



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

File: 310064018

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

WESLEY PLACE LTD., Landlord,

Applicant

And

**YOSHIKO MORIMOTO, VITOR DON SANTOS, TAMARA
BLAGOJEVIC, JED RYAN, LUIS AUGUSTO, NATALIE
CHABEN, NIKOLA OBRKNEZEV, SERGII NAUMENKO,
OLENA NAUMENKO, FATMA AHMED, EDUARDO LEITE,
ITALO SANTOS, JULIET MACIVER, JOHN MACIVER,
SALAZAR GOMEZ, ELENA MARLUBI, MEHMET BEHTI,
JENINE VICKERMAN, TRACEE VICKERMAN, MADISON
QUINTON, COLIN CUTTING, EDGAR GARCIA, COLLINS
KIERAN, TIMOTHY WOODFORD, RICHARD FINNEY, EMILY
BOOTHROYD, GORDANA BOOTHROYD, SANG HO LEE,
JINA KIM, EMMANUEL ZURBANO, TAYLOR WHITLEY,
DONNA MACDIARMID, SWAPNA PANGANAMALA, HELENA
LEE, LAURA KAVANAGH, SHANE HAGERTY, DAVID
CEREZO INIGO, INA TAKIGUCHI, KEVIN MCCARTHY,
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Dispute Resolution Services

Residential Tenancy Branch
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**TRAN, BROOKE SILVER, LOVEJOT GILL, FREDRICK
LIGHT, Tenants,**

Respondents

Regarding a rental unit at: 1022 NELSON STREET, VANCOUVER, BC

Date of Decision: July 07, 2023



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code ARI-C

Introduction

1. Landlord Wesley Place Ltd. applied for an additional rent increase for capital expenditures (expenditures), under section 43(3) of the Residential Tenancy Act (the Act) and 23.1 of the Residential Tenancy Regulation (the Regulation).
2. I conducted hearings on June 2, November 9, 2022 and March 23, 2023 and issued interim decisions on June 2, November 9, 2022, March 30, April 21 and May 23, 2023.
3. This decision should be read in conjunction with the interim decisions.
4. The landlord submitted 9 files named “LL_supplemental_evidence” containing 459 numbered pages with submissions and evidence (hereinafter, the landlord’s evidence).
5. On April 4, 2023 the landlord submitted the document named “Table of final capital expenditures adjusted” (hereinafter, the adjusted table) and an email from tenant ZAC confirming receipt.
6. On May 15, 2023 ZAC submitted the document named “Written Submissions” (hereinafter, the tenants’ final submissions) and an email from the landlord confirming receipt.
7. On June 7, 2023 the landlord submitted the document named “Landlord Reply Submissions” (hereinafter, the landlord’s final submissions).
8. ZAC submitted a request for clarification on June 7, 2023:

The Landlord's most recent submission (para. 11) says "landlord's witness". No one was ID'd or treated as a witness, only agents or counsel. The Interim Decision dated June 2, 2022 seeks "a list of witnesses ... [be provided] ... in advance of the teleconference hearing". No list was provided. The lease in para. 14 is new evidence. We are out of province and cannot verify if this is our lease or a generic one used for new tenants. We defer to the Arbitrator to address these issues.

9. Section 78 of the Act enables the Residential Tenancy Branch (RTB) to correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or deal with an obvious error or inadvertent omission in a decision or order.
10. ZAC does not indicate what should be clarified in the landlord's final submissions but rebuts them. As such, I dismiss ZAC's request for clarification.
11. The proceedings for this application concluded on June 8, 2023.

Service

12. Based on the emails (paragraphs 5 and 6) and ZAC's request for clarification, I find the parties served the adjusted table, the tenants' final submissions and the landlord's final submissions in accordance with section 88 of the Act and the interim decisions.

Application for Additional Rent Increase

13. As stated in the adjusted table, the landlord is seeking an additional rent increase for 9 expenditures:

Expenditure	Amount \$
01. Lobby renovation	430,474.91
02. Building envelope	62,976.71
03. Landscaping	[abandoned]
04. Pressure valves	31,494.75
05. Locker	21,845.55
06. Security system	31,284.50
07. Fire panel and sprinklers	19,391.93
08. Corridor upgrade	41,836.23
09. Gym upgrade	[abandoned]
10. Elevator upgrades	88,879.36
11. Water system repairs	8,496.50
Total	730,680.44

14. 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 the case is on the person making the claim.
15. Regulation 23.1 sets out the framework for determining if a landlord is entitled to impose an additional rent increase for expenditures.
16. Regulation 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”.
17. Per Regulation 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.”
18. Regulation 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.

19. Per Regulation 23.1(5), the tenant may defeat an application for an additional rent increase for expenditure if the tenant can prove, on a balance of probabilities, that the 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.

20. 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 23.1(5), a landlord may impose an additional rent increase pursuant to section 23.2 and 23.3 of the Regulation.

21. Regulation 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;

22. I will address each of the legal requirements.

23. 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. I emphasize the parties submitted 551 pages of documentary evidence and submissions and the hearings that I conducted lasted 647 minutes.

The rental building

24. I accept the landlord's testimony that the rental building is a 22-storey tower containing 199 residential units, a 4-floor parkade and 4 commercial tenant units built in 2002.

25. The commercial tenants are a church, a health clinic, a college, and a parking company (hereinafter, the commercial tenants). The church, the health clinic and the college rent units on the rental building's ground floor and the parking company rents parking levels 1 and 2, which contain parking spots open to the public. Parking levels 3 and 4 are exclusive to the residential tenants.

26. For clarity, I quote the property condition assessment dated July 5, 2018 (landlord's evidence, page 64):

The property includes a 22-storey mixed use development with 20 storeys of apartments (193 units) and two levels of commercial. At the west side of the building, there are six townhouse units with two floors of living area and a deck / terrace on the third level. Based on the information provided, we believe the building was constructed circa 2002 and 2003 and first occupied in 2004.

We understand that the building was constructed by [the church] which abuts the building to the east. Other than a door between the commercial lobby and the Church the buildings are separate. The Church is a tenant / user of two commercial areas on the ground floor.

There are currently four commercial tenants / units. The second floor is occupied by [the college]. The ground floor houses [the clinic], [the church's offices] and a church social room.

Amenities in the building include the front and rear lobbies, building office (originally designed as a social room), 3rd floor social room and terrace, storage rooms and bike storage rooms.

There is a four-level parking garage under the building, commercial and townhouses. Access to the garage is from the south lane at the east end of the building. At the top of the ramp, there is a sectional grille type overhead door. The P1 and P2 levels are available for public parking with about 127 parking stalls.

There is a second grille type overhead door between the P1 and P2 levels. The P3 and P4 levels are available for residential parking with about 96 parking stalls (one can only fit a motorcycle). There is a 3rd grille type overhead door between the public parking and residential parking at the P3 level.

The commercial tenants

27. The landlord submitted the commercial tenancy agreements into evidence (landlord's evidence, pages 308-404). The landlord redacted the sensitive information in the commercial tenancy agreements and submitted unredacted copies of the 4 commercial tenancy agreements to the RTB, in accordance with the interim decision dated November 9, 2022.
28. The landlord claims that 13.38% of expenditures 2, 6 and 7 (hereinafter, the commercial tenants' expenditures) are recoverable from the commercial tenants. The landlord added the total amount of expenditures 2, 6 and 7 and multiplied them by the ratio representing the commercial tenants' rentable square footage in relation to the rest of the building (landlord's evidence, page 4, paragraph 4).
29. I reviewed the unredacted copies of the 4 commercial tenancy agreements and I did not find any evidence in these documents, or anywhere else, that the commercial tenants could be liable for paying more than 13.38% of the expenditures. Based on the landlord's convincing testimony and the commercial tenants' tenancy agreements, I find the commercial tenants are liable for 13.38% of the commercial tenants' expenditures.
30. The amounts for the claims recorded on paragraph 13 include the amounts claimed by the landlord after the commercial tenants' reduction.
31. ZAC argues that the expenditures related to the commercial tenants are not eligible for an additional rent increase and should be entirely excluded (the tenants' final submissions, pages 1-2, paragraphs 1-8).
32. I accept the uncontested testimony and evidence that parking is not included in the tenancy agreements and the tenants have the option to pay extra to rent a parking spot on parking levels 3 and 4 or pay per use for a parking spot on levels 1 and 2 (the tenants' final submissions, page 2, paragraph 7).
33. The Act defines rental unit as: "living accommodation rented or intended to be rented to a tenant" and residential property as:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

34. Regulation 21.1 defines dwelling unit and specified dwelling unit as:

Dwelling unit

- (a) living accommodation that is not rented and not intended to be rented;
- (b) a rental unit;

Specified Dwelling unit

- (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.

35. ZAC claims that ambiguity should be resolved in favour of the tenants and references the British Columbia Supreme Court decision *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

11. 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.

36. The landlord argues the Act's definition of residential property and the Regulation's definition of specified dwelling unit is broad, not ambiguous: "The legislation is extremely broad in scope because, in the landlord's submissions, it is intended that way" (landlord's final submissions, page 4, paragraph 8).

37. I find the legislation defines rental unit in a broad rather than ambiguous way and the RTB can consider the relevant facts when the definition of rental unit is questioned.

38. I find that all the parking levels are part of the rental building and specified dwelling units, in accordance with the definition of the Act and Regulation 21.1,

as the tenants have the right to pay for a parking spot on levels 3 and 4 and can also pay for the parking spots on levels 1 and 2. While not all the tenants may choose to rent a parking spot, this is a service offered to all the tenants. The tenants' guests may also choose to pay for a parking spot on levels 1 or 2, as these levels are available to the public. Furthermore, all the parking levels are part of the rental building's structure located on the rental building's parcel.

Mixed use areas

39. ZAC states that the rental building's lobbies and some of the elevators are used by the church's staff (tenants' final submissions, pages 4 and 5, paragraph 15) and these spaces are not rented to any specific tenant. ZAC also claims that the building manager's office and the elevators are not rented to any specific tenant and should not be eligible for an additional rent increase.
40. The landlord affirmed the rental office is used by the landlord's agents to provide service to all the tenants, and the elevators are used by the tenants to access their rental units.
41. The legislation does not require the spaces to be of exclusive use by the tenants to be eligible for an additional rent increase. Landlords may apply for additional rent increase for expenditures related to mixed use areas.

Prior application for additional rent increase

42. The landlord stated he did not submit a prior application for an additional rent increase.
43. Based on the landlord's undisputed and convincing testimony, I find that the landlord has not imposed an additional rent increase in the 18 months preceding the date on which the landlord submitted this application, per Regulation 23.1(2).

Number of specified dwelling units

44. Based on the property condition assessment dated July 5, 2018 (landlord's evidence, page 64), quoted on paragraph 26 of this decision, and the landlord's testimony (paragraph 24), I find the rental building has 199 residential units and 4 commercial units that are affected by the expenditures. In accordance with Regulation 21.1(1), I find there are 203 specified dwelling units.

45. Based on the landlord's convincing testimony, I find the landlord submitted this application against all the rented residential units on which the landlord intends to impose the rent increase, per Regulation 23.1(3).

Expenditures incurred in the 18-month prior to the application

46. RTB Policy Guideline 37, issued in July 2021, states:

Capital expenditure is considered 'incurred' when payment for it is made.

[...]

A landlord can make a single application for an additional rent increase for multiple capital expenditures when all the expenditures were incurred within the 18-month period prior to making the application.

47. On February 17, 2023 Policy Guideline 37C was published, updating the previous Policy Guideline 37. This Policy Guideline had the same text above quoted regarding when the expenditure is incurred.

48. On June 23, 2023 Policy Guideline 37C was updated:

A 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.

49. As the landlord submitted this application on February 21, 2022, the expenditures must have been incurred between August 21, 2020 and February 21, 2022 (hereinafter, the 18-month period) to comply with Regulation 23.1(4)(b).

50. ZAC testified that some invoices for expenditures 1 and 2 were paid before the 18-month period.

51. According to *Morse v. Crystal River Court Ltd.*, 2021 BCSC 1868 (hereinafter, *Morse*), RTB Policy Guidelines are not law and are not binding:

[32] The RTB issues residential tenancy policy guidelines to assist members of the public and to guide arbitrators as to the criteria to be used in the decision-making process. These guidelines are not law and they are not binding: Powell at para 33.

52. Regulation 23.1(4)(b) requires the expenditures were incurred in the 18-month period prior to the application date. As precisely and correctly pointed out by ZAC, some invoices for expenditures 1 and 2 were paid before the 18-month period. I find that it is not fair to accept expenditures paid prior to the 18-month period, as the Regulation does not allow that. As stated in *Morse*, RTB policy guidelines are not law.
53. Furthermore, Policy Guideline 37C was only published after the landlord submitted this application and the update on Policy Guideline 37C was only published on June 23, 2023, after the proceedings for this application concluded, as stated on paragraph 11 of this decision. The landlord could have submitted this application earlier.
54. I note that Policy Guideline 37C published on February 17, 2023 states that subsections E1 to E3 only apply to applications made on or after February 17, 2023. Subsections E1 to E3 are only regarding Rule of Procedure 11, which was enacted on February 17, 2023.
55. Hereinafter, when I refer to Policy Guideline 37, I am considering Policy Guideline 37 issued in July 2021, as this was the relevant policy guideline in effect when the landlord submitted this application and when I heard most of the merits of this matter.

Expenditures expected to occur again for the next 5 years

56. The landlord said that the expenditures are not expected to occur again for at least 5 years.
57. The tenants disputed the landlord's testimony about the lockers and security system.
58. Based on the landlord's convincing testimony, I find the landlord proved that all expenditures except the lockers and security system are not expected to be incurred again for at least 5 years, per Regulation 23.1(4)(c).
59. I will address the lockers and security system later in this decision.

Expenditures because of inadequate repair

60. The landlord affirmed that the expenditures were not necessary because of inadequate repair or maintenance on part of the landlord.
61. The tenants disputed the landlord's testimony about the building envelope, pressure valves and water system repairs.
62. Based on the landlord's convincing testimony, I find the landlord proved that all the expenditures except the building envelope, pressure valves and water system repairs were not necessary because of inadequate repair or maintenance on the part of the landlord, per Regulation 23.1(5)(a).
63. I will address the building envelope, pressure valves and water system repairs later in this decision.

Payment from another source

64. The landlord stated that he is not entitled to be paid from another source for the expenditures claimed. As previously stated, the table on paragraph 13 contains the amounts claimed by the landlord after the deductions of the amounts that will be paid by the commercial tenants.
65. Based on the landlord's convincing testimony, I find the landlord is not entitled to be paid from another source, per Regulation 23.1(5)(b).

Type and reason for each expenditure

66. I will individually analyze the expenditures claimed by the landlord.

Lobby renovation – expenditure 1

67. The landlord testified that he changed the lobby's carpet and finishes in 2020, as they were original from 2002. The lobby is a space available for all the tenants. The new finishes and the carpet are expected to last 15 years.
68. The landlord submitted 29 invoices for this expenditure indicating a total expense of \$430,474.91 and explained (pages 1-3, the adjusted table):

Scope of work completed: complete renovation of ground floor common areas, including main lobbies, office and gym. Reason for work: The common areas required updating as the finishes had reached the end of their useful life. Timing of last repair / upgrade: The common areas have not been updated since the building was constructed in 2002

69. Based on the landlord's testimony and the list of invoices (pages 1-3, the adjusted table), and considering paragraphs 49 and 52 of this decision, I find that the following invoices are for expenses paid outside the 18-month period, as they were paid prior to August 21, 2020:

Invoice number	Amount \$	Date Paid
95654	49,634.24	May 15, 2020
95654-HB	5,514.91	May 15, 2020
97702	62,042.79	August 4, 2020
97702-HB	6,893.65	August 4, 2020
610	808.50	May 1, 2020
643	8,569.61	July 2, 2020
F902252	2,604.56	June 18, 2020
IN725241	2,604.56	August 4, 2020
68290	3,540.00	June 11, 2020
Total	142,212.82	

70. The remaining invoices totalling \$288,262.09 were paid in the 18-month period.
71. I note the landlord withdrew the invoices for the gym upgrades from the lobby expenditure and these expenses are excluded from the amount claimed for this expenditure.
72. The landlord said that a well-maintained lobby benefits all the tenants and it is important for them, as the lobby now is better illuminated, and it is part of the rental building's major structural systems.
73. ZAC affirmed the lobby's upgrades are cosmetic in nature, they are not allowed for an additional rent increase, and they are not part of a major structural system. ZAC also stated the invoices include expenses for desks, chairs, and cabinets.
74. ZAC testified the lobby's carpet and finishes were not at the end of their useful life.

75. RTB Policy Guideline 37 states that a major system is: “an electrical system, mechanical system, structural system or similar system that is integral to the residential property or to providing services to tenants and occupants” and a major component means “a component of the residential property that is integral to the property or a significant component of a major system”.
76. Policy Guideline 37 also states: “Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security”.
77. Policy Guideline 37 explains that “Installations, repairs or replacements of major systems or major components will qualify for an additional rent increase if the system or component is close to the end of or has exceeded its useful life.” and that “Repairs should be substantive rather than minor. For example, replacing a picket in a railing is a minor repair, but replacing the whole railing is a major repair.”
78. Policy Guideline 37 states that cosmetic changes can qualify for an additional rent increase: “Cosmetic changes are not considered a capital expenditure. However, a cosmetic upgrade will qualify if it was part of an installation, repair, or replacement of a major system or component. For example, a landlord may replace carpet at the end of its useful life with porcelain tiles even if it costs more than a new carpet.”
79. RTB Policy Guideline 40 has information about the useful life of materials and states the useful life of carpet is 10 years.
80. The rental building contains 199 residential units, and the lobby is used by all the tenants. I find it reasonable that after 18 years the carpet is beyond its useful life.
81. Based on the landlord’s convincing testimony, I find that the lobby’s carpet is part of the rental building’s primary flooring in common areas, and it is a major

component of the rental building, as the lobby's carpet is integral to the rental building, per Regulation 21.1 and Policy Guideline 37.

82. The expenses for furniture, finishes and interior design expenses are related to cosmetic changes. However, as they are part of the lobby's renovation, considering Policy Guideline 37, these expenses can be considered part of the expenditure.

83. Considering the above, I find that the expenditure of \$288,262.09 to renovate the lobby is in accordance with Regulation 23.1(4)(a)(ii), as the landlord replaced the carpet and finishes that were beyond their useful life and the lobby's carpet is part of the rental building's primary flooring, which is a major component.

Building envelope – expenditure 2

84. The landlord replaced the rental building's lintel, as the replaced lintel was from 2002. The new lintel, part of the building's envelope, is expected to last ten years.

85. The landlord submitted the engineering report dated July 8, 2018 and signed by 2 engineers (pages 63-101, the landlord's evidence):

The purpose of our report was to provide a general indication of the present physical condition of the visually accessible building and surrounding property finishes. As per our proposal, we were to record deficiencies and conditions which we anticipate will require capital expenditures greater than \$10,000 within the next 10 years. Expenditures associated with normal operations or routine maintenance are not included.

This report is based on the information available to Consultant at the time of preparing this report after Consultant has used reasonable industry practices, in the circumstances, to obtain information. To the extent that Consultant was required to rely on information from other persons, Consultant has verified such information to the extent reasonably possible in the circumstances. The material provided in this report reflects reasonable industry judgment in light of the information available at the time of preparation of this report.

To provide a general assessment of existing conditions, we completed an on-site visual review of the following:

- Structural systems,
- Building envelope,
- Mechanical, plumbing, and electrical systems
- Fire safety systems (excluding fire containment systems and egress systems)

- Elevators
- Site finishes

[page 68]

Vancouver is known for vegetation and moss growth due to the wet and humid climate. Most of the balconies are stained or discoloured as a result of this.

[page 75]

No exterior wall or window leaks were noted or reported.

[...]

We noted that the toe of some of the shelf angles supporting masonry are corroded and staining the brick below. We recommend budgeting to inspect all the lintels and preparing and painting those that are corroded.

[page 79]

86. The landlord submitted 17 notices to the tenants regarding maintenance and repair in the rental building (pages 405-421 the landlord's evidence), as ZAC requested these documents.
87. The landlord submitted 11 invoices for this expense indicating a total of \$62,976.71 and explained (pages 4-5, the adjusted table): "The building envelope was repaired, rusted steel lintels were painted and damaged masonry was replaced. The building envelope repairs were required in order to prevent water infiltration and water damage to the building."
88. Based on the landlord's testimony and the list of invoices (pages 4-5, the adjusted table), and considering paragraphs 49 and 52 of this decision, I find invoices 0844427 (\$1,995.00 paid on August 1, 2019) and 0851121 (\$6,069.00 paid on September 3, 2019) represent expenses paid prior to August 21, 2020.
89. The remaining invoices totalling \$54,912.71 were paid in the 18-month period.
90. ZAC said the landlord did not properly maintain the building's envelope.
91. The relevant portions of the engineering report (paragraph 85) do not indicate the landlord did not properly maintain the building's envelope. ZAC is not an engineer and the report submitted by the landlord is signed by 2 engineers.
92. Considering the detailed engineering report and the maintenance and repair notices submitted by the landlord, I find the landlord properly maintained the rental building's lintel and envelope.

93. I find the lintels replaced, part of the rental building's envelope and structure, are a major component of the rental building, as the lintels are integral to the rental building and are load-bearing elements, per Regulation 21.1 and Policy Guideline 37.
94. Considering the detailed engineering report, I find the lintel replaced was corroded and malfunctioning because of the weather.
95. Considering the above, I find that the expenditure of \$54,912.71 to repair the building envelope in accordance with Regulation 23.1(4)(a)(ii), as the replaced lintels were corroded and malfunctioning.

Pressure Valves - expenditure 4

96. The landlord replaced the water pressure reduction valves and the access panel door for the valves, as they were original from 2002. The new valves are expected to last 20 years and the valves replaced were beyond their useful life, as they were used for 18 years.
97. The landlord submitted 2 invoices paid in September and December 2020 indicating a total expense of \$31,494.75 and explained (page 8, the adjusted table):

The pressure reducing valves were replaced in the water lines and an access panel was installed. The existing pressure reducing valves had failed due to age and needed to be replaced. The access panel was installed to facilitate access for future repairs.

98. The landlord affirmed the invoices claimed under this expenditure are not related to the expenditure for the water system repair.
99. ZAC stated the access panel doors were replaced because of inadequate repair (tenant's final submissions, page 9).
100. The landlord submitted (landlord's final submissions, page 7, paragraph 21):

The landlord's evidence is that the PRV's were original to the building, and so it was reasonable for them to replace the lines at the recommendation of the author as contemplated by section 23.1(4)(a)(i) and (ii) of the legislation. The tenant has

failed to establish an ineligible capital expenditure on a balance of probabilities as a result.

101. Considering the landlord's detailed submission and testimony and the engineering report dated July 8, 2018 (pages 63-101, the landlord's evidence), I find the landlord was diligent and performed repairs and maintenance in the rental building. I find ZAC failed to prove, on a balance of probabilities, that the pressure reduction valves and the access panel door for the valves were replaced because of inadequate repairs or maintenance.
102. Based on the landlord's convincing testimony and the invoices, I find the landlord proved that he replaced the water pressure valves that were close to the end of their useful life and installed new access doors to facilitate access for future repairs.
103. I find that the water pressure valves, part of the rental building's plumbing system, is a major component of the rental building, as the plumbing system is integral to the rental building, per Regulation 21.1 and Policy Guideline 37.
104. Considering the above, I find that the expenditure of \$31,494.75 to replace the pressure valves and the access panel door is in accordance with Regulation 23.1(4)(a)(ii), as the landlord replaced the water pressure valves from 2002 in 2020.

Lockers - expenditure 5

105. The landlord installed lockers in the rental building's lobby to receive parcels, as the original mailroom could not accommodate the packages received by the tenants. The lockers securely store the parcels until the tenants open them with an access code. The landlord explained that when the packages were left in the mailroom they were unsecured. The tenants only have to pay to use

the lockers if they wait longer than 3 days to open the lockers after receiving an automatic message about the parcels.

106. The landlord testified the lockers increase the security of the rental building, as it is less likely that parcels will be stolen from secured lockers than from the original mailroom. The lockers are expected to last 15 years.

107. The landlord submitted 2 invoices paid in December 2020 and March 2021 indicating a total expense of \$21,845.55 and explained (page 9, the adjusted table):

Lockers were installed in the main floor common area to accommodate parcel deliveries.

The lockers were installed to facilitate parcel delivery for residents and to reduce theft of unsecured parcels.

Anticipated useful life of repair / upgrade: 15 years

108. The landlord submitted a report indicating that 82 of the 199 units registered to use the lockers and that 2,897 parcels were retrieved from the lockers until December 2022 (landlord's evidence, pages 456-9).

109. ZAC said that parcels are still left in the mailroom and that the lockers do not increase the security of the rental building and that he has found parcels addressed to other tenants in his locker.

110. Tenant PEV affirmed that she registered for the lockers, and she still receives some packages in the mailroom.

111. Tenant KAS stated that there have been more thefts as the delivery agents are not attempting to deliver the parcels in person.

112. ZAC testified the lockers will not last 15 years, as they have wireless and touchscreen technologies.

113. Based on the landlord's convincing testimony, and the reports on pages 456-9 of the landlord's evidence, I find that 82 of the 199 rental units registered for the system and that 2,897 parcels were retrieved from the lockers.

114. RTB Policy Guideline 37 states that if an installation of a major component better protects "people and property at the residential property, the security of the

residential property has been improved. A landlord is not required to establish that additional or better security was necessary for the director to grant an additional rent increase”.

115. Based on the landlord’s convincing testimony, I find the lockers increase the rental building’s safety, as it is less likely that parcels stored in a secured locker will be stolen than unsecured parcels in the mailroom. The landlord does not have to prove that the locker system is perfect or that all the tenants use it.
116. I find that ZAC’s testimony about the lockers’ useful life is vague. ZAC did not explain why a system with wireless and touchscreen technologies cannot last 15 years.
117. Based on the landlord’s convincing testimony, I find the lockers are expected to last 15 years.
118. I find that being able to receive parcels and store them safely is essential for tenants, as important documents may be mailed as a parcel, such as passports and legal notices. Thus, I find the lockers are part of the rental building’s security system. I find the security system is a rental building’s major system, as this system is integral to the rental building and provides security to the tenants, per Regulation 21.1 and Policy Guideline 37.
119. Considering the above, I find the expenditure of \$21,845.55 to install the lockers is in accordance with Regulation 23.1(4)(a)(iii)(b), as the lockers increase the rental building’s safety.

Security system - expenditure 6

120. The landlord installed motion sensors and security cameras in the 4-floor parkade, as vehicles were stolen in the parkade. The landlord also upgraded the security camera system because of the higher number of cameras and added cameras in the office, as the security camera system is in the office.
121. The landlord said the motion sensors and security cameras will last more than 5 years, improve the rental building’s security and reduce the consumption of electricity, as the lights will only turn on when there is someone by the light.

122. The landlord submitted 4 invoices paid in November 2020, February, November and December 2021 indicating a total expense of \$31,284.50 and explained this expenditure (page 10, the adjusted table):

The security camera system was upgraded and motion sensors for the garage lighting were installed.

Reason for Work: The security camera system was upgraded to increase resident safety and the security of the building and motion sensors were installed for the garage lighting system to improve energy efficiency.

Timing of Last Repair/Upgrade: The security system and garage lighting have not been updated since the building was constructed in 2002.

Anticipated Useful Life of Repair/Upgrade: 15-20 years

123. ZAC affirmed that motion sensors and security cameras are unlikely to last 20 years. ZAC believes that the new cameras and motion sensors do not increase security, as there was no information about the old security cameras. ZAC stated the sensors' batteries will not last 5 years.

124. ZAC testified that some of the invoices for this expenditure imply the network cables were in disarray.

125. RTB Policy Guideline 37 states that some examples of installations of major components that improve security are installing CCTV cameras and repairing the lighting in the parking garage.

126. The landlord said that ZAC's testimony is lay testimony, as ZAC is not providing testimony as a specialist in technology matters.

127. I find that ZAC's testimony (paragraphs 123 and 124) and the tenant's final submissions (pages 7 and 8, paragraph 17) are vague and mere speculation. I find that installing security cameras and motion sensors increases the security in the rental building, as the presence of this equipment deters crime. I further find it reasonable that security cameras and sensors are likely to last at least 5 years. It is not relevant if the sensors' batteries do not last 5 years.

128. I find that the security cameras and sensors are part of the rental building's security system, and that this system is integral to the rental building, per Regulation 21.1 and Policy Guideline 37.

129. Considering the above, I find that the expenditure of \$31,284.50 to install new cameras and sensors is in accordance with Regulation 23.1(4)(a)(iii)(b), as the cameras and sensors improve the security of the rental building.

Fire panel and sprinklers - expenditure 7

130. The landlord updated the rental building's fire panel and updated the fire safety plan.

131. The landlord submitted 4 invoices paid between October 15, 2020 and September 15, 2021 indicating a total expense of \$19,391.93 and explained (page 11, the adjusted table):

Scope of work completes: The fire panel was repaired and sprinkler head covers were added to corridor sprinklers. The fire safety plan was also updated.

Reason for Work: The fire panel was repaired and the sprinkler head covers were added to the corridor sprinkler heads to improve fire safety. The fire safety plan was also updated for this reason.

Timing of Last Repair/Upgrade: The fire suppression system had not been updated since the building was constructed in 2002.

Anticipated Useful Life of Repair/Upgrade: 15 years

132. The landlord affirmed the Fire Department requires the fire safety plan to be updated every ten years.

133. Based on the landlord's convincing testimony, submissions and the invoices, I find the landlord proved that he replaced the fire panel and sprinklers that were beyond their useful life, as they were from 2002 and were replaced in 2020 and the Fire Department requires the fire safety plan to be updated every ten years.

134. ZAC stated that invoice number 14663 is related to another expenditure.

135. Invoice number 14663 states: "Pacific Coast Fire Equipment. Description: Repairs from quote #COQ-20-228 to replace 5" pressure reducing valve".

136. Based on the landlord's convincing testimony and the fact that invoice 14663 is issued by a fire equipment company, I find that this invoice is related to the fire panel and the fire safety plan.

137. I find the fire panel and sprinklers are part of the rental building's fire security system. I find the fire security system is a rental building's major system, as this system is integral to the rental building and provides fire security to the tenants, per Regulation 21.1 and Policy Guideline 37.
138. Considering the above, I find that the expenditure of \$19,391.93 to update the fire panel and sprinklers is in accordance with Regulation 23.1(4)(a)(ii), as the landlord replaced the fire panel and sprinklers from 2002 in 2020.

Corridor upgrades - expenditure 8

139. The landlord modernized the rental building's corridors by installing new energy efficient lighting, carpets and stainless steel corner guards, directional signs and rekeyed the common area doors.
140. The landlord submitted 9 invoices paid within the 18-month period for a total of \$41,836.23 and explained (pages 12 and 13, the adjusted table):
- Scope of Work Completed: Corner guards and new floor numbers were added to the corridor. The master common area doors were rekeyed and the light fixtures were replaced with LED fixtures in the common areas.
Reason for Work: This work was done to increase security at the building and increase energy efficiency.
Timing of Last Repair/Upgrade: The corridors have not been updated since the building was constructed in 2002.
Anticipated Useful Life of Repair/Upgrade: 5-10 years
141. The landlord testified that rekeying the common area doors will make the building safer and reduce break-ins, as prior building managers had copies of the original keys from 2002.
142. ZAC said the old directional signs were in good condition.
143. The landlord affirmed the new signs replaced original signs from 2002 and the new signs better identify the exits and rental units in case of an emergency.
144. The landlord submitted an email dated November 16, 2022 from the directional signs contractor (landlord's evidence page 426):

In 2019 and 2020, we conducted surveys at the [landlord] to ensure adequate wayfinding and safety signage were securely installed and properly displaced to be compliant with the fire department requirements. It was determined that below required attention and actions:

- All doors leading to stairways, utility rooms and amenity rooms to be properly identified
- All floors to have directional wayfinding signage that could be easily read
- All fire plan / escape maps to be updated to reflect current building layouts
- Video surveillance signs to be installed wherever surveillance cameras are installed

We have subsequently worked with the Property Manager on site to address the concerns above and installed up-to date signage to ensure the safety of the residents at [landlord] to the PM's satisfaction.

145. ZAC stated the landlord did not prove that the new lights will last 5 years or that they will reduce energy consumption. The landlord testified that the corridor lights replaced were from 2002.
146. The landlord submitted the lights specification sheet indicating the new lights have a 5-year warranty (page 102 of the landlord's evidence) and that they are "economic and efficient LED ideal for domestic application, fully automatic, high quality controller lights".
147. ZAC said the prior carpet was not at the end of its useful life.
148. The landlord affirmed the prior carpet was from 2002 and deteriorated.
149. ZAC stated the corner guards are a cosmetic upgrade and do not qualify for an additional rent increase.
150. The landlord testified the corner guards help to maintain the rental building, as they reduce the maintenance costs and benefit the tenants. The corner guards will reduce damages to the walls and the tenants' belongings if tenants hit their belongings on the common area walls.
151. ZAC said that invoice number 102548 is ineligible, as it is for painting the mechanical room doors. The invoice states: "Supply and install all labour and materials to paint mechanical room doors – prime and 2 coats of paint (floors 7, 15, 22). Supply all labour and materials to supply and install new thresholds on doors".

152. Based on the landlord's convincing testimony (paragraph 141), I find that rekeying common area doors increases the rental building's safety, as prior building managers had copies of the original keys from 2002.
153. Based on the landlord's convincing testimony (paragraph 143) and the email dated November 16, 2022, I find that installing new directional signs to substitute the original signs from 2002 increases the rental building's safety, as it will be easier to identify the exits and the rental units in case of an emergency, regardless of the fire department requirements for new signage.
154. Based on the lights specification sheet (paragraph 146), I find that the new lights are LED lights. I further find that it is reasonable to conclude that LED lights installed in 2020 will save electricity compared to lights installed in 2002.
155. I note that the landlord did not substitute a few lights or door keys, but all the lights and door keys for all the rental building's common area.
156. I find that installing corner guards and painting the mechanical room doors qualifies as an additional rent increase, as it is part of the corridor upgrades and it helps to maintain the hallways in good condition, as stated in Policy Guideline 37.
157. I find that the corridor's carpet and lights, common area keys, and directional signs are part of the rental building's primary flooring and security systems, as they are integral to the rental building, per Regulation 21.1 and Policy Guideline 37.
158. Considering the above, I find the expenditure of \$41,836.23 for corridor upgrades is in accordance with Regulations 23.1(4)(a)(ii) and (iii)(a) and (b), as the upgrades replaced items that were beyond their useful life (carpet), reduced the energy consumption (lights) and improved the security of the building (keys and signs).

Elevator upgrades – expenditure 10

159. The landlord upgraded in 2021 the rental building's elevators by replacing the elevators' cab finishes, including the floors, walls, ceiling and lighting, as the original finishes were from 2002.

160. The landlord submitted 4 invoices paid within the 18-month period for a total of \$88,879.36 and explained (page 15, the adjusted table):

Scope of Work Completed: The elevator cab finishes, including the floors, walls, ceilings and lighting, were updated and replaced.

Reason for Work: The elevator cab finishes were updated and replaced because they had reached the end of their useful life.

Timing of Last Repair/Upgrade: Unknown

Anticipated Useful Life of Repair/Upgrade: 10-20 years

161. ZAC affirmed the landlord did not prove the elevators were close to the end of their useful life.

162. RTB Policy Guideline 40 states the useful life of an elevator is 20 years.

163. The landlord emailed the contractor about the elevators' cab finishes on December 7, 2022 (page 425, the landlord's evidence):

Landlord: Barring any vandalism, should the cab finishes last more than 5 years?

Contractor: Yes they would last more than 5 years.

164. Based on the landlord's convincing submissions, I find the elevators upgraded in 2021 were from 2002. The parties did not submit testimony or evidence regarding the elevators' useful life contrary to the policy guideline. I find the elevators were close to the end of their useful life in 2021, as they were 19 years old when they were upgraded, and Policy Guideline 40 provides the useful life of an elevator is 20 years.

165. Policy Guideline 37 states that elevators are a major system of a rental building.

166. Considering the above, I find that the expenditure of \$88,879.36 to upgrade the elevators is in accordance with Regulation 23.1(4)(a)(ii), as the

landlord replaced the elevator finishes that were close to the end of their useful life.

Water system repairs - expenditure 11

167. The landlord replaced the pressure gauges on the sprinkler system and repaired the booster pump (hereinafter, the water system repairs).
168. The landlord submitted 2 invoices paid in April and August 2021 indicating a total expense of \$8,496.50 and explained (page 16, the adjusted table):

The pressure gauges on the sprinkler system were replaced and the booster pump was repaired.

Reason for Work: These updates were made to the sprinkler system in order to ensure adequate water pressure for rental units and for water circulation in the building.

Anticipated Useful Life of Repair/Upgrade: 10 years.

169. ZAC stated that the water system was not properly maintained and referenced the report on page 90 of the landlord's submissions: "We discussed the plumbing with the plumbing contractor Artisan. They indicated that there have been issues with the PRVs as they have not been maintained."

170. The landlord replied (page 7, landlord's final submissions):

In respect of the tenant's submissions at paragraph 18, the cherry-picked excerpts of the report used by the tenant were not intended to draw a conclusion that the observed issues caused the equipment that was replaced to fail prematurely. In the entire context of the report, the maintenance issue described related to a recent decision at the time the report was prepared to rebuild the PRV's. Those costs are not sought in this application.

171. The remaining part of the paragraph on page 90 of the landlord's submissions, only partially quoted by ZAC, states:

We discussed the plumbing with the plumbing contractor Artisan. They indicated that there have been issues with the PRVs as they have not been maintained. They recently rebuilt one and more work has been quoted, approximately \$2.5k. he further indicated that they have had to address pinhole leaks in the copper recirculation lines about 2 to 3 time per year. They indicated that this was not unusual for recirculation lines in the Vancouver area. They see cold water lines

typically lasting at least 30 years, hot water lines 20 to 25 years and recirculation lines 10 to 15 years. Given the leaks, we recommend budgeting to replace the recirculation lines within the report term.

172. The tenant did not specify what are the PRV maintenance issues above mentioned.
173. Considering all the evidence submitted by the parties and especially the complete report on page 90 of the landlord's evidence, I find the landlord proved, on a balance of probabilities, that he has been diligent by inspecting the rental building and conducting the necessary repairs to ensure the building's system continues to operate properly. I find the tenant failed to prove, on a balance of probabilities, that the landlord repaired the water pressure system because of inadequate maintenance.
174. ZAC testified that the November 18, 2022 letter (page 134 of the landlord's evidence) indicates the landlord did not properly maintain the water pressure system:

This report is based on review of mechanical drawings submitted via email November 14th, 2022. Questions from [landlord] regarding the operation and function of the domestic water mechanical systems from November 10, 2022. [landlord] place residential tower domestic cold and hot water systems as well the PRVs on the 7th floor, 15th floor and 22nd floor are separate from the commercial retail spaces on the ground floor.

These PRVs and related domestic cold and hot water piping for the tower portion act independently of each other and serve different sections or "zones" in the building.

The pressure reducing valves act a reduction ratio for demand of fixture units both hot and cold connected to the PRVs on the various levels and zones. A typical lifespan of a PRV hot or cold water can be upwards of (10) years, with a number of factors that can attribute to longer lifespan of the device: Regular manufacture service intervals, proper manufacture sizing, proper manufacture installation guidelines are adhered to.

In summary, [landlord] is set up for several different pressure zones. Each PRV that serves a particular pressure zone in the building is independent of each other. Commercial CRU areas are separate from the tower PRVs and act separately from the different pressure zones within the tower.

175. Upon reviewing the November 18, 2022 letter, I find this document does not indicate the landlord did not properly maintain the water pressure system.
176. Considering the detailed engineering report on page 90 of the landlord's evidence, I find that it is not necessary to have the maintenance records for the water pressure system, as the engineering report was conducted by engineers to assess the rental building's condition on July 8, 2018, as mentioned in paragraph 85 of this decision.
177. I find that the pressure gauges on the sprinkler system, part of the rental building's fire safety and plumbing systems, is a major component of the rental building, as the safety and plumbing systems are integral to the rental building, per Regulation 21.1 and Policy Guideline 37.
178. Considering the above, I find that the expenditure of \$8,496.50 to repair the water system is in accordance with Regulation 23.1(4)(a)(ii), as the landlord repaired the water pressure system to ensure adequate water pressure for the rental units and water circulation in the building and that the replaced water system was malfunctioning.

Outcome

179. 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 23.1(5).
180. In summary, the landlord is entitled to impose an additional rent increase for the following expenditures:

Expenditure	Amount \$
01. Lobby renovation	288,262.09
02. Building envelope	54,912.71
03. [Abandoned]	0
04. Pressure valves	31,494.75
05. Lockers	21,845.55
06. Security system	31,284.50
07. Fire panel and sprinklers	19,391.93
08. Corridor upgrades	41,836.23
09. [Abandoned]	0
10. Elevator upgrades	88,879.36
11. Water system repairs	8,496.50
Total	586,403.62

181. 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 203 specified dwelling units (paragraph 44) and that the amount of the eligible expenditure is \$586,403.62.

182. The landlord has established the basis for an additional rent increase for expenditures of \$24.07 per unit ($\$586,403.62 / 203 \text{ units} / 120$). 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 Regulation 23.3.


183. The parties may refer to RTB Policy Guideline 37, Regulations 23.2 and 23.3, section 42 of the Act (which requires that a landlord provide a tenant 3 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

184. The landlord has been successful. I grant the application for an additional rent increase for expenditures of \$24.07 per unit. The landlord must impose this increase in accordance with the Act and the Regulation.

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

Dated: July 07, 2023



I Borba, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply
- How and when to issue a Notice of Additional Rent Increase - Eligible Capital Expenditures:
Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

