



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding KELSON GROUP PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **ARI-C**

### **INTRODUCTION**

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (Act) and the *Residential Tenancy Regulation* (Regulation) for an additional rent increase for capital expenditures under section 43(1)(b) of the Act, and section 23.1 of the Regulation.

Landlord's representatives J.F. and K.F., support specialist C.G., regional property manager L.S., building manager J.B. and one Tenant J.H. and their support M.L. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. All parties testified that they were not recording this dispute resolution hearing.

### **Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)**

The Landlord served 29 Proceeding Packages for this hearing to the Tenants by Canada Post registered mail on March 21, 2024. The Landlord uploaded the Canada Post customer receipts with tracking numbers for each unit to which the capital expenditure claim is against. The one Tenant who attended the hearing confirmed receipt of the Proceeding Package. I find that the Tenants were sufficiently served with the Proceeding Package for this hearing on March 26, 2024 in accordance with section 71(2)(b) of the Act.

No Tenants submitted any evidence to the RTB for this matter.

## **ISSUE TO BE DECIDED**

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

## **BACKGROUND, EVIDENCE AND ANALYSIS**

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

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. The onus to prove their case is on the person making the claim.

### Summary of Proceedings

The Landlord bought the property in 2008. The Landlord stated that there are 35 individual apartments in the residential building. The Landlord said they excluded tenants who began their tenancies after the work was completed.

The hearing for this matter covered one hearing time. The Tenants did not submit any written submissions or evidence for this matter. I accept the Landlord's convincing and credible testimony about the capital expenditures.

The Landlord testified that the building was built in the mid-1970s, and it is a four-story building with an elevator. The Landlord has not applied for a previous additional rent increase for this building.

The Landlord uploaded after pictures of the new hot water tank and the make up air furnace system installed. The Landlord uploaded before and after pictures of the new chain link fence and the three metal doors installed.

### **A. Statutory Framework**

Sections 21 and 23.1 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 made an application for an additional rent increase against these Tenants within the last 18 months;
- the number of specified dwelling units on the residential property;
- the amount of the capital expenditure;
- that the submitted capital expenditures were:
  - o an *eligible* capital expenditure;
  - o incurred less than 18 months prior to making the application; and,
  - o not expected to be incurred again within five years.

The Tenants may defeat an application for an additional rent increase for capital expenditure 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, or
- 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 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 under sections 23.2 and 23.3 of the Regulation.

### **B. Prior Application for Additional Rent Increase**

The Landlord submitted that they have not applied for an additional rent increase for the capital expenditures against any of the Tenants prior to this application. Based on the Landlord's undisputed testimony, I find the Landlord has not made a previous application for an additional rent increase for the eligible capital expenditures in the last 18 months in accordance with section 23.1(2) of the Regulation.

### **C. 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.

I find the number of specified dwelling units for the purposes of the capital expenditures is equal to the total number of units in the building, or 35 units. The Landlord stated they would not impose an additional rent increase against six Tenants as they moved in after the capital expenditure work was completed. The Landlord deemed the six units as exempt from having an additional rent increase as these units are paying the current market rent for their suites, but I find the final calculation of the additional rent increase will include the total number of specified dwelling units, 35 units, in the residential property.

#### **D. Amount of Capital Expenditure**

The Landlord submitted this application on March 15, 2024. I find the prior 18-month cut-off date for eligible capital expenditures is September 15, 2022.

The Landlord testified that they are seeking, under section 23.1(4) of the Regulation, to impose an additional rent increase for the following capital expenditures incurred:

Capital expenditures		Amount
1	Hot water tank replacement and installation	\$19,965.75
2	Make up air furnace system installation	\$80,967.60
3	Chain link fence installation	\$12,600.00
4	Metal door replacement and installation	\$15,844.96

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

For the capital expenditure to be considered eligible, the Landlord must prove all the following:

- the capital expenditure was to repair, replace, or install a major system or a component of a major system;
- the capital expenditure 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
    - because it 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; and,
- the capital expenditure is not expected to be incurred again within five years.

The Landlord testified their replacement of the make up air furnace qualified for a \$7,000.00 rebate because of its energy-efficiency standard. The Landlord stated that the other capital expenditures did not qualify for any rebates. Further the Landlord did not disclose that they are expecting to receive any other payments going towards any of the remaining capital expenditures.

No Tenants submitted that the repairs, replacements, and installations were required because of inadequate repair or maintenance on the part of the Landlord.

Based on the Landlord's undisputed testimony, I find the Landlord has established, on a balance of probabilities, that the capital expenditures undertaken have not been required for repairs or replacement because of inadequate repair or maintenance on the part of the Landlord. I find that the Landlord received a \$7,000.00 rebate for the make up air furnace installation, but has not received any additional rebates or other payments for the remaining capital expenditures in accordance with section 23.1(5) of the Regulation.

## Types of Capital Expenditure

Section 21.1(1) of the Regulation defines “major system” and “major component” as:

***"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;

### **1. Hot water tank replacement and installation**

#### Reason for the hot water tank replacement and installation

The Landlord testified that one of the two domestic hot water tanks that supplies hot water to the whole building was replaced. The previous hot water tank failed and was leaking water. The previous tank was over 10 years old, and the new tank is expected to last approximately 10 to 15 years. The total cost of this expenditure was \$19,965.75, and the date the Landlord made the final payment was December 6, 2023.

Hot water tanks are considered integral major systems of a building that provide hot water, a critical function, to the building residents. As the old tank had failed, it was incumbent on the Landlord to replace the hot water tank so the Landlord met their obligation to maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law under section 32 of the Act.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. PG#40 states that the useful life of domestic hot water tanks is 10 years. I find the hot water tank replacement was required as the old tank had failed and was past its useful life.

I find the Landlord incurred this expenditure due to the replacement and installation of a major system that had failed and was at the end of its useful life.

I find the Landlord has established that the hot water tank replacement and installation was required as the existing hot water tank had failed and was past its useful life. I find the capital expenditure totaling **\$19,965.75** for the hot water tank is not expected to be incurred again for at least 10 years.

#### Timing of hot water tank replacement and installation

The Landlord provided a copy of their hot water tank project ledger and the invoice for the work completed for the hot water tank replacement and installation. The ledger shows that the payment date for this capital expenditure occurred on December 6, 2023.

RTB Policy Guideline 37C-Additional Rent Increase for Capital Expenditures (dated June 2023) states:

*A capital expenditure is eligible for an additional rent increase if it was incurred in the 18-month period preceding the date on which a landlord made the application;*

...

#### **3. 18-Month Requirement**

*... the date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.*

(Emphasis added)

The onus is on the Landlord to establish on a balance of probabilities that the expenditure meets this requirement to be eligible for an additional rent increase.

I accept that the Landlord paid the invoice for the hot water tank replacement and installation on December 6, 2023 totaling **\$19,965.75**. I find the cost for this capital expenditure, based on the detailed invoicing and reported payment in the ledger, was incurred within the 18-month period preceding the date on which the Landlord made the application.

## 2. Make up air furnace system installation

### Reason for make up air furnace system installation

The Landlord installed a new make up air furnace system to supply heat and ventilation to the hallways and common areas of the building. The Landlord's previous system, installed in 2015, failed and this installation was required so the Landlord met their obligations under section 32 of the Act. The new system was planned with an engineer, and qualified for a \$7,000.00 rebate from FortisBC because of its energy-efficiency. The new system's final cost is \$80,967.60. The new system is expected to last 20 years.

PG#40 states that the useful life of electric and oil, gas furnaces range from 20 to 25 years. This system was designed employing the expertise of an engineer, and the Landlord believes this make up air furnace system is substantially better than what was previously installed.

Based on the Landlord's undisputed testimony, and PG#40, I find the installation of a new make up air furnace system is essential to provide fresh air replacement service to the Tenants and occupants of the residential property. I find also that the make up air furnace system is an integral component to a major system for the residential property. I find this system needed replacement as the original system failed. The Landlord, working with an engineer, developed and installed a substantially better system. The Landlord testified that the new system comes with a warranty.

The Landlord does not expect to incur this expense again within the next five years.

I find the Landlord has established that the new make up air furnace system was required as the existing item had failed. I find the capital expenditure totaling **\$80,967.60** for the make up air furnace system is not expected to be incurred again for at least 20 years.

### Timing of replacement of make up air furnace system installation

The Landlord provided a copy of their heating and cooling project ledger and invoices for the work completed for the make up air furnace system. The summary invoicing for the make up air furnace system spans from January 14, 2022 to March 14, 2023.



I accept that the Landlord paid for the invoices noted on the project ledger summary, and that the final payment for the complete make up furnace system occurred in March 2023.

I find that final payment for the make up air furnace system was dated within the 18-month period preceding the date on which the Landlord made the application, and I accept that the capital expenditure for the make up furnace system totalling **\$80,967.60** is supported by the detailed invoicing and were paid for within the allotted timeframe.

### **3. Chain link fence installation**

#### Reason for chain link fence installation

To improve safety, security, and cleanliness, the Landlord installed a 200 foot long by 6 foot high chain link fence at the rear of the property. The fence is meant to deter people from walking through the back of the property, and bears from coming up from the park and gully next to the property. The Landlord said there was no previous fence in place. The Landlord submitted that the chain link fence is expected to last at least 20 years.

The Landlord said that they would find all sorts of garbage in the gully, and they wanted to prevent people from getting into their garbage bins. The fence's purpose is to separate the rear of the building from the park area.

The total cost of the fence is \$12,600.00, and the Landlord has not received any other financial assistance for this capital expenditure.

I find the installation of the fence will improve the safety, and security of the residential property. This work benefits all the Tenants of the residential property, and enhances the property's security from animals and people who may be traveling through the area, or people who are looking for items in the building's garbage bins.

Based on the Landlord's undisputed testimony and their submission of the need for the chain link fence, I find the chain link fence addresses a major system that serves to improve the security of the residential property. I find the chain link fence is an eligible capital expenditure that cost the Landlord **\$12,600.00**. I find that the newly installed chain link fence is not expected to be incurred again for at least 20 years.

#### Timing of chain link fence installation

The Landlord provided a copy of their yard project ledger and invoice for the work completed for the newly installed chain link fence. The ledger notes that the yard project final payment was made on December 14, 2023.

I accept that the Landlord paid the invoice uploaded in their evidence on December 14, 2023. I find that payment for the chain link fence was dated within the 18-month period preceding the date on which the Landlord made the application, and I accept that the capital expenditure totalling **\$12,600.00** supported by the detailed invoicing was paid for within the allotted timeframe.

#### **4. Metal door replacement and installation**

##### Reason for metal door replacement and installation

The Landlord replaced two exterior metal doors that entered the building at stairwells, and one metal door for access to the furnace room. The interior door required replacement because the new furnace was too large to fit through the old doorway, and a whole new door needed to be refitted. The exterior doors were the original doors installed on the building, and they were no longer closing properly. The Landlord submitted that all doors also needed new lock and key systems.

The Landlord submitted that these new doors provide security for the building and are part of a major system to enclosing the building. The Landlord stated that the total cost for the metal door replacement and installation was \$15,844.96.

PG#40 states that the useful life of doors is 20 years. The building is approximately 50 years old, so these doors were well past their useful life.

Based on the Landlord's undisputed testimony, PG#40, and on a balance of probabilities, I find that these metals doors were at the end of their useful life and needed to be replaced. Exterior doors are part of a major system in the building's physical integrity, and an interior metal door provides safety for residents to not access areas that are not needed for them. I find the replacement of these metal doors benefits all the Tenants and it is the Landlord's obligation to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by section 32 of the Act. This work was required due to the doors being at the end of their useful life, and not functioning properly.

I find the Landlord does not expect that the metal doors will need to be replaced again for at least five years, and they have a life expectancy of at least 20 years.

#### Timing of metal door replacement and installation

The Landlord provided a copy of their door project ledger and invoices for the work completed for the metal door replacement and installation. The summary invoicing for the metal door replacement and installation work spans from April 23, 2023 to May 18, 2023.

I accept that the Landlord paid for the invoices noted on the door project ledger and that the final payment for the metal door replacement and installation occurred on May 18, 2023.

I find that final payment for the metal door replacement and installation was dated within the 18-month period preceding the date on which the Landlord made the application, and I accept that the capital expenditure for the metal door replacement and installation totalled **\$15,844.96** is supported by the detailed invoicing and were paid for within the allotted timeframe.

For the above-stated reasons, I find that the following capital expenditures incurred are eligible capital expenditures as defined by the Regulation:

Capital expenditures	Amount
Hot water tank replacement and installation	\$19,965.75
Make up air furnace system installation	\$80,967.60
Chain link fence installation	\$12,600.00
Metal door replacement and installation	\$15,844.96
Total capital expenditures	\$129,378.31

## **OUTCOME**

The Landlord has been successful. They have proven, on a balance of probabilities, all the elements required to be able to impose an additional rent increase for 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 such:

$$\begin{aligned}\text{Additional rent increase} &= \left[ \frac{\text{Eligible capital expenditure}}{\text{Number of specified dwelling units}} \right] / 120 \\ &= \left[ \frac{\$129,378.31}{35} \right] / 120 = \$30.80\end{aligned}$$

In this case, I have found that there are 35 specified dwelling units and that the amount of the eligible capital expenditures is \$129,378.31.

So, the Landlord has established the basis for an additional rent increase for capital expenditures of \$30.80. 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 RTB Policy Guidelines 37 (June 2023), and 40 (March 2012), 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 RTB website 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 of \$30.80 for a capital expenditure of \$129,378.31. The Landlord must impose this increase in accordance with the Act and the Regulation.

I order the Landlord to 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: July 18, 2024

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Residential Tenancy Branch