as the amount claimed is after the Fortis BC rebate.

The 4 invoices submitted indicate a total expense of $125,775.06 and the Landlord received a rebate of $9,082.00. The expense minus the rebate equals the amount the Landlord is claiming ($116,693.06).

Policy Guideline 37C states:

> To be considered a "payment from another source," a landlord must be reimbursed

> by a third party for some or all of the cost of the capital expenditure. For grants, rebates, subsidies, insurance plans, and claim settlements, landlords are reimbursed for the cost of capital expenditures by a third party (e.g., insurance provider, government, private individual). However, landlords are not reimbursed by another party under tax credit and deduction schemes. Instead, a landlord is simply paying another party a lesser amount. As such, schemes that landlords can access to reduce their taxable income when they incur capital expenditures do not constitute "payments from another source" because the landlord is not receiving payment by reducing their taxable income.

TCH affirmed the Landlord purchased the building knowing the boiler needed to be replaced and that there was an allowance for replacing the boiler, as stated in the Pinchin report.

ZBR inquired if there was a discount from the seller because the Landlord knew he would need to replace the boiler when the building was purchased.

AAG stated there was no discount from the seller, and the eventual discount would not be a relevant issue.

AAG said the allowance referred to in the Pinchin report is not relevant, as foreseeability is not related to section 23.1 of the Regulation. I refer the parties to the heading 'Prior Decision'.

Based on AAG's convincing testimony and the rebate confirmation, I find the Landlord is not entitled to be paid from another source for the expenditure, per Regulation 23.1(5)(b), as the amount claimed is the post-rebate total.

The legislation does not indicate that a discount from the seller is a payment from another source. I find that an eventual discount from the seller would not be considered payment from another source, as such a discount is not a grant, subsidy or insurance claim settlement, as explained in policy guideline 37C.

Boiler

The Landlord affirmed the new boiler reduces gas emissions and the prior one was beyond its useful life.

The Landlord submitted photos showing the old and the new boiler and the gas bills showing a reduction in gas consumption with the new boiler in the amount of 159.6 GJ from July 18, 2023 to August 14, 2024.

BIS stated it is difficult to calculate the reduction in energy consumption related to the new boiler.

The Landlord's written submissions state:

16. According to invoices from Mac's Heating Ltd., 90% of the Boiler Replacement was substantially completed by July 28, 2023. Over a 13-month period since substantial completion, an analysis of the Rental Property's invoices from Fortis BC show a reduction in natural gas consumption by 159.6 GJ, as follows:

Billing Period 90% Completion as of July 28, 2023	GJ Usage
July 18 to August 15, 2023	+10.1
August 16, to September, 2023	-17.8
September 15 to October 17, 2023	-23.8
October 18 to November 16, 2023	-49.0
November 17 to December 14, 2023	-55.2
December 15, 2023 to January 16, 2024	-33.8
January 17 to February 14, 2024	-182.5
February 15 to March 14, 2024	+135.6
March 15 to April 15, 2024	-15.0
April 16 to May 14, 2024	-29.3
May 15 to June 13, 2024	+40.3
June 14 to July 15, 2024	+34.9
July 16 to August 14, 2024	+25.9
Net Reduction in GJ Usage	**-159.6**

Exhibits, pages 53 to 65

DKI said that the reduction in energy use may have happened because the new boiler is not working properly.

DKI submitted into evidence notes issued by the Landlord indicating disruptions in the heating and hot water system in the rental building on:

- 2023: March 15, July 10, October 4, November 27
- 2024: January 30, February 24 to 27, March 4, April 16, May 24, June 19, August 29, September 5, 10, and 19, October 8
- 2025: February 5, 7 and 24

Landlord DSA testified the disruptions in hot water on the mentioned dates were temporary disruptions of services for maintenance, and the Landlord provided notices in advance to the Tenants informing them about the temporary disruptions, including the time of the scheduled disruptions.

DSA affirmed the disruptions were related to individual pipes throughout the entire rental building, and not to the new boiler. DSA stated the building is over 60 years old, and it is normal to have these disruptions in a building this age.

GWI testified the pipes issues mentioned by DSA are not the pipes directly related to the new boiler.

GWI said the piping statements in the invoices are for the pipes related to the boiler and that the new boiler required new pipes in the boiler's room. The pipes replaced are only the ones directly related to the new boiler, not the entire building.

GWI affirmed that, as of the hearing date, there is no scheduled repair for the new boiler, it is in perfect condition and there is no indication that the boiler will need to be replaced in the next 5 years.

Tenants TCH and ZBR stated they believe the new boiler is not working properly due to "something to do with a measuring device" and a microchip, the prior boiler provided a better service and the only way to control the heat in their unit is by closing a valve.

AAG said the testimony of TCH and ZBR is speculation.

TCH testified he talked with a contractor, and the contractor informed him in 2024 that a valve related to the new boiler needs to be replaced.

Tenant HAS stated that on November 26 and 28, 2024 there were disruptions of hot water and read a text message from the Landlord's contractor informing that he was aware of that issue.

Tenant NKU said the disruptions in the heating and hot water system have been more common with the new boiler.

Landlords DSA and GWI affirmed they are not aware of issues with a microchip or measuring device and that the new boiler is working properly.

RTB Policy Guideline 37C states: “Major systems and major components 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 (e.g., walls, beams, and columns); the roof; siding; entry doors; windows; primary flooring in common areas, heating systems, plumbing and sanitary systems…”

I find the boiler system is a major component of the rental building, as it is integral to the rental building and provides the building’s users hot water, per Regulation section 21.1 and Policy Guideline 37C.

I find tenants TCH and ZBR provided vague information about alleged issues with the new boiler.

I find the testimony provided by HAS about the disruption in November 2024 does not prove the new boiler is consistently not working. The new boiler, as any mechanical equipment, may have maintenance issues.

Based on the convincing testimony offered by GWI and DSA, I find the Landlord proved the disruptions in the heating and hot water system are not related to the boiler. The Tenants have the right to submit any maintenance request and submit an application for dispute resolution if the Landlord does not address it.

Based on the Landlord’s convincing testimony, the invoices, the Pinchin report, the Fortis BC letter, the Landlord’s submissions (para 16) and the related gas bills, I find the Landlord proved that he replaced the boiler system in 2023 and the new boiler achieved a reduction in gas emissions.

Considering the above, I find that the expenditure of $116,693.06 to replace the boiler system is in accordance with Regulation section 23.1(4)(a)(iii)(A), as the Landlord replaced the major component (boiler) and the new boiler system achieves a reduction in gas emissions, and also 23.1(4)(a)(ii), as the previous boiler was from 1963 and beyond its useful life.

Tenant ZBR stated that many tenants in the rental building have clauses in their tenancy agreement prohibiting changes in the price of heat and the rental units do not have individual thermostats.

AAG said this application is not about the price of heat, but for an additional rent increase regarding the new boiler.

I find that individual tenants' issues with thermostats and clauses regarding the cost of heat for their units is not related to this application.

Outcome

The Landlord has been successful in this application, as the Landlord proved that all the elements required to impose an additional rent increase for expenditure and the Tenants failed to prove the conditions of Regulation section 23.1(5).

In summary, the Landlord is entitled to impose an additional rent increase for the boiler system in the amount of $116,693.06.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specified dwelling units divided by the amount of the eligible expenditure divided by 120. In this case, I have found that there are 35 specified dwelling units.

The Landlord has established the basis for an additional rent increase for the expenditure of $27.78 per unit ($116,693.06 / 35 units / 120). If this amount represents an increase of more than 3% per year for each unit, the additional rent increase must be imposed in accordance with section 23.3 of the Regulation.

The parties may refer to RTB Policy Guideline 37C, Regulations 23.2 and 23.3, 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 RTB website (http://www.housing.gov.bc.ca/rtb/WebTools/AdditionalRentIncrease/#NoticeGeneratorPhaseOne/step1) for further guidance regarding how this rent increase may be imposed.

Conclusion

The Landlord has been successful. I grant the application for an additional rent increase for expenditures of $27.78 per unit. The Landlord must impose this increase in accordance with the Act and the Regulation.

The Landlord must serve the tenants with a copy of this decision in accordance with section 88 of the Act.

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

Dated: April 11, 2025

Residential Tenancy Branch