

IN THE MATTER OF THE *RESIDENTIAL TENANCY ACT*, SBC 2002, c 78

BETWEEN:

CAPREIT Limited Partnership and Les Investissements Immobiliers Ciame Inc., Landlord

APPLICANT

SAND:

Tenants of 12184, 12186, 12188, and 12190 224th Street, Maple Ridge, British Columbia,
Tenants

RESPONDENTS

LANDLORD'S WRITTEN SUBMISSIONS

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I. INTRODUCTION

1. CAPREIT Limited Partnership (the “**Landlord**”) applies to the Director for an order approving an additional rent increase for the Queen Anne Apartments, a four-building apartment complex located at 12184, 12186, 12188, & 12190 224th Street, Maple Ridge, British Columbia (the “**Buildings**”) on the basis that it has made a number of eligible capital expenditures relating to the Building, totaling \$1,689,051.78 (the “**Total Capital Expenditures**”). The Total Capital Expenditures all relate to work to the exterior walls and balconies of all four Buildings.
2. Les Investissements Immobiliers Ciame Inc. holds legal title to the Building. However, the Building is beneficially owned by CAPREIT Limited Partnership. A partnership is not a separate legal entity at law, and cannot therefore hold registered title to property directly. This means that in order for a partnership to own property, it must hold title to the property through a separate legal entity. In this case, CAPREIT Limited Partnership holds legal title to the Building through Les Investissements Immobiliers Ciame Inc.

Title Summary of Building [Tab 1b]

Nominee Agreement [Tab 1c]

3. Both CAPREIT Limited Partnership and Les Investissements Immobiliers Ciame Inc. meet the definition of a “landlord” in the *Residential Tenancy Act*, SBC 2002, c 78 (the “**Act**”) as owners of the Buildings. This explanation of the ownership structure of the Landlord is provided in case there is any confusion with respect to why legal title refers to Les Investissements Immobiliers Ciame Inc. while all invoices and payment documents reference CAPREIT Limited Partnership.
4. The Buildings were constructed in 1977 and the Landlord took over ownership and operation on November 26, 2020.

BC Assessment Information [Tab 1a]

Nominee Agreement [Tab 1c]

5. The Total Capital Expenditures all relate to a project to repair balconies and the exterior walls of the Buildings as needed to maintain the Buildings in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act (as set out in section 23.1(4)(a)(i) of the *Residential Tenancy Regulation*, BC Reg 477/2003 (the “**Regulation**”)) and to repair or replace a major system or major component that has failed or is malfunctioning or inoperative that is close to the end of its useful life (as set out in section 23.1(4)(a)(ii) of the Regulation).
6. The Total Capital Expenditures were incurred in the 18-month period preceding the date of this application, are not expected to recur within the next 5 years, in accordance with sections 23.1(4)(b) and (c) of the Regulation.
7. A tenant’s ability to oppose this kind of additional rent increase application is very limited. The tenants only have two defences, and the burden of proof is on the tenants to establish them with clear and convincing evidence. Those defences are as follows:

- a. the cost of the repairs or replacements is required because of inadequate repair or maintenance on the part of the landlord; or
 - b. the landlord has been paid, or is entitled to be paid, from another source.
8. Anything else is irrelevant. So, for example, it is irrelevant whether a tenant believes that the replacements or repairs could have been handled a different way, or in their opinion, at a lower cost.
9. As explained by the evidence of a professional engineer, the replacements are because over the decades, the building components have become worn and are past their useful life. But this is not the same as inadequate repair or maintenance. Eventually, all building components have to be replaced, even if they are well maintained. Therefore, the Director must therefore grant this application for an additional rent increase for capital expenditures pursuant to section 23.1(4) of the Regulation.
10. The Buildings have 147 rental units. The balcony and exterior wall repairs were part of a project to replace components in the exterior wall system, which all units in the Buildings benefit from.

BC Assessment Information [Tab 1a]

11. The total amount of the increase sought, per unit, is determined by using a formula which takes the Total Capital Expenditures (\$1,689,051.78), divides it by 147 rental units, and then further divides it by 120 months (the cost is amortized over 10 years). This comes to \$95.75 per rental unit per month. In the event \$95.75 is more than 3% of the current monthly rent for a rental unit, then the remaining portion in excess of 3% must be applied in a later year and cannot be imposed all at once upon a tenant.

II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS

a. Overview of Additional Rent Increase Applications

12. Section 23.1(4) of the Regulation states that the Director must grant an application for an additional rent increase for capital expenditures that are:
- a. incurred in the 18-month period preceding the date on which the Landlord made the application;
 - b. not expected to recur for at least 5 years; and
 - c. incurred for one or more of the following reasons:
 - i. to install, repair or replace a major system or major component:
 - 1. in order to maintain the residential property in a state of repair that complies with section 32(1)(a) of the Act;
 - 2. that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
 - 3. in order to reduce energy use or greenhouse gas emissions; or
 - 4. in order to improve the security of the residential property.

6. A capital expenditure is “incurred” when payment for it is made. The Landlord paid the Total Capital Expenditures by electronic funds transfer, as confirmed by the contractors themselves, on the dates set out in the table below in these submissions. The Total Capital Expenditures were therefore incurred within the 18-month period preceding the application.

Residential Tenancy Policy Guideline 37C – Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1 [Tab 6]

7. The Total Capital Expenditures are not expected to recur in the next 5 years and involve repairs to a major system or a major component of a major system (balconies and exterior walls). These are eligible capital expenditures pursuant to sections 23.1(4)(a)(i) and (ii).

Residential Tenancy Policy Guideline 37C – Additional Rent Increase for Capital Expenditures [Tab 6]

8. None of the Total Capital Expenditures were due to the completion of routine maintenance or resulted from a failure by the Landlord to maintain the Buildings. The balconies are original to the Building (built in 1977). The balconies are therefore nearly 50 years old and due for repairs and replacements as necessary.

b. Reliance on Residential Tenancy Policy Guideline 37C to Interpret Section 23.1 of the Regulation

9. The Landlord relies on Residential Tenancy Policy Guidelines 37C (“**RTPG 37C**”) and (“**RTPG 40**”) for the proposition that the date an expense is incurred is the date payment is made by the Landlord, for the proposition that all invoices for the same project can be included in an additional rent increase application so long as one invoice is within the applicable 18-month period, and for the estimated useful life of building components.
10. Although policy guidelines do not have the force of law, policy guidelines are instructive and intended to help guide how legislation is to be interpreted.
11. The additional rent increase application (“**ARI**”) regime is new, and policy guidelines are the only interpretive aids available to landlords and tenants at this time. RTPG 37C and RTPG 40 are more detailed than other policy guidelines. They are instructive about how to apply for an ARI.
12. In this context, there are two good reasons for why policy guidelines are interpretive aids which should not be ignored absent good reason:
 - a. policy guidelines provide guidance with respect to the meaning and interpretation of legislation. This permits everyone subject to the legislation to govern their affairs in a manner which provides some certainty and confidence that if they are acting consistent with the policy guidelines, they are acting consistent with the legislation; and
 - b. policy guidelines provide guidance to arbitrators such that decisions made by one arbitrator are consistent with decisions of another arbitrator. This does not mean that an arbitrator is bound to follow a policy guideline by law, but generally, an arbitrator’s decision should be consistent with prior decisions by other arbitrators, and all decisions should be consistent with the applicable policy guideline. If a

decision varies from past decisions and/or the applicable policy guideline, there should be a good reason for the deviation, which should be explicitly explained in the arbitrator’s written reasons. Otherwise, the arbitrator’s decision is vulnerable to being overturned on judicial review.

13. Judges in British Columbia routinely consider Residential Tenancy Policy Guidelines when RTB decisions are judicially reviewed by the court.¹ RTB arbitrators routinely apply RTPG 37C, including permitting expenditures outside the 18-month period where the final payment for the project was dated during the 18-month period. The policy guideline correctly interprets the legislation. Because a landlord cannot apply for an ARI until the work in question is completed, it would lead to the absurd result of landlords using accounting tricks to postpone invoicing and payments to the end of a project.

ARI Decision of Arbitrator R. Yee [Tab 8]

ARI Decision of Arbitrator M. Fox [Tab 9]

ARI Decision of Arbitrator K. Wang [Tab 10]

14. Although other Tribunal decisions are not binding on this matter the way a court decision would be, an arbitrator’s decision can be set aside as unreasonable on judicial review if it deviates from prior decisions without a very good reason.

Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper, Ltd., 2013 SCC 34 at para 6 [Tab 11]

III. DETAILED DESCRIPTION OF CAPITAL EXPENDITURES

Balcony and Exterior Wall Repairs
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<p>Scope of Work Completed: CC Management Solutions, a division of McIntosh Perry Limited (“CCMS”) managed the balcony and exterior wall repairs project, and sought bids from qualified contractors to complete the work [see Limited Bid Contract at Tab 14]. CCMS received bids from two contractors, and recommended The Restorers Group complete the work [see Recommendation from CCMS at Tab 15]. The Restorers Group was selected by the</p>

¹ See, for example, the recent BC Supreme Court decision of *Li v Virk*, 2023 BCSC 83 at **Tab 11** of the Landlord’s evidence where the court refers to residential tenancy policy guidelines to support its interpretation of the RTA (paragraphs 8 and 12).

Landlord to complete the work [see Invoices at **Tab 2**]. The Restorers Group completed the following work at the Buildings:

- **Balconies:** The balcony portion of the project included removal of the front header assembly across the balcony and all associated metal fascia and soffit trim. The headers were cut as required to facilitate the installation of dual header replacements across the front of each balcony on the second and third floors of each Building. The waterproofing membrane was removed from decks on the second and third floors and the underlying wood sheathing was removed and replaced where needed due to deterioration. The balcony enclosures for the first floor balconies were removed down to the concrete, and deteriorated concrete was repaired as needed. New waterproofing membrane was then installed over top of the balcony decks once underlying framing had been inspected and repaired as necessary. Any deteriorated wood joist framing was removed and replaced and the Buildings were examined to determine if wood rot extended into the Buildings. Sealant was removed and replaced or applied where missing at joints within the exterior wall assembly or within the balcony wall assembly where needed. The existing joists were cut back within the balcony area perimeter where required, and new header joists were installed to form new balcony floor assembly to finish header and provide support for the new railing assembly. This work included the supply and installation of new metal drip edge flashing. New aluminum post and picket panel railing assembly was installed across the balcony edges at each floor level following completion of deck repairs where the existing balcony railing had been removed. All balcony divider wall panels were removed and replaced, as the existing dividing wall panels contained asbestos [see Limited Tender Bid at **Tab 14**, pages 36-37; Project Contract at **Tab 13**; Letter from Doru Cornescu at **Tab 16**].
- **Exterior Walls:** Deteriorated or cracked brickwork within the wall assembly was removed and replaced. The metal shelf angels and lintels were cleaned, primed, and painted and new throughwall flashing, including fastening bars, was installed. Deteriorated mortar joints were routed out and repointed. Deteriorated sealant was removed and replaced or applied where missing as necessary. The existing sealant was replaced as it contained asbestos [see Limited Tender Bid at **Tab 14**, page 37; Project Contract at **Tab 13**; Letter from Doru Cornescu at **Tab 16**]

Reason for Work: Structural repair work was required for several balconies at the Buildings. In addition, various balconies required new guardrails, repairs to privacy screens between balconies, rot removed from balcony joists, floor and fascia board repairs and replacements, and repairs or replacements of the vinyl membrane. In addition, exterior walls of the Buildings required repair work including repairs to the brick veneer and the existing building membranes, and some floor level guardrails were missing or required replacement. As noted above, some components required replacing as they contained asbestos [see McIntosh Perry Limited Observation Reports at **Tab 5**; Project Contract at **Tab 13**; Limited Tender Bid at **Tab 14**; Letter from Doru Cornescu, P. Eng., McIntosh Perry, at **Tab 16**].

These capital expenditures were incurred to replace a major system or major component that was close to the end of its useful life and in order to keep the Building in a state of repair required by section 32(1)(a) of the Act (section 23.1(4)(a)(i) and (ii) of the Regulation) and are therefore eligible capital expenditures.

Timing of Last Repair/Upgrade: The balconies and exterior wall are original elements of the Buildings and were first built in 1977 [see BC Assessment Information at **Tab 1a**]. The Landlord does not know the last time this type of work was carried out at the Buildings. The Landlord started this work shortly after taking over ownership and operation of the Buildings.

Anticipated Useful Life of Repair/Upgrade: Residential Tenancy Policy Guideline 40 [Tab 7] states the estimated useful life for steel balcony railings is 15 years, 20 years for decks and porches, 15 years for masonry repairs, and 15 years for waterproofing (building membrane). All work therefore has an estimated useful life of approximately 15-20 years. The Landlord does not anticipate completing similar repair work in the Buildings for the next five years [Letter from Doru Cornescu, P. Eng., McIntosh Perry, at Tab 16].

Expenditures Incurred in Past 18 Months: 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. 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 [Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1]. The final cheque for this capital expenditure is dated November 1, 2022. This means that the Landlord has until May 1, 2024 to apply for an additional rent increase with respect to this capital expenditure. This application was therefore incurred within the 18 months prior to this application.

Total Cost of Work Completed (Capital Expenditures): \$1,689,051.78

Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord						
Contractor	Invoice No.	Tab 2 Pg.#	Cost	Date Paid	Method of Payment	Tab and Pg.#
The Restorers Group Inc.	010297	77-79	\$142,672.32	June 8, 2021	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	82544	106	\$9,383.16	June 15, 2021	EFT	Tab 3, page 3
The Restorers Group Inc.	010379	37-39	\$85,976.34	July 6, 2021	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	83146	98	\$5,654.42	July 20, 2021	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	83701	103	\$9,294.35	July 27, 2021	EFT	Tab 3, page 3
The Restorers Group Inc.	010404	52-54	\$141,321.92	July 27, 2021	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	010486	62-64	\$47,808.97	August 31, 2021	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	010564	81-83	\$100,984.82	September 28, 2021	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	86078	105	\$4,080.71	February 1, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	86079	107	\$4,337.89	February 1, 2022	EFT	Tab 3, page 3

The Restorers Group Inc.	010794	47-49	\$65,958.17	February 1, 2022	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	010670	67-69	\$62,047.76	February 1, 2022	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	010955	27-29	\$198,516.15	February 8, 2022	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	87212	104	\$13,055.85	February 22, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	88126	100	\$4,698.17	March 29, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	88283	102	\$8,371.61	March 29, 2022	EFT	Tab 3, page 3
The Restorers Group Inc.	010837	42-44	\$127,291.50	March 29, 2022	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	010997	72-74	\$71,436.33	March 29, 2022	EFT	Tab 4, pages 17-19
The Restorers Group Inc.	011063	57-59	\$38,002.23	April 19, 2022	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	88318	101	\$2,499.30	April 26, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	88937	97	\$2,199.56	June 14, 2022	EFT	Tab 3, page 3
The Restorers Group Inc.	011132	32-34	\$33,444.50	June 14, 2022	EFT	Tab 4, pages 17-19
The Restorers Group Inc. (Holdback Invoice- Payment of 10% held back from invoices 010297, 010379, 010404, 010486, 010564, 100670, 010794, 010837, 010955, 010997, 011063, 011132)	R2447H	86-89	\$123,940.11	June 28, 2022	EFT	Tab 4, pages 17-19
CC Management Solutions/McIntosh Perry	89912	94	\$2,682.60	July 26, 2022	EFT	Tab 3, pages 1-2
CC Management Solutions/McIntosh Perry	89913	96	\$6,028.37	July 26, 2022	EFT	Tab 3, pages 1-2
CC Management Solutions/McIntosh Perry	89996	93	\$8,154.31	July 26, 2022	EFT	Tab 3, pages 1-2

CC Management Solutions/McIntosh Perry	83891	108	\$3,144.26	August 31, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	84528	99	\$6,641.48	September 21, 2022	EFT	Tab 3, page 3
CC Management Solutions/McIntosh Perry	91511	95	\$2,949.64	October 25, 2022	EFT	Tab 3, pages 1-2
The Restorers Group Inc.	11157	17-19	\$43,897.61	July 19, 2022	Electronic Funds Transfer (EFT)	Tab 4, pages 4 and 10
The Restorers Group Inc.	11237	7-9	\$98,645.95	July 19, 2022	EFT	Tab 4, pages 4 and 10
The Restorers Group Inc.	11303	12-14	\$133,434.23	July 19, 2022	EFT	Tab 4, pages 4 and 10
The Restorers Group Inc.	11400	2-4	\$44,849.69	October 25, 2022	EFT	Tab 4, pages 4 and 10
The Restorers Group Inc. (Holdback Invoice – Payment of 10% held back from invoices 11157, 11237, 11303, and 11400)	R2716H	21-24	\$35,647.50	November 1, 2022	EFT	Tab 4, pages 4 and 10
Total Cost			\$1,689,051.78			

IV. CONCLUSION

15. The Total Capital Expenditures were incurred in the 18-month period preceding the date of this application, are not expected to recur within the next 5 years, and were incurred to repair or replace a major component or major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life and to comply with health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act (see sections 23.1(4)(a)(i) and (ii) of the Regulation).
16. Therefore, the Director must grant this application for an additional rent increase for the Total Capital Expenditures pursuant to section 23.1(4) of the Regulation.
17. As set out above, the Building has 147 rental units that are affected by this matter. The total amount of the increase sought, per unit, is determined by using a formula which takes the Total Capital Expenditures, divides it by 147 rental units, and then further

divides it by 120 months (the cost is amortized over 10 years). This comes to \$95.75 per rental unit per month. In the event \$95.75 is more than 3% of the current monthly rent for a rental unit, then the remaining portion in excess of 3% must be applied in a later year, and cannot be imposed all at once upon a tenant.

All of which is respectfully submitted.

Dated: March 20, 2024



Michael L. Drouillard, Counsel to the Landlord