Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110058694

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

Between
NR **and** NR **Tenant(s),**
Applicant(s)

And
NR **Landlord(s),**
Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: March 17, 2022, by conference call.

Date of Decision: March 18, 2022

Attending:

For the Landlord: No one attended

For the Tenant: No one attended

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, RP, DRI-ARI-C, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order:

- cancelling a One Month Notice to End Tenancy for Cause of December 30, 2021;
- cancelling a 10 Day Notice to End Tenancy - Unpaid Rent of December 30, 2021;
- for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- to dispute a rent increase from the Landlord;
- an additional rent increase for a capital expenditure; AND
- to recover the $100.00 cost of their Application filing fee.

This matter was set for hearing by telephone conference call at 1-888-458-1598 on March 17, 2022, at 11:00 a.m. (Pacific Time). Neither Party contacted the telephone bridge. The telephone line remained open while the phone system was monitored for over ten minutes. Neither Party appeared. I then concluded the hearing and closed the conference call.

As neither Party appeared for the hearing, I Order the Application dismissed with leave to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation periods. 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: March 18, 2022

NR

NR 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.

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  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:
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  Please Note: Legislated deadlines apply

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- Victoria: 250-387-1602

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310048503

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

Between

NR

Landlord

Applicant

And

NR

NR

Tenants

Respondents

Regarding rental units at: NR

- AND -

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

File No: 310053123

Between

NR

Landlord

Applicant

And

NR

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Respondents

Regarding rentals unit at: NR

Date of Hearing: March 25, 2022 by conference call.

Date of Decision: March 29, 2022

Attending:

For the Landlord:	NR	President
	NR	Property Manager
	NR	Property Manager
	NR	Residence Manager
For the Tenants:	NR	, on his own behalf

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application made on October 18, 2021 pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord was represented at the hearing by its president NR , two property managers NR and NR and its resident manager NR Tenant NR attended on his own behalf. No other tenants attended.

This matter was reconvened from a preliminary hearing on November 29, 2021. Following that hearing I issued an interim decision which I ordered the landlord to serve on each tenant as well as a copy of the notice of dispute resolution proceeding hearing. NR testified that he posted these documents on the door of each rental unit, and submitted copies of proof of service forms corroborating this. NR stated that he was served in this manner. As such I find that the tenants were served with the required documents.

This hearing was originally scheduled to occur on March 22, 2022 but had to be rescheduled until March 25 2022. The parties were not made aware of this rescheduling until they called in for the hearing on March 22, advised by an employee of the residential tenancy branch about the hearing had to be rescheduled. The individuals attending that hearing were provided with the date, time, and call-in instructions for today's hearing. NR and NR confirmed this and both testified that the only people who called in to the March 22, 2022 hearing were those individuals who called into this hearing. NR stated that the landlord was also sent an email containing the call-in instructions. NR did not receive such an email.

In any event, given that everyone who attended the March 22, 2022 hearing was present at this hearing, I am satisfied that this hearing can proceed.

I must also note that in the interim decision I ordered that any tenant who did not attend that interim decision but not be permitted to give oral testimony or make verbal arguments at the adjudicative hearing. They would instead be required to make written submissions. None of the tenants provided written submissions prior to the hearing.

As stated in the interim decision, the reason for making such an order was "to ensure that the adjudicative hearing could be conducted in the allotted time". NR did not attend the preliminary hearing. Despite this, I permitted him to make oral submissions at this hearing, as no other tenant was in attendance, and the hearing was not at risk of exceeding its allotted time.

Issues to be Decided

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

Background and Evidence

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 parties' claims and my findings are set out below.

The residential property is comprised of two buildings (Building "A" and Building "B"). Each building is three storeys in each story contains seven dwelling units. each building has 21 dwelling units, for a total of 42 dwelling units on the residential property.

NR testified that the landlord has not applied for an additional rent increase for capital expenditure against any of the tenants prior to this application. He stated that the landlord was seeking to impose an additional rent increase for a capital expenditure incurred to pay for a work done to both buildings. He testified that the landlord replaced the roofs of both Building A and Building B, as well as repaired the patios of all units on the second and third story of both buildings (collectively, the "**Work**").

NR testified the roofs, which were of a "tar and gravel" design, were replaced because they had begun to blister, causing cracks in the sealant which had began to allow water into each building. The landlord submitted photos into evidence of the cracks in the roof.

NR stated that the leaks were "not a disaster" but the roofs were at the end of their useful life and needed to be replaced. He stated that the landlord purchased the residential property in 2008 and that it has not replaced the roofs in this time. He testified that he was unsure when the last time the roofs were replaced, as the prior owner did not keep very good records, but that the landlord estimated, based on their years of experience as a property management company, that the roofs were between 20 to 25 years old.

He stated that the patios had begun to rot, as the membranes a tears in them which allowed water to seep into their structure. The landlord submitted photos of patios which showed portions of the bases rotted out an water damaged, and the protective membranes torn. As with the roofs, NR could not say when exactly the patios membranes had last been replaced, but that it was prior to the landlord acquiring the

building. He estimated the patio membranes were roughly 20 years old, and close to the end of their useful life.

The landlord engaged a contracting company to replace the roof of each building with a more modern “two-ply roof membrane system”. The contractor started replacing the roof of building “A” in the fall of 2020 and the of building “B” in the spring of 2021. The landlord paid $60,795 for each roof replacement ($121,590 total). It submitted an invoice for each of these expenses, the first dated October 20, 2020 and the second dated June 10, 2021. NR testified that the landlord paid each of these shortly after they were issued.

The landlord hired a different contractor to repair the patios. The contractor started work in the fall of 2020. The contractor detached the metal railings, removed the the existing vinyl decking and plywood as well as the fascia of some of the patios, installed new plywood structure and vinyl decking, and then reinstalled the original railings. NR estimated the life expectancy of these materials as between 20 to 25 years.

The landlord submitted an invoice from the contractor on September 9, 2020 for $44,325.95. NR testified that the landlord paid this invoice shortly thereafter.

In total, the landlord incurred $165,915.95 in capital costs, and seeking to impose rent increases to recover the following amounts against the following tenants”

Description	Amount
Building A tenants	
100% Building A roof cost (all floors)	$60,795.00
50% of Building A and B patio cost (2nd and 3rd floor tenants only)	$22,162.98
Subtotal	**$82,957.98**
Building B tenants	
100% Building B roof cost (all floors)	$60,795.00
50% of Building A and B patio cost (2nd and 3rd floor tenants only)	$22,162.98
Subtotal	**$82,957.98**
Total	**$165,915.95**

Tenant NR did not dispute the fact that roof and patios were replaced or repaired as claimed by the landlord. Rather, the tenant argued that the landlord should not be permitted to impose a rent increase to recover the cost of replacing or repairing parts of the building that are near or at the end of their useful life and for which the landlord could have anticipated would need to have been replaced. I understood his argument to be that the landlord should have set rents according to the landlord’s future maintenance and replacement needs.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Analysis

1. Statutory Framework

Sections 21.1, 23.1, and 23.2 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 successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
- the number of specified dwelling units on the residential property (s. 23.2(2));
- the amount of the capital expenditure (s. 23.2(2));
- that the Work was an *eligible* capital expenditure, specifically that:
    - the Work was to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
    - the Work was undertaken for one of the following reasons:
        - to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
        - because the system or component:
            - was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
            - had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
        - to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
        - to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
    - the capital expenditure was incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)); and
    - the capital expenditure is not expected to be incurred again within five years (s. 23.1(4)(c)).

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 (s. 23.1(5)(a)); or
- for which the landlord has been paid, or is entitled to be paid, from another source (s. 23.1(5)(a)).

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 above), the

landlord may impose an additional rent increase pursuant to sections 23.2 and 23.3 of the Regulation.

.

2. Prior Application for Additional Rent Increase

Based on the testimony of the parties, I am satisfied that the landlord has not previously imposed an additional rent increase on any of the tenants within the last 18 months.

3. 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.

RTB Policy Guideline 37 states:

> A specified dwelling unit must be included in the calculation if it is located in a building (or is the unit) for which the capital expenditure was incurred or, if not located in the building, is affected by the capital expenditure at the residential property. For example:
> • If the roof of a building has been replaced, all dwelling units located in the building are specified dwelling units.
> […]
>
> Unless they are located in the building where the capital expenditure was incurred, dwelling units that are not affected by the capital expenditure must not be used in the calculation.
>
> For example, if there are two rental buildings on the residential property and the landlord performs $1,000,000 in eligible capital expenditures on the first building, the dwelling units in the second building are not specified dwelling units and must not be used in the calculation.

As such, I find that there are 21 “specified dwelling units” for the roof replacement for Building “A” (all the units in Building “A”) and 21 “specified dwelling units” for the roof replacement for Building “B” (all the units in Building “B).

As the patios in both buildings were replaced, I find that all units located in each building (42 in total) are “specified dwelling units”. I note that the landlord only applied to impose additional rent increases for this capital expenditure against the second and third floor tenants of each building. The Act requires that all units in the building where the repairs or replacement was carried out be considered specified dwelling units.

I also note that Policy Guideline 37 exempts dwelling units *not* located in the building where the capital expenditure was incurred, not those which are located in the building, but not affected.

As both buildings had the patios replaced, all units in all buildings are considered “specified dwelling units”.

4. Amount of Capital Expenditures

Based on NR undisputed testimony and the invoices submitted into evidence, I find that the landlord incurred capital expenditures as follows:

Description	Amount
Building A roof	$60,795.00
Building B roof	$60,795.00
Patio	$44,325.95

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

As stated above, in order for the Work to be considered an eligible capital expenditure, the landlord must prove the following:

- the Work was to repair, replace, or install a major system or a component of a major system
- the Work 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
    - 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;

- the capital expenditure is not expected to be incurred again within five years.

I will address each of these in turn.

a. Type of Capital Expenditure

The Work amounted to upgrades to the buildings' roofs and patios. Policy Guideline 37 explicitly identifies a residential property's roof as a "major system". Section 21.1 of the Act defines "major system" and "major component":

> "**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
> […]
> "**major component**", in relation to a residential property, means
> (a) a component of the residential property that is integral to the residential property

I find that a patio is part of a residential property's "structural system" and that it is integral to the residential property, as without it, the exterior doors in each of rental units would open onto empty air, posing an unacceptable risk to occupants. The exterior patio forms part of a rental unit, and a patio itself is as integral to a rental unit as the interior floor.

As such, I find that the Work was undertaken to replace a "major system" and "major components" of a "major system" of the residential property.

b. Reason for Capital Expenditure

Based on NR testimony, I find that the roofs of each building had begun to fail. I accept that blistering and cracking appeared on the surface of the roof which allowed water to enter the structure. Furthermore, I accept NR estimate that the roofs are between 20 and 25 years old, and that given their age the replacement of the roofs is more appropriate than simple repairs.

As such, I find that the roofs were replaced because they had failed or was malfunctioning, which satisfies one of the requirements set out in the Regulation.

Based on NR testimony and the photos submitted into evidence, I find that the patios were replaced because the protective membrane had failed, which allowed water to seep into the structure of the patios causing rod. I also except NR This estimate that the patios were roughly 20 years old.

As such, I find that patios were replaced because their protective membrane had failed, which satisfies one of the requirements set out in the Regulation.

c. Timing of Capital Expenditure

Residential Tenancy Branch Policy Guideline 37 states:

> A capital expenditure is considered "incurred" when payment for it is made.

Based on the invoices submitted into evidence, I find that the contractor who replaced the roofs issued invoices on October 20, 2020 and June 10, 2021. I accept NR testimony that the landlord paid these invoices shortly after receiving them. Similarly, I find that the contractor who replaced the patios issued an invoice on September 9, 2020, and that the landlord paid this invoice shortly thereafter.

The landlord made this application on October 18, 2021. As such, it incurred all of the capital expenditures less than 18 months prior to making the application.

d. Life expectancy of the Capital Expenditure

RTB Policy Guideline 40 sets out the useful life of roofs between 15 to 20 years. NR testified that he expected the roofs to last for 20 to 25 years. Under either estimate, I am satisfied that the replacement roofs will last at least five years.

Policy Guideline 40 sets the useful life of wooden decks and porches at 20 years. This is in accordance with NR testimony. I am satisfied that the repaired patios will last at least five years.

As such, I am satisfied that these capital expenditures cannot reasonably be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditures incurred to undertake the Work are eligible capital expenditures, as defined by the Regulation.

6. Tenants' Rebuttals

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditure. In addition to presenting evidence to contradict the elements the landlord must prove (set out above), the tenant may defeat an application for an additional rent increase if they can prove that:

- the capital expenditures were incurred because the repairs or replacement were required due to inadequate repair or maintenance on the part of the landlord, or
- the landlord has been paid, or is entitled to be paid, from another source.

Tenant NR did not argue either of these points. Rather, he argued that the landlord should not be permitted to impose a rent increase to recover the cost of replacing or repairing parts of the building that are near or at the end of their useful life and for which the landlord could have anticipated would need to have been replaced.

Neither the Act nor the Regulation sets this out as a basis on which an application for an additional rent increase can be denied. To the contrary, section 23.1(4)(a)(ii) explicitly allows for such an application to be made when the component replaced "is close to the end of its useful life". Accordingly, I understand the authors of the Regulation to have made a policy decision to allow landlords to recover the costs of replacing components of major systems on the residential property after they have been incurred, rather than requiring landlords to anticipate such costs and set their rent rates accordingly.

As such, I find that the tenant's argument does not cause the landlord's application to be denied.

7. Outcome

The landlord has been successful. It has proved, on a balance of probabilities, all of the elements required in order to be able to impose an additional rent increase for capital expenditure. 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 capital expenditure divided by 120.

In this case, I have found that:

1) the roof replacement of Building "A" has 21 specified dwelling units (all the units in Building "A") and cost $60,795;
2) the roof replacement of Building "B" has 21 specified dwelling units (all the units in Building "B") and cost $60,795; and
3) the patio replacement has 42 specified dwelling units (all units in both buildings) and cost $44,325.95

The landlord did not apply to impose an additional rent increase for the patio replacement for any units on the ground floor. I have found that these units are specified dwelling units. As such, they will be counted for the purposes of calculating the amount of additional rent increase that may be imposed for the patio replacement, but the landlord is not permitted to impose any increase in connection with that replacement against those tenants.

The landlord has established the basis for additional rent increases for capital expenditures as follows:

	Roof	Calculation	Patio	Calculation	Total
Building "A" 1st Floor	$24.13	($60,795 ÷ 21 units ÷ 120)	$0	(Did not apply against these tenants)	$24.13

Tenants					
Building "A" 2nd and 3rd Floor Tenants	$24.13	($60,795 ÷ 21 units ÷ 120)	$8.79	($44,325.95 ÷ 42 units ÷ 120)	$32.92
Building "B" 1st Floor Tenants	$24.13	($60,795 ÷ 21 units ÷ 120)	$0	(Did not apply against these tenants)	$24.13
Building "B" 2nd and 3rd Floor Tenants	$24.13	($60,795 ÷ 21 units ÷ 120)	$8.79	($44,325.95 ÷ 42 units ÷ 120)	$32.92

If these amounts exceed 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 Guideline 37, 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 made be imposed.

Conclusion

The landlord has been successful. I grant the application for an additional rent increase for capital expenditures as specified above. 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 *Residential Tenancy Act*.

Dated: March 29, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310058370

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **, Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: April 01, 2022, by conference call.

Date of Decision: April 6, 2022

Attending:

For the Landlord: NR agent

For the Tenant: NR

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel an additional rent increase, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. All parties confirmed under affirmation they were not recording this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Should the rent increase be cancelled?

Background and Evidence

The tenancy began on June 1, 2019. Rent in the amount of $1,850.00 was payable on the first of each month. A security deposit of $925.00 was paid by the tenant.

The tenant testified that when they signed the tenancy on May 16, 2019, they were from a foreign country and the landlord had them sign that they would agree to a 16% rent increase starting June 1, 2020, in the addendum to the tenancy agreement. The tenant stated they were unaware of the Residential Tenancy Act.

The tenant testified that they were told by one of their friends who was receiving a rent increase of $8.00, which made them question the $300.00 per month or 16% rent increase the landlord had them sign before the tenancy started.

The landlord's agent testified that they have a third-party company that finds tenants and have them sign leases. The agent stated that they believe the rental unit was advertised at a higher rent, and that the tenant was given a temporary reduce in rent.

The tenant responded that they viewed two rental units and they asked the landlord how much for the one they had preferred and were informed $1,850.00 per month. The tenant stated that there was no conversation that they were receiving a rent reduction as an incentive for the first year. The tenant stated they felt they had no choice but to agree to this increase to secure housing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

This Act cannot be avoided

5 (1)Landlords and tenants may not avoid or contract out of this Act or the regulations.
(2)Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Amount of rent increase

43 (1)A landlord may impose a rent increase only up to the amount
(a)calculated in accordance with the regulations,
(b)ordered by the director on an application under subsection (3), or
(c)agreed to by the tenant in writing.

Residential Tenancy Policy Guideline

Unconscionable Terms Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the

term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable.

Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party. The burden of proving a term is unconscionable is upon the party alleging unconscionability.

On May 16, 2019,the parties entered into a tenancy agreement effective June1 2019. At that time the landlord had the tenant agreed to a 16% rent increase that would take effect on June 1, 2020, even before the tenant took possession of the premises. Due to the Order of the Director, rent increases were frozen until January 1, 2022, and the maximum allowable is 1.5%. The landlord is now forcing the addendum to the tenancy to collection a 16% rent increase, which amounts to $300.00 per month for the tenant.

While I accept the tenant agreed to this in writing as a condition to their tenancy, I find there is no documentary evidence that there was any reduction in the rent due a rent incentive, as I would expect the agreed upon market rent would be set out in the tenancy agreement and a term lowering the rent for a specific period of time would be in the addendum setting the rent incentive provision. Then there would be no need to issue of notice of rent increase as the market rent would simply be payable when the rent incentive was completed.

Further, the landlord's own written submission does not support that this was a rent incentive, as they only state this was agreed as an addendum to the tenancy agreement.

In this case, the tenant was new to Canada and signed the tenancy agreement as they did not know about the provision of the Act, limiting rent increases. I find it was within the landlord control that if this was a true rent incentive that firstly, they would have told this important information to the tenant, who I found to be credible; and secondly, this should have been reflected in the tenancy agreement. Not simply an agreement to increase the rent by 16%, without any explanation, especially when this is signed before the tenancy started.

I find that it appears the landlord is attempting to contract outside the Act, by making tenants agree to rent increases over the allowable amount, in order to secure housing. I find that in unconscionable as this is exploiting tenants and taking advantage of their ignorance to the provision of the Act. If the landlord wants to provide a rent incentive that must be clearly laid out in the tenancy agreement. Therefore, I find the tenant's rent will remain at $1,850.00 until properly increased under the Act and at the allowable amount.

Based on the above, I grant the tenant's application and cancel the Notice of Rent Increase. As the tenant was successful with their application, I find the tenant is entitled to recover the cost of the filing fee of $100.00 from the landlord.

The tenant paid the rent increase of $300.00 in January 2022. I find the tenant is entitled to deduct the $300.00 for the overpayment of rent and $100.00 cost of filing fee total amount $400.00 from a future rent payable to the landlord in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice of Rent Increase is granted.

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: April 6, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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- Toll-free: 1-800-665-8779

Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

- Lower Mainland: 604-660-1020
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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110059724

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: April 08, 2022, by conference call.

Date of Decision: April 11, 2022

Attending:

For the Landlord: No one

For the Tenant: No one

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the amount of $19,600.00 for loss or other monetary owed.

This matter was set for hearing by telephone conference call at 1:30 P.M. on this date, April 8, 2022. The line remained open while the phone system was monitored for ten minutes, and no participant called into the hearing during this time.

On March 14, 2022, the Residential Tenancy Branch (the "RTB") contacted the tenant to verify if the hearing was still required. On March 15th, 2022, the tenant confirmed by email that the hearing is still needed.

On April 5, 2022, the tenant was sent a reminder notification from the RTB that they have an upcoming hearing, scheduled for April 8, 2022 at 1:30 PM (today) and the instructions for the proceeding were provided in the Notice of Dispute Resolution Proceeding. The tenant was also informed, that if you do not attend this hearing, you will lose the opportunity to provide information that could impact the result. I have confirmed the correct information was provided to the tenant.

I note in the tenant's submitted evidence that they provided proof of service on the landlord. However, the tenant has simply provided a copy of evidence submission receipt, which they may have sent to the landlord by email. This does not comply with the Act as the landlord must be served by registered mail or in person at the service address listed in their tenancy agreement with the Tenant's Application for Dispute and the Notice of Hearing.

Further, the tenant is alleging an illegal rent increase; however, the tenant has provided a signed tenancy agreement showing they agreed to the rent of $2,500.00 commencing May 1, 2020. I find this is not an illegal rent increase, rather a written agreement on the rent to be paid. Therefore, I dismiss the tenant's application **without leave to reappl**y.

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: April 011, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 310061021
Additional File: 310061570

Date: April 12, 2022

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

Between

NR **Tenant,**

Applicant and respondent

And

NR **Landlords,**

Respondents and applicants

Re: Applications pursuant to sections 26, 38, 46, 41, 62, 72 of the *Residential Tenancy Act* regarding a rental unit at:

NR

ORDER

I HEREBY ORDER, pursuant to sections 26 and 72 of the *Residential Tenancy Act,*
tenant NR to pay to the landlords, NR
NR the sum of **$6,650.00**

Dated: April 12, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310058852

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: April 14, 2022, by conference call.

Date of Decision: April 14, 2022

Attending:

For the Landlord: No One Appearing

For the Tenant: No One Appearing

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, DRI-ARI-C, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancelation of a Notice of Rent Increase pursuant to section 43;
- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This matter was set for hearing by telephone conference. Neither party attended although I left the teleconference hearing connection open from the scheduled time for an additional ten minutes to enable them to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that I was the only one who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing *– If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As neither the applicant nor the respondent attended the hearing and in the absence of any evidence or submissions, I order the application dismissed with leave to reapply.

Conclusion

As neither the applicant nor the respondent attended the hearing and in the absence of any evidence or submissions, I order the application dismissed with leave to reapply.

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: April 14, 2022

NR

NR

Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110052908

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

Between

NR **Landlord(s),**

Applicant(s)

And NR

NR **Tenant(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: April 05, 2022, by conference call.

Date of Decision: April 14, 2022

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Attending:

For the Landlord: NR **agents**

For the Tenants: NR

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") and the *Residential Tenancy Regulation* (the "**Regulation**") for an additional rent increase for capital expenditure pursuant to section 23.1 of the Regulation.

The landlord was represented at this hearing by three agents, NR , NR and NR ("the landlord").

The seventeen tenants present at the hearing are listed on the first page.

The parties were informed that no recording of the hearing was permitted.

This hearing was reconvened from a hearing on January 4, 2022. The Arbitrator issued an Interim Decision on January 4, 2022.

The hearing lasted 3.3 hours.

The tenants had not decided on a group representative. Accordingly, all tenants who attended the hearing were granted the opportunity to ask questions of the landlord and to make oral submissions.

Submission and Service of Documents

The Interim Decision set out the date by which each party were to submit and serve documents as well as the manner of service.

No issues were raised with respect to the submission and service of documents by the landlord or the tenants.

An 11-page written submission dated March 21, 2022, by the tenants NR and NR was submitted. The landlord acknowledged receipt.

Issue(s) to be Decided

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

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The apartment building contains 34 units on three floors. The building was constructed in 1971 and the elevator was original to the building.

As stated above, the tenants NR and NR submitted an 11-page written submission ("the written submission"), the only documentary evidence on behalf of the tenants. The authors were the tenants NR and NR who stated their belief that the written submissions reflected the opinions of most of the tenants.

The written submission describes the building:

> NR Apartments is somewhat unique insofar as it was family built, owned and operated by two generations of the same family since 1971 to the present day. The tenants of NR Apartments are 55+ and many are quite elderly some requiring home care. Most live on pensions and personal savings. Many have limited personal savings to draw on and need to budget carefully especially given the challenges of ever-increasing inflation and the cost of living. Rent already consumes a high percentage of most pensioners monthly expenses.

A landlord may apply for an additional rent increase if they have incurred eligible capital expenditures or expenses to the residential property in which the rental unit is located.

To raise the rent above the standard (annual) amount, the landlord must have either the tenant's written agreement or apply to the RTB for either an Additional Rent

Increase for Expenses (ARI-E) or an Additional Rent Increase for Capital Expenditures (ARI-C).

None of the tenants consented to the increase.

The landlord is seeking to impose an additional rent increase for a capital expenditure of $266, 929.72 incurred to pay for work done to the building's elevator. The landlord had the building's elevator modernized including replacement of all electrical and mechanical elements (collectively, the "Work"). The landlord testified the Work was done because of the age of the elevator, frequent break downs, difficulty in getting parts and repairs, and increasing unreliability. The landlord submitted a copy of the contract and an overview by the contractor of the components of the upgrade.

The tenants acknowledged that the Work was necessary as the elevator was old, unreliable and required inconvenient repairs. The tenants stated that many residents were seniors, and some had mobility issues. When the elevator did not work, those residents may be confined to their units.

The landlord applied on November 2, 2021. The 18-month period prior to the application therefore began May 2, 2020. The landlord claimed cost of Work as follows based on submitted invoices with the payment dates written on each:

	DATE INVOICE	DATE PAID	AMOUNT
1.	February 20, 2020	March 9, 2020	$59,903.55
2.	April 30, 2020	May 19, 2020	$3,902.85
3.	[illegible], 2020	June 26, 2020	$61,499.99
4.	September 25, 2020	October 7, 2020	$38,339.26
5.	October 20, 2020	October 29, 2020	$29,951.78
6.	November 6, 2020	November 17, 2020	$1,161.86
7.	November 20, 2020	November 26, 2020	$9,983.93
8.	November 20, 2020	December 17, 2020	$22,186.50
	TOTAL CLAIMED		**$226,929.72**

The tenants acknowledged the landlord incurred this expense of $226, 929.72.

However, the tenants claimed that the amount of the capital expenditure should be reduced by two claimed expenses as follows.

1. *Invoice dated February 20, 2020, paid March 9, 2020 - $59,903.55*

The tenants claimed that the capital expenses should be reduced by the amount of $59,903.55 paid by the landlord on March 9, 2020, pursuant to an invoice dated February 20, 2020, from the contractor. A copy of the invoice with payment date written on it was submitted. The payment was made before the 18-month period began.

The landlord acknowledged that this payment was made before the 18-month period started. However, the landlord requested that the payment be included as there was delay in completion of the work because of circumstances involving supply that were beyond their control.

2. Invoice dated April 30, 2020, paid May 19, 2020 - $3,902.85

The tenants claimed that the capital expenditures should be reduced by a further amount of $3,902.85 for an invoice dated April 30, 2020, prior to the start of the 18-month period. The landlord paid the invoice on May 19, 2020, within the 18-month period. A copy of the invoice with the payment date written on it was submitted.

The parties agreed that the landlord has not imposed an additional rent increase pursuant to sections 23 or 23.1 of the Regulations in the last 18 months.

Tenant's Submissions

In the lengthy hearing, the tenants put forward many arguments against the rent increase. While key concerns are referenced below, I do not reproduce every argument or submission.

Selected illustrative comments of the many oral submissions and the written submission follow:

1. Many tenants disagreed with any increase when their fixed incomes were not being increased. They cited economic hardship, and some expressed the belief they were being marginalized after a "lifetime of being a working Canadian". One

tenant, who stated he lived on a fixed income, said the last increase in his fixed income allowed him “to buy one coffee a month”.

2. One tenant stated they had rented their unit shortly before the application without being informed their rent could rise above the allowable annual rent increase. The current application for another increase was “grossly unfair” in the circumstances.

3. Any increase continued after the landlord had been compensated and amounted to “unjust enrichment” as the increase continued forever, long after the landlord was fully compensated for the expense. There was no end date.

4. The landlord should not be able to claim capital expenses incurred before the legislation took effect. The written submissions stated in part as follows:

> We submit that the purpose and intent ofthe eligible capital expenditures regime which was established under RTA Reg 23.1 was, and should be interpreted, as prospective-in other words, for claims of capital expenses incurred after July 2021, and not retroactively allow claims for capital expenses incurred during 2020. In our respectful view, to interpret the meaning of "preceding “otherwise would defeat the publicly stated purpose of the amendments.

5. The written submissions contained a summary section repeated here:

> It is clear, at least from the perspective of tenants, that the entire eligible capital expenditure regime created by the BC government

and administered by the RTB is ambiguous and profoundly unfair. This unfairness will be acutely felt by many NR tenants who are elderly and on fixed incomes that cannot possibly meet such dramatic long-term rent increases.

It is our view, and that of most tenants in the NR , that the landlord should have been budgeting for the completely foreseeable replacement of an elevator which typically has a 25-30 year lifespan. They did not do this, and under the new legislation tenants must now pay the price for a landlords lack of budgeting foresight.

The tenants' main arguments why this application should not be allowed relate to the retroactive nature of the legislation, the hardship on tenants of any allowed increase, especially those tenants with fixed incomes, and the alleged failure of the landlord to budget and plan for a new elevator.

Analysis

1. *The Residential Tenancy Act*

To raise the rent above the standard (annual) amount, the landlord must have either the tenant's written agreement or apply to the RTB for either an Additional Rent Increase for Expenses (ARI-E) or an Additional Rent Increase for Capital Expenditures (ARI-C).

This Application is for an Additional Rent Increase for Capital Expenditures (ARI-C).

Section 43(1)(b) of the Act states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director or agreed to by the tenant in writing. The section states:

> **Amount of rent increase**
>
> **43** (1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection or
>
> (c) agreed to by the tenant in writing.

Section 43(3) states that a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution. The section states:

> 43 (3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

Statutory Framework

Sections 21 and 23.1 of the Regulations set out the framework for

determining if a landlord is entitled to impose an additional rent increase for capital expenditures. *RTB Policy Guideline 37 – Rent Increases* provides guidance on the Act and Regulations.

The landlord has the burden of proof which is based on a balance of probabilities.

The landlord must establish the following:

1. The number of specified dwelling units on the residential property – section 23.2(3)
2. 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 – section 23(2)
3. The expenditures are *eligible capital expenditures* under section 23.1(4) in that they were incurred for one of the following:
    a. 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– section 23(4)(a)(i)
    b. 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 – section 23(4)(a)(ii);
    c. 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

4. The capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application – sections 23(1), 23(4)(b)
5. The capital expenditure is not expected to be incurred again within five years - section 24(4)(c)
6. The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
    a. for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
    b. for which the landlord has been paid, or is entitled to be paid, from another source.

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

Each of the above elements are considered.

1. *The number of specified dwelling units on the residential property – s. 23.2(3)*

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 aninstallation was made, or repairs or a replacement was carried out, forwhich eligible capital expenditures were incurred, or

(b) a dwelling unit that is affected by an installation made, or repairs or areplacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

Based on the evidence before me, I find that there are 34 specified dwelling units.

2. *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 – s. 23(2)*

Based on the evidence before me, I find the landlord has complied with this requirement and there has been no previous application.

3. *The expenditures are eligible capital expenditures under section 23.1(4) i*

Based on the evidence before me, I find $226, 929.72 to be *eligible capital expenditures,* as discussed below.

Pursuant to section 23(4)(a)(i), I find the capital expenditures were incurred for the replacement and installation of a major system, the building's elevator. The Work took place to maintain the residential property in a state of repair in compliance with the Act pursuant to section 23(4)(a)(i).

In determining the useful life of an elevator, I referred to *RTB Policy Guideline 40 – The Useful Life of Building Elements*. This Guideline states the useful life of an elevator is 20 years. The elevator was original to the building built in 1971. I find the elevator was periodically malfunctioning and was at the end of its useful life.

4. *The capital expenditures were incurred in the 18-month period preceding the date on which the landlord makes the application - s. 23(1), 23(4)(b)*

Guideline 40 states:

> *A capital expenditure is considered "incurred" when payment for it is made.*

I disallow the claimed expenses relating to the February 20, 2020 invoice paid on March 9, 2020 in the amount of $59,903.55 as it was not incurred as defined within the allowable 18-month period.

Based on invoices submitted into evidence, I find that landlord incurred the following expenses totally $167,026.17 which are *eligible capital expenditures* within the allowable 18-month period:

	DATE INVOICE	DATE PAID	AMOUNT
1.	February 20, 2020	March 9, 2020	disallowed
2.	April 30, 2020	May 19, 2020	$3,902.85
3.	[illegible], 2020	June 26, 2020	$61,499.99
4.	September 25, 2020	October 7, 2020	$38,339.26
5.	October 20, 2020	October 29, 2020	$29,951.78
6.	November 6, 2020	November 17, 2020	$1,161.86
7.	November 20, 2020	November 26, 2020	$9,983.93
8.	November 20, 2020	December 17, 2020	$22,186.50
	TOTAL		**$167,026.17**

5. *The capital expenditure is not expected to be incurred again within five years - s. 24(4)(c)*

As stated above, the useful life for an elevator is 20 years. Based on the evidence, I find that the life expectancy of the components replaced will exceed five years and that the capital expenditure to replace them cannot be expected to reoccur within five years.

For the above-stated reasons, I find that the capital expenditures of

$167,026.17 was incurred to undertakethe Work and $167,026.17 is an eligible capital expenditure.

6. *The capital expenditures were incurred*
    a. *for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or*
    b. *for which the landlord has been paid, or is entitled to be paid, from another source.*

Having established a prima facie case of capital expenditures, I must now consider subsection 23.1(5) of the Regulation, which states:

> 23.1 (5) The director must not grant an application under this section for that portion of capital expenditures in respect of which a tenant establishes that the capital expenditures were incurred
>
> (a) for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or
>
> (b) for which the landlord has been paid, or is entitled to be paid, from another source.

As stated above, the Regulation limits the reasons which a tenant may raise to oppose an additional rent increase for capital expenditures. I find the tenants have not met the burden of proof under section 23.1(5) although I recognize and appreciate their submissions.

The tenants' main arguments why this application should not be allowed relate to the retroactive nature of the legislation, the hardship on tenants of any allowed increase,

especially those tenants with fixed incomes, and the alleged failure of the landlord to budget and plan for a new elevator. Each of these arguments is addressed.

Legislation may have a retroactive effect. I acknowledge the tenant's argument that this appears to them as unjust. However, if the intended retroactive effect is expressed sufficiently clearly, as in the case of the ARI-C provisions of the Residential Tenancy Act and Regulations, the statute is effective according to its terms.

The tenants' second main argument relates to the effect of the legislation and the hardship on tenants who have fixed incomes. I acknowledge the sincere and eloquent submissions by tenants concerned about "making ends meet". They clearly expressed their surprise and dismay regarding the change in the law and the landlord's application. Nevertheless, this argument does not meet the narrow exceptions in section 23.1(5)(a) and (b). I find the argument has no merit.

The tenants' third argument relates to the alleged failure of the landlord to budget for the predictable expense of replacing the elevator. The tenants' wondered why there appeared to be no fund to which the landlord contributed regularly to save for maintenance. If such prudent budgeting had occurred, there would be no need for the landlord to ask for an additional rent increase.

Section 23.1(5)(a) allows for rejection of the landlord's application if there had been inadequate repair or maintenance on the part of the landlord, The tenants did not claim the landlord had not adequately repaired or maintained the elevator. They acknowledged the inconvenience of not having an elevator while it was inoperative during repairs. Several submissions related to tenants being unable to leave their units because they could not navigate the stairs. However, the landlord is not required to submit evidence of budgeting or financial planning for a predictable capital

expense.

Therefore, I find the tenants have not established grounds to reject the application under section 23.1(5)(a). I dismiss this claim which I find has no merit.

Conclusion

Summary

I find the landlord has met the burden of proof on a balance of probabilities that the total of $167,026.17 is an eligible capital expense. I find the landlord has established all elements necessary for an additional rent increase for the eligible capital expenditure.

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 specific dwelling units divided by the amount of the eligible capital expenditure divided by 120.

In this case, I have found that there are 34 specified dwelling units and that the amount of theeligible capital expenditure is $167,026.17.

Accordingly, I find the landlord has established the basis for an additional rent increase for capital expenditures of $40.94 ($167,026.17÷ 34 units ÷ 120).

If this amount exceeds 3% of a tenant’s monthly rent, the landlord may not be permitted to impose a rent increase forthe entire amount in a single year. The

parties may refer to *RTB Policy Guideline 40,* 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 made be imposed.

Conclusion

Given the above, I grant the application for an additional rent increase for a capital expenditure of $40.94 to be applied in accordance with the Act and the Regulation.

I order the landlord to serve the tenants with a copy of this decision by posting to the door of each unit.

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: April 14, 2022

NR

NR 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.

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Please Note: Legislated deadlines apply

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- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110060830

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: April 22, 2022, by conference call.

Date of Decision: April 22, 2022

Attending:

For the Landlord: No One Attended

For the Tenant: No One Attended

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNRT, MNDCT, DRI-ARI-C, RR, LRE, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33;
- A monetary order for damages or compensation pursuant section 67;
- A dispute to a rent increase for capital expenditures pursuant to section 41;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72

Neither party attended at the appointed time set for the hearing, although I waited until 9:40 a.m. to enable them to participate in this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that I was the only person who had called into this teleconference.

The Residential Tenancy Branch Rules of Procedure state:

7.1 Commencement of the dispute resolution hearing
The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented
Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of the presentation of any evidence or submissions I order the application be dismissed with leave to reapply**. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Conclusion

As noted above, this Application for Dispute Resolution is dismissed with leave to reapply.

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: April 22, 2022

NR

NR Arbitrator

Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310062042

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: May 05, 2022, by conference call.

Date of Decision: May 05, 2022

Attending:

For the Landlord: Did not attend

For the Tenant: Did not attend

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened as the result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The hearing began at 11:00 a.m. Pacific Time on Thursday, May 5, 2022, as scheduled and the telephone system remained open and was monitored for 18 minutes. During this time, neither party attended. I confirmed that the conference codes were correct and that I was the only person on the teleconference line for the entire 18 minutes.

The Residential Tenancy Branch Rules of Procedure (Rules) provide as follows:

> **7.3 Consequences of not attending the hearing**. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.
>
> **7.4 Evidence must be presented**. Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of either party to present their evidence at the hearing, **I order the application dismissed with leave to reapply**. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

As I have not considered the merits of the application, the request to recover the filing fee is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 05, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310062893

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

Between

NR **Tenant,**

Applicant

And

NR **Landlord,**

Respondent

Regarding a rental unit at: NR

Date of Hearing: May 20, 2022, by conference call.

Date of Decision: May 21, 2022

Attending:

For the Landlord: No one attended

For the Tenant: No one attended

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities pursuant to section 46.

This matter was set for hearing by telephone conference call at 11:00 am (Pacific Time) on May 20, 2022. The line remained open while the phone system was monitored for ten minutes, and no participant called into the hearing during this time. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states:

> **7.3 Consequences of not attending the hearing**
>
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

As neither the Landlord nor Tenant attended the hearing by 11:10 am, and in the absence of any evidence or submissions, I order the Application dismissed with leave to reapply. I make no findings on the merits of the matter. The issuance of this decision does not extend any applicable deadlines under 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 *Residential Tenancy Act*.

Dated: May 21, 2022

NR

NR

Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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  Please Note: Legislated deadlines apply
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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 110064579

Date: June 14, 2022

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

Between

NR

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 46, 47, 62, 65, 67, 72 of the *Residential Tenancy Act* regarding a rental unit at:

NR

ORDER

Having heard the evidence of the Respondent and in the absence of any evidence from the Applicant, who did not appear, **I DO HEREBY ORDER,** pursuant to section 67 of the *Residential Tenancy Act*, the Applicant(s) NR to pay to the Respondent(s), NR the sum of **$1,650.00.**

Dated: June 14, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 310062857

Date: June 20, 2022

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 33, 43, 62, 65, 67, 70, and 72 of the *Residential Tenancy Act* regarding a rental unit at:

NR

ORDER

I DO HEREBY ORDER, pursuant to section 67 of the *Residential Tenancy Act*, that the landlord(s), NR pay to the tenant(s), NR the sum of $1,465.00.

Dated: June 20, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 210064832

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: June 20, 2022, by conference call.

Date of Decision: June 20, 2022

Attending:

For the Landlord: No one

For the Tenant: No one

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord comply with the Act, and to cancel a One Month Notice to End Tenancy for Cause, that they indicated in their application that it was received on March 1, 2022.

This matter was set for hearing by telephone conference call at 9:30A.M. on this date. The line remained open while the phone system was monitored for fifteen minutes, and no participant called into the hearing during this time.

As the tenants did not appear to prove service of their application for dispute resolution and notice of hearing on the landlord. I find I must dismiss the tenants' application without leave to reapply as any future hearing based on the One Month Notice to End Tenancy for Cause would be barred from being considered as it would be past the effective date.

I have not considered whether the landlord is entitled to an order of possession, as a copy of the notice to end tenancy was not provided for my review and consideration and I cannot determine if it complies with section 52 of the Act. The landlord is at liberty to make their own application for dispute resolution should an order of possession still be required.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: June 20, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 310064893

Date: June 23, 2022

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Re: An application pursuant to sections 46(4) and 72 of the *Residential Tenancy Act* regarding a rental unit at:

NR

ORDER

I HEREBY ORDER, pursuant to section 67 of the *Residential Tenancy Act*, that NR Tenant, pay to NR Landlord, the sum of **$3,950.50.**

NR

NR Arbitrator
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 910066604

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

Between

NR **Tenants**

Applicants

And

NR **, Landlord**

Respondent

Regarding a rental unit at: NR

Date of Hearing: July 05, 2022, by conference call.

Date of Decision: July 05, 2022

Attending:

For the Landlord: No one appearing

For the Tenants: No one appearing

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, RP, RR, PSF, MNRT, DRI-ARI-C, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for pursuant to section 47;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of $5,000.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the Tenants to reduce rent by $5,000.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the Landlord provide services or facilities required by law pursuant to section 65;
- a Monetary Order of $5,000.00 for the cost of emergency repairs that the Tenants made during the tenancy pursuant to section 33;
- cancellation of an additional rent increase for capital expenditures in the amount of $50.00 pursuant to section 43; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

Issue to be Decided

Are the Tenants entitled to the relief sought?

Background and Evidence

Neither the Landlord nor the Tenants attended at the appointed time set for the hearing, although I waited until 1:40 pm to enable them to participate in the hearing which was to

start at 1:30 pm. I confirmed that the correct hearing date, time, call-in numbers and participant access code had been provided on the notice of dispute resolution proceeding. During the hearing, I used the teleconference system to confirm that I was the only person who had called into the hearing.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states:

> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As none of the parties attended the hearing by 1:40 pm, and in the absence of any evidence or submissions, I order the application dismissed with leave to re-apply.

Conclusion

The Tenants' application is dismissed with leave to re-apply.

I make no findings on the merits of this application. Leave to re-apply does not extend any applicable limitation period.

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 05, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 310068262

Date: July 28, 2022

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

Between

NR **Tenants**

Applicants

And

NR **Landlords**

Respondents

Re: An application pursuant to sections 43, 49, 62, and 72 of the *Residential Tenancy Act* regarding a rental unit at:

NR

ORDER

I ORDER the Tenants, NR and any other occupant on the premises to deliver full and peaceable vacant possession and occupation of the said premises to the Landlords, NR by **1:00 p.m. on September 30, 2022**.

NR

NR Arbitrator
Residential Tenancy Branch

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 210074820

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

Between

NR

Tenant(s),

Applicant(s)

And

NR **, Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR

Date of Hearing: July 28, 2022, by conference call.

Date of Decision: July 29, 2022

Attending:

For the Landlord: No one attended

For the Tenant: No one attended

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR. OLC

In the Application for Dispute Resolution filed by the Tenants ("Application"), they applied for: an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated June 3, 2022; and an Order for the Landlord to Comply with the Act or tenancy agreement.

This matter was set for hearing by telephone conference call at 1-888-458-1598 on July 28, 2022, at 9:30 a.m. (Pacific Time). Neither Party contacted the telephone bridge. The telephone line remained open while the phone system was monitored for over ten minutes. Neither Party appeared. I then concluded the hearing and closed the conference call.

As neither Party appeared for the hearing, I Order the Application dismissed with leave to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation periods.

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: June 29, 2022

NR

NR Arbitrator
Residential Tenancy Branch

Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)

BRITISH COLUMBIA

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310068545

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

Between

NR **Tenant(s),**

Applicant(s)

And

NR **Landlord(s),**

Respondent(s)

Regarding a rental unit at: NR
NR

Date of Hearing: July 28, 2022, by conference call.

Date of Decision: July 28, 2022

Attending:

For the Landlord: No One Appearing

For the Tenant: No One Appearing

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI-ARI-C, LRE, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancelation of a Notice of Rent Increase pursuant to section 43;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This matter was set for hearing by telephone conference. Neither party attended although I left the teleconference hearing connection open from the scheduled time for an additional ten minutes to enable them to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that I was the only one who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing *– If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As neither the applicant nor the respondent attended the hearing and in the absence of any evidence or submissions, I order the application dismissed with leave to reapply.

Conclusion

As neither the applicant nor the respondent attended the hearing and in the absence of any evidence or submissions, I order the application dismissed with leave to reapply.

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 28, 2022

NR

NR 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

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

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