RTB File No. 910128611

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

BETWEEN:

1326 WEST 13TH AVENUE HOLDINGS INC., Landlord

APPLICANT

AND:

Tenants of 1326 West 13th Avenue, Vancouver BC, Tenants

RESPONDENTS

LANDLORD'S REPLY SUBMISSIONS

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1. Introduction

1. 1326 West 13th Avenue Holdings Inc. (the "**Landlord**") provides these reply submissions, in addition to the written submissions dated September 27, 2023, in response to issues recently raised by some of the tenants of 1326 West 13th Avenue, Vancouver, BC (the "**Tenants**").

2. The Tenants' evidence was only received recently on January 29, 2024. They raise new matters the Landlord has not had the opportunity to address. The Landlord is entitled to a fair hearing, and a full answer and defence to new issues, by providing rebuttal submissions.

3. The Landlord therefore requests that this Tribunal review these submissions, in addition to the written submissions of the Landlord dated September 27, 2023, as a matter of procedural fairness, and to ensure that each party has an equal opportunity to be heard on all issues.

4. Notably, the Tenants' evidence complains about problems with invoices that don't exist and are not included anywhere in the Landlord's evidence. It appears that the Tenants' have copied legal submissions used in another ARI proceeding, without even checking if the submissions have any application to this building. This is a waste of this tribunal's time, and the submissions provided by the Tenants' should be reviewed with skepticism.

5. Wayne O'Brien provides evidence in the Tenant's submissions. This Tribunal has questioned Mr. O'Brien's credibility with respect to his evidence before this Tribunal in

the past, holding that he has exaggerated his evidence or has not been truthful. As will be submitted, any evidence from Mr. O'Brien must be considered in light of these credibility concerns.

2. The Definition of "Landlord" in the RTA is Broad, and includes multiple different entities

6. The Tenant alleges that only the corporate entity 1326 West 13th Avenue Holdings Inc. is the landlord of 1326 West 13th Avenue, Vancouver BC (the "**Building**") and other corporate entities are not "definitionally considered a landlord" (see paragraph 54 of the Tenants' written argument).

7. The Tenants' argument ignores the very broad definition of "landlord" in the *Residential Tenancy Act*, SBC 2002, c 78 (the "**RTA**") (section 1, definition of "landlord"):

> "landlord", in relation to a rental unit, includes any of the following:
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> (i) permits occupation of the rental unit under a tenancy agreement, or
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
> (c) a person, other than a tenant occupying the rental unit, who
> (i) is entitled to possession of the rental unit, and
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
> (d) A former landlord, when the context requires this.

8. The RTA clearly states that any of the following are considered a "landlord" pursuant to the RTA:

    a. the owner of the rental unit;
    b. the owner's agents;
    c. another person[1] acting on behalf of the owner which permits occupation of the rental unit under a tenancy agreement; and

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[1] The *Interpretation Act*, which applies to the RTA, defines a "person" as including legal persons such as corporations.

d. another person acting on behalf of the owner which exercise powers or performs duties under the RTA, tenancy agreement, or service agreement.

9. 1326 West 13th Avenue Holdings Inc. is therefore a landlord pursuant to section 1(a) of the RTA (definition of "landlord") as the legal owner of the Building. Whether or not another entity who also owns or manages the building is the agent of the owner is irrelevant despite the Tenants' lengthy submissions on this issue, because the definition of a landlord includes both agents and other persons who act on behalf of the owner. The other person acting on behalf of the owner doesn't have to be an agent to qualify as a landlord.

10. The property is owned by a partnership. It is common for real estate to be held by partners. However, a partnership cannot hold legal title. It must hold title through legal entities, like corporations or natural persons.

11. The partnership in this case is known as Vancouver No. 1 Apartments Partnership, which used to be named Vancouver No. 1 Partnership. Because these partnerships are not legally capable of holding title to land, they must do so through a corporation, which is 1326 West 13th Avenue Holdings Inc. Therefore, both the legal and beneficial owners of real property are "landlords" pursuant to section 1(a) of the RTA (definition of landlord) as they are both owners of the Building.

Tab 15 – Nominee Agreement
Tab 16 – Corporate Information for Landlord Entities

12. Since the Building was acquired by the current owners, it has been managed by InterRent Holdings Manager Limited Partnership ("**InterRent**"). InterRent also uses the tradename "CLV Group" pursuant to a license from CLV Group Inc. InterRent is the managing partner of the Partnership and acts on behalf of the legal and beneficial owners of the Building, as their agent, to manage the Building.

13. InterRent is an agent of the legal and beneficial owners of the Building. But even if it wasn't an agent of the owners, that doesn't matter, because the definition of "landlord" isn't restricted to agents. It includes any person who does something on behalf of the owner.

14. In any event, the nominee agreement and corporate documents enclosed show how both 1326 West 13th Avenue Holdings Ltd. and the Partnership are owners of the Building, and how InterRent manages the Building as their agent.

15. On behalf of the owners, InterRent permits occupancy of the rental units in the Building and exercising powers and performing duties pursuant to the RTA and tenancy

agreements on behalf of the legal and beneficial owners. InterRent is therefore also a "landlord" as defined in section 1(a)(i) and (ii) of the RTA.

16. An irony about this argument is that the Tenants who made it also submitted numerous correspondence with InterRent with their evidence. It's absurd that the Tenants would write to InterRent about matters concerning the maintenance and security of the Building, and then seriously take the position in this proceeding that InterRent is not a "landlord" as that term is defined by the Act.

3. 1326 West 13th Avenue Holdings Inc. Incurred the Costs of Completing the Renovations

17. All invoices, regardless of the corporate entity listed on the invoice, were paid by InterRent as the managing partner of the Partnership on behalf of 1326 West 13th Avenue Holdings Ltd. and the Partnership as the owners of the Building. This Tribunal will hear sworn testimony from a representative of InterRent confirming this practice at the upcoming hearing.

18. The Landlord therefore incurred all the expenses included in this additional rent increase application.

19. The ARI scheme is not designed to trap landlords who need to use a partnership as a form of valid and lawful business association, and who have another entity manage the property, using extremely narrow definitions of "landlord" and "agency". It's an intriguing, but ultimately meritless, argument that a building could have done work to it, yet that cost not be incurred by the landlord, in a for-profit rental environment.

4. Response to Tenant' arguments regarding reliance on Residential Tenancy Policy Guideline 37C

20. It is true that policy guidelines, including Residential Tenancy Policy Guidelines 37C ("**RTPG 37C**") and 40 ("**RTPG 40**"), do not have the force of law. However, this doesn't mean that policy guidelines are unimportant or that they can be completely disregarded or ignored. Policy guidelines are instructive and are intended to help guide how legislation is to be interpreted and applied.

21. Additionally, the Tenants' argument is logically incoherent, because they ask this tribunal to ignore the policy guidelines when it suits them, but apply them when it helps their case.

22. The ARI regime is new, and the policy guidelines are the only interpretive aids available to landlords and tenants at this time. These policy guidelines are more detailed than other policy guidelines. They are instructive about how to apply for an ARI.

23. In this context, there are two good reasons for why policy guidelines are important interpretive aids which should not be ignored absent good reason:

    a. policy guidelines provide guidance with respect to the meaning and interpretation of legislation. This permits everyone subject to the legislation to govern their affairs in a manner which provides some certainly and confidence that, if they are acting consistent with the policy guidelines, they are acting consistent with the legislation; and

    b. policy guidelines provide guidance to arbitrators such that decisions made by one arbitrator are consistent with decisions of another arbitrator. This does not mean that an arbitrator is bound to follow a policy guideline by law, but generally, an arbitrator's decision should be consistent with prior decisions by other arbitrators, and all decisions should be consistent with the applicable policy guideline. If a decision varies from past decisions and/or the applicable policy guideline, there should be a good reason for the deviation, which should be explicitly explained in the arbitrator's written reasons. Otherwise, the arbitrator's decision is vulnerable to being overturned on judicial review.

24. Judges in British Columbia also consider the applicable Residential Tenancy Policy Guideline(s) when RTB decisions are judicially reviewed by the court. See, for example, the recent BCSC decision of *Li v Virk*, 2023 BCSC 83 where the court refers to policy guidelines to support its interpretation of the RTA (paragraphs 8 and 12). This means that although policy guidelines do not have the force of law, they are even considered by courts in British Columbia when reviewing decisions made by this Tribunal.

25. RTB arbitrators routinely apply Residential Tenancy Policy Guideline 37C, including permitting expenditures outside the 18-month period where the final cheque for the project was dated during the 18-month period.[2] The policy guideline correctly interprets the legislation. Because a landlord cannot apply for an ARI until the work in question is completed, it would lead to the absurd result of landlords using accounting tricks to postpone invoicing and payments to the end of a project.

26. Although other Tribunal decisions are not binding on this arbitrator the way a court decision would be, an arbitrator's decision can be set aside as unreasonable on judicial review if it deviates from prior decisions without a very good reason (see paragraph 6 of

[2] See Landlord's evidence at Tabs 19-21.

the Supreme Court of Canada's decision in *Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.,* 2013 SCC 34).[3]

27. On at least three (3) other occasions in the past few months, the RTB has held that expenses incurred outside the 18-month window may be included in an application for an additional rent increase so long as the latest expense for the project was paid within the 18-month period:

    a. On October 27, 2023, Arbitrator Yee issued a decision applying the meaning of "incurred" Residential Tenancy Policy Guidelines 37C:[4]

    > Residential Tenancy Branch Policy Guideline 37C states:
    >
    > 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. **<u>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</u>**.
    >
    > I accept the landlords uncontroverted evidence that the final payment for [sic] was incurred on February 1, 2022. This date is within 18 months of the landlord filing the application for additional rent increase on June 8, 2023.

    b. On October 25, 2023, Arbitrator Fox issued a decision applying Residential Tenancy Policy Guideline 37C, and allowing all expenses for a capital expenditure so long as one expense was paid during the 18-month window:[5]

    > As suggested by Policy Guideline #37C, a landlord may claim for expenditures paid outside the 18-month window provided the final expenditure for the overall project is paid

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[3] See also the BCSC decision in *Aspen Planters Ltd. v Assessor of Area*, 2015 BCSC 1573 noting that "… the inapplicability of *stare decisis* to administrative tribunals cannot be assumed to be an absolute rule" and that "it is difficult to conceive of meaningful legislation that would allow diametrically opposed interpretations" (at para 69).

[4] Page 5 of RTB Decision for Additional Rent Increase Application at Tab 19 of Landlord's evidence, under the heading "C. Timing of Capital Expenditure" [emphasis added].

[5] Page 7 of RTB Decision for Additional Rent Increase Application at Tab 20 of Landlord's evidence, first full paragraph on the page.

> within the 18 months of filing the application. In other words, the Landlord may claim for the total project cost provided the final payment on the project was made after February 28, 2022.

c. On October 22, 2023, Arbitrator Wang issued a decision applying Residential Tenancy Policy Guideline 37C, and allowing all expenses for a capital expenditure so long as one expense was paid during the 18-month window:[6]

> As stated in RTB Policy Guideline 37C, the capital expenditure must have been incurred in the 18-month period preceding the date the landlord submits their application. The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made.
>
> 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 clarify, the capital expenditure will still be eligible for an additional rent increase in these situations so long as the final payment for the project was incurred in the 18-month period.

28. The Tenants have provided no explanation for why this additional rent increase application should be decided differently from prior additional rent increase applications decided by this Tribunal. The Landlord submits that there is no good reason for this additional rent increase application to be decided in a manner that is inconsistent with the policy guidelines and past decisions of this Tribunal. Therefore, Residential Tenancy Policy Guideline 37C should apply in this case.

29. The Tenants argue that the purpose of the RTA is to protect tenants, and therefore the explicit and clear wording of the policy guidelines should not apply. They say that RTPG 37C must be narrowly interpreted because the RTA is tenant protection legislation and, as such, explicit wording should be ignored in order to favour the tenants in every case.

30. The thrust of their submission is that the RTA should be interpreted selectively in the favour of a tenant. For example, matters which help them defend this claim, like a

[6] Page 6 of RTB Decision for Additional Rent Increase Application at Tab 21 of Landlord's evidence, under the heading "C. Timing of Capital Expenditure".

narrow definition of "landlord" should be used, but that a broader definition which favours the tenant should be used when it suits the tenant in dispute resolution.

31. The BCSC decision in *Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 ("***Berry and Kloet***") does not support the Tenant' argument that the policy guidelines should be ignored. The specific paragraph they rely on explicitly states that it is only in the case of **ambiguity** that the language should be resolved in favour of the tenants (see paragraph 16 of the Tenant' written submissions, citing paragraph 11 of *Berry and Kloet*). This means that where there is no ambiguity, the language should just be interpreted according to the plain meaning of the words.

32. The Landlord submits there is no ambiguity such that *Berry v Kloet* has any application to this matter. The ARI regime is broad, but not ambiguous.

33. The Tenant also mistakenly place a significant amount of emphasis on the dictionary definitions of the word "incur" to support their interpretation of the RTA, which is directly contrary to the explicit wording of the RTPG 37C with respect to how expenses are said to be included within the 18-month period (see Tenant' written submissions at paragraph 30).

34. Ruth Sullivan, a legal scholar whose works are regularly cited by the Supreme Court of Canada (including in the Supreme Court of Canada decision *65302 British Columbia Ltd v Canada,* [1999] 3 S.C.R. 804 cited by the Tenant at paragraph 15 in their block quote), has cautioned against the use of dictionary definitions when considering the "ordinary meaning" of the words at issue (see paragraph 27 of *Thompson-Nicola Regional District v. 0751548 B.C. Ltd.*, 2014 BCSC 1867):

> [18] The interpretation of legislation properly begins with looking at the ordinary meaning of the words – with the words in their grammatical and ordinary sense (*Sullivan*, 24). The ordinary meaning is not the same as the dictionary definition, as the ordinary meaning will vary with the context (*Sullivan*, 27). One way of understanding ordinary meaning is the presumption that legislatures "use words in the same sense as would the 'main in the street'. (Coté, Pierre-André, *The Interpretation of Legislation in Canada*, 3d ed (Scarborough, Ontario: Carswell, 2000) at 261).

35. In this case, there is no need to resort to dictionary definitions to determine what the word "incur" means in this context. The Province of British Columbia has published Residential Tenancy Policy Guideline 37C to explain that, in this context, incurred means the date the landlord issued the final cheque for the project (page 7, footnote 1).

36. Even if the dictionary definition is relevant, the Tenants' note that the dictionary definition of "incur" includes to "suffer an expense" (paragraph 29, Tenants' written submissions). A person can be said to "suffer" the expense when they make payment.

37. In addition, the Tenants' claim that the definition of "project" in RTPG 37 is inconsistent with the definition of "capital expenditure" in the Regulation. That is not the case. The definition of "capital expenditure" in the legislation does not preclude an undertaking with multiple stages or components.

38. With respect to the Tenants' argument that a Landlord could indefinitely extend the completion of a project and stop the 18-month timeline from starting indefinitely, the Tenants provide no evidence that this occurred in this case or that it would be beneficial for a Landlord to do so. Taking into account the time value of money, generally a landlord will want to begin recovering the costs of a capital expenditure as soon as the project is completed. Although it is theoretically possible for a landlord to postpone the 18-month timeline from starting, there is no evidence that this hypothetical situation is occurring in this case or why it would benefit this Landlord to do this.

39. Finally, is also important to note that an arbitrator cannot apply some parts of a policy guideline but not others, without providing a good reason for why part of the policy guideline doesn't apply (see paragraph 84 of *Chishuan Housing Society v Silver*, 2021 BCSC 1074).

40. In this case, the Tenant are asking that the arbitrator apply the portions of RTPG 37C and RTPG 40 that support their position, but not the portions that would support the Landlord's position. For example, the Tenant rely on the list of examples of "major systems" and "major components" to support their arguments about why various expenses do not fall into those categories (see paragraphs 46-51 of the Tenant' written argument) but then argue that the explicit wording of RTPG 37C with respect to when an expense is said to be "incurred" should not be applied (see paragraphs 24-33 of the Tenant' written argument).

41. The fact that the RTA provides some protections to tenants doesn't mean that policy guidelines must be ignored to the extent that it would result in a tenant having to pay an additional rent increase. The additional rent increase exists so that the cost of maintaining residential buildings is shared between the landlord and the tenants. That is the purpose of the additional rent increase regime.

5. The Tenants' Argument regarding the Building Automation System is Not Supported by RTPG 37

42. The Tenants argue that RTPG 37 should be applied to exclude the Building Automation System (the "**BAS**") because it is "merely software" and therefore, cannot be considered a major component or a major system (paragraph 50 of the Tenants' written submissions).

43. Nothing in RTPG 37 prohibits artificial intelligence or software from being considered a major system or a major component of a major system. It is not unusual for machinery which traditionally did not include software, such as motor vehicles, to now include software or "smart" components. It would be absurd if a landlord were required to parse out the cost of software or other "smart" components when upgrading equipment. It would also discourage landlords from installing the newest, most energy efficient models when replacing major systems and/or major components.

44. The Landlord provided the Tenants with a report showing the estimated cost and energy savings for the BAS of $5,824 or 11,649 m^3 of natural gas saved from the date of installation to October 23, 2023.

Tab 14 – BAS and Boiler MV Report

6. The Landlord responded to the Tenants' document requests where appropriate

45. The Tenants have provided an email in their evidence, setting out a number of documents which were requested from the Landlord. A number of these requests demanded irrelevant documents or records which are not required to be produced pursuant to the legislation. The Landlord responded to the Tenants' document request on January 29, 2024.

Response to Tenants' Document Requests [Tab 27]

46. In response to the Tenants' document requests, the Landlord has provided the following additional documents:

    a. elevator maintenance records and correspondence between the Landlord and Richmond Elevator discussing the age of the elevator and the need for a modernization. On September 30, 2021, Jon Dode, the District Manager at Richmond Elevator, wrote to the Landlord to explain that the elevator was performing well considering its age, but that it had long exceeded its expected life span [**Tab 18d**]; and
    b. information regarding the make and model of the Building Automation System ("**BAS**"), which is a JACE 8000 Vykon. The BAS allows for the entire Building

to be maintained at set environmental specifications for improved energy efficiency [**Tab 18f**].[7]

Richmond Elevator Maintenance and Repair Logs (September 27, 2021 to April 10, 2023) [Tab 18a]
Service Records from Richmond Elevator (September 15, 2021 to May 24, 2022) [Tab 18b]
Detailed description of elevator work from Richmond Elevator [Tab 18c]
Emails between Landlord and Richmond Elevator (September 2021) [Tab 18d]
Email between Landlord and Richmond Elevator (October to November 2021) [Tab 18e]
JACE 8000 Vykon Controller Data Sheet [18f]
Other elevator maintenance records [18g]

47. With respect to the elevator maintenance records, the Landlord has produced them, but says they are not relevant to this proceeding. The Landlord is not seeking to repair or replace a component that has failed. It installed new components as part of a modernization program.

48. it is important to note that the Tenants' own evidence includes complaints about the elevator prior to the modernization and includes a letter from Richmond Elevator Maintenance Ltd. explaining the need for the elevator modernization (see Tenants' document Item317_Not_Dated_Richmond_Elevator_RTB_letter).

7. Response to the Tenant' arguments raised regarding specific invoices identified by the Tenant

49. The Tenant have provided an excel spreadsheet in which they allege that nearly every invoice should not have been included in this additional rent increase application. Before addressing the specific invoices referred to in the Tenant' written submissions, it is important to make a few general points:

    a. as previously stated, the Tenant' argument that invoices are out of time and shouldn't be included because they are outside the 18-month period has no merit. Each capital expenditure includes at least one invoice paid within the 18-month period. Residential Tenancy Policy Guideline 37C, which has been applied multiple times by this Tribunal, must be applied in this case and all invoices must

[7] For Tenants wishing more information on the JACE 8000 and the automation platform, see https://www.niagara-solution-provider.store/en/products/jace-8000-automation-platform. Accessed January 31, 2024.

be considered as being made within the 18-month period, regardless of when, for example, the elevator was again accessible to tenants;

b. any large project, for example, the lobby and hallway renovations, will have a number of sub-contractors and smaller jobs that can be parsed out from the larger project. The Tenant have attempted to pick apart each capital expenditure project and claim that it is actually made up of a number of sub-projects, some of which are outside the 18-month period. That is not the intent of the legislation or Residential Tenancy Policy Guideline 37C. The reality is that residential buildings require period capital expenditures to keep these buildings safe and habitable. The additional rent increase application regime is designed to balance the needs of landlords to make these types of expenditures against protecting tenants from paying more than they should for poorly managed buildings. The regime is not intended to pick apart expenditures looking for technicalities so that tenants can avoid paying their share of these capital expenditures;

c. the Tenants complain that the Landlord has not provided before and after photographs of the capital expenditure projects. However, the Tenants themselves provide before and after photos of the lobby and hallway (Item401_2021_01_21_photos_Collection_Lobby_Hallway), lighting (Item501_2021_01_21_photos_Collection_Exterior_Lighting), and intercom system (Item601_2021_01_21_photos_Collection_Intercom).

50. The Tenant have raised concerns with the following specific invoices in their written submissions (see paragraphs 60 to 67 of the Tenant' written submissions). The Landlord provides the following explanation for these particular invoices:

   a. Invoice #21-274 from Rooney, Irving & Associates Ltd. (Tab 2a of Landlord's Written Submissions at page 2);
      i. the invoice on page 2 lists the name and address of the Building and shows the total paid with respect to this specific Building as $3,045.00. On the following page of Tab 2a (page 3) the Landlord has provided proof that this invoice was paid. The proof of payment shows that $3,045.00 was paid with respect to the Building (line 7 in the proof of payment, payment reference number 749005). Other buildings owned by the landlord also incurred a similar expense since their elevators were also modernized, but these are clearly different payments indicated by the different pay reference number for each building. This invoice came directly from the contractor providing the consulting services regarding the elevator modernization with respect to this specific Building. The Landlord has not taken a global invoice for consulting services and simply divided the total

by the number of Buildings. The $3,045.00 is the amount that the contractor specifically charged for consulting services for this particular Building. Simply because other buildings were charged the same for consulting services does not mean the Landlord has done anything wrong. It is not unusual for a contractor to charge a flat fee for certain services, such as consulting services, regardless of the number of floors in the building or the specific elevator at issue.

b. Invoice #21-665[8] from Rooney, Irving & Associates Ltd. (Tab 2a of Landlord's Written Submissions at page 5);
   i. the invoice on page 5 lists the name of the Building and shows the total paid with respect to the Building as $609.00. On the following page of Tab 2a (page 6) the Landlord has provided proof that this invoice was paid. The proof of payment shows that $609.00 was paid with respect to the Building (line 7 in the proof of payment table, pay reference 773742). Other buildings owned by the landlord also incurred a similar expense since their elevators were also modernized, but these are clearly different payments indicated by the different pay reference number for each building. This invoice came directly from the contractor providing the consulting services regarding the elevator modernization with respect to this specific Building. The Landlord has not taken a global invoice for consulting services and simply divided the total by the number of Buildings. The $609.00 is the amount that the contractor specifically charged for consulting services for this particular Building. Simply because other buildings were charged the same for consulting services does not mean the Landlord has done anything wrong. It is not unusual for a contractor to charge a flat fee for certain services, such as consulting services, regardless of the number of floors in the building or the specific elevator at issue.

c. Invoice #22-401 which the Tenants claim is at page 8 of Tab 2a of the Landlord's evidence. There is no Invoice #22-401 anywhere in the Landlord's evidence and the invoice at page 8 of Tab 2a is from Richmond Elevator Maintenance Ltd., Invoice #762738. The only other invoices that are close to #22-401 are invoices #22-397 from Rooney, Irving & Associates at page 13 of the Landlord's Tab 2a or Invoice #22-841 from Rooney, Irving & Associates at page 36 of Tab 2a. If these are the invoice the Tenants are concerned about, the Landlord provides the following response.

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[8] The Tenants mistakenly refer to this as Invoice #21-667, but the invoice on page 5 of Tab 2a of the Landlord's evidence is Invoice #21-665 from Rooney, Irving & Associates Ltd.

i. Both invoices list the name of the Building and shows the total paid with respect to this specific Building as $525.00 and $997.50 respectively. On the following pages of Tab 2a (pages 14 and 37) the Landlord has provided proof that these invoices were paid. The proof of payment shows that $525.00 was paid with respect to the Building (line 1 in the proof of payment table, pay reference 817253 on page 14) and that $997.50 was paid with respect to this specific Building (page 37, pay reference 842896). Other buildings owned by the landlord also incurred similar expenses since their elevators were also modernized, but these are clearly different payments indicated by the different pay reference number for each building. These invoices came directly from the contractor providing the consulting services regarding the elevator modernization with respect to this specific Building. The Landlord has not taken a global invoice for consulting services and simply divided the total by the number of Buildings. The $525.00 and $997.50 are the amounts that the contractor specifically charged for consulting services for this particular Building. Simply because other buildings were charged the same or similar amounts for consulting services does not mean the Landlord has done anything wrong. It is not unusual for a contractor to charge a flat fee for certain services, such as consulting services, regardless of the number of floors in the building or the specific elevator at issue.

d. Unidentified invoice number allegedly at page 3 of 2a of the Landlord's evidence for $37,065.00 which was apparently split between 12 buildings (see paragraph 61, Tenants' written submissions). There is no invoice at page 3 of the Landlord's Tab 2a. Page 3 of Tab 2a is proof of payment for invoice #21-274 from Rooney, Irving & Associates Ltd. addressed above. There is also no invoice for this amount anywhere in the Landlord's evidence.

e. Invoice #INV-02352 allegedly referring to the intercom system at the Building, which the Tenants claim is at pages 24-25, Tab 2c of Landlord's Written Submissions (Tenants' written submissions at paragraph 64). The Landlord's Tab 2c ends at page 21 and does not include pages 24-25. There is also no invoice in the Landlord's evidence, in any tab, referring to 9 or 10 intercoms. It is possible that the Tenants may be referring to Invoice INV-02341 from 1Valet showing a quantity of 0.9 intercoms and hardware. It is possible that someone, if they weren't reading carefully, could mistake 0.9 for 9. However, this invoice clearly shows only the address for this particular Building, and shows that the Landlord received a 10% discount on the cost of the invoice and hardware.

   i. this invoice clearly shows the shipping address as the Building and that it was for 1 "Valet entry console (21.5 inch) - Outdoor" intercom system (page 16, Tab 2c). This invoice shows that a single intercom system costs

$14,000.00 and the associated hardware costs $2,000.00. This is clear from the “rate” portion of the invoice. However, the Landlord received a 10% discount on this equipment, shown under “Qty” where the Landlord is only being charged for 90% (0.9 of 1.0) of the total amount. The “amount” column reflects this 10% discount, showing that of the $14,000 the Landlord was charged $12,600 and of the $2,000 the Landlord was charged $1,800. On page 18 of Tab 2c, the Landlord has provided proof of payment of $12,096 ($11,584 + $512 = $12,096) and the reference for the payment states it was for “supply intercom for 1326 West 13th Ave” (payment reference 842932). No other buildings are referenced and no costs are allocated to any other building or from any other building to this Building.

ii. It is absurd for the Tenant to argue that 9 additional intercoms were ordered and that the cost of 10 intercoms are being charged to this Building (see paragraph 64 of the Tenant’ written submissions). The quantity (i.e., number of intercoms purchased) on the invoice is 0.9 not 9 as argued by the Tenant. The only reason this is 0.9 and not 1.0 (meaning 1 intercom) is because the Landlord received a 10% discount and this is how the discount was shown on the invoice. Clearly, the Building did not receive 0.9 or 90% of an intercom – it received one intercom and the cost of that one intercom system is what is included in this additional rent increase application.

iii. If the Tenant were correct and 10 intercoms were ordered – one for this Building in addition to 9 other intercom systems - that would make the cost of each individual intercom system approximately $1,260.00 before taxes. That is an absurd amount and is less than what an individual smart phone costs. It is nowhere near the cost of an intercom system servicing an entire building with multiple residential units.

51. The Tenant also raise concerns with respect to the costs of an “artificial intelligence system” (see paragraphs 46-51 of the Tenant’ written submissions). The Building automation system is designed to make the Building operate in a more energy efficient manner (see Tabs 8 and 14 of the Landlord’s evidence). Increased energy efficiency is specifically included as a basis to make an eligible capital expenditure in section 23.1(4)(a)(iii)(A) of the Regulation. The Building Automation Sytem is an eligible capital expenditure.

8. Concerns with respect to evidence provided by Wayne O’Brien

52. The Tenants have provided an RTB Decision dated May 9, 2023, RTB File No. 310094141 where Wayne O’Brien is listed as the Tenant (see

Item102_2023_05_05_RTB_Decision in the Tenants' documents) (the "**O'Brien Decision**"). The O'Brien Decision is also included in the Landlord's evidence at Tab 10.

53. The Tenants have also provided an excel spreadsheet describing their various documents (see Item005_Tenants_Submission_Index). With respect to the O'Brien Decision, the Tenants state "RTB dispute resolution regarding File No: 310094141, first page is all that is directly relevant (See highlighted sections)".

54. The Tenants have good reason for not wanting this Tribunal to read the O'Brien Decision. In that matter, Mr. O'Brien sought $16,375.00 from the Landlord for allegations that the Landlord breached his quiet enjoyment during repairs done to the Building. A number of the repairs discussed in that decision are at issue in this application.

55. Not only was Mr. O'Brien completely unsuccessful in his monetary claim, but Arbitrator Thiessen concluded that renovations to the Building (in particular, the elevator) were required repairs, necessary for the safety of residents and to maintain the Building in compliance with section 32 of the Act (page 13, O'Brien Decision). In addition, Arbitrator Thiessen concluded that Mr. O'Brien was either "exaggerating or falsifying entirely their account" of by-law infractions (page 14, O'Brien Decision).

56. Mr. O'Brien has been held by this Tribunal in the past to exaggerate or falsify evidence. The Landlord submits that there are significant problems with respect to Mr. O'Brien's credibility and any evidence from him must be reviewed with that in mind.

9. Conclusion

57. The Landlord has provided an explanation and clarification of the above-noted issues raised by the Tenant in these reply submissions. For these reasons, and the reasons set out in the Landlord's written submissions dated September 11, 2023, the Landlord is entitled to an additional rent increase as set out in the application.

All of which is respectfully submitted.

Dated: February 4, 2024

Michael Drouillard
Counsel to the Landlord