

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

BETWEEN:

Terraces on Tenth Apartments Ltd. and CAPREIT Limited Partnership, collectively, the Landlord

APPLICANT

AND:

Tenants of 333 Tenth Street, New Westminster, British Columbia, Tenants

RESPONDENTS

LANDLORD'S WRITTEN SUBMISSIONS

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Dated: October 23, 2025



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Contents

| | |
|---|---|
| I. SUMMARY OF THE LANDLORD'S REQUEST FOR AN ADDITIONAL RENT INCREASE | |
| | 3 |
| II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS | 4 |
| III. DESCRIPTION OF ELIGIBLE CAPITAL EXPENDITURE | 7 |
| Roof Replacement (Capital Expenditure 01) | 7 |

| Documents Referenced Throughout the Landlord's Written Submissions | |
|---|---|
| Tab 1a | Title Summaries for Property |
| Tab 1b | BC Assessment Information for Building |
| Tab 2 | Invoices and Proof of Payment Documents – Building Envelope Repairs |
| Tab 3 | RTPG 37C – Additional Rent Increases for Capital Expenditures |
| Tab 4 | RTPG 40 – Useful Life of Building Elements |
| Tab 5 | Contract for Roof Replacement (Tectra Group Inc.) |
| Tab 6 | Roof Condition Report (Tri-Tech Pinnacle Group Inc.) dated May 22, 2018 |
| Tab 7 | <i>Li v Virk</i> , 2023 BCSC 83 |
| Tab 8 | ARI Decision by Arbitrator R. Yee |
| Tab 9 | ARI Decision by Arbitrator M. Fox |
| Tab 10 | ARI Decision by Arbitrator K. Wang |
| Tab 11 | <i>Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Limited</i> , 2013 SCC 34 |
| Tab 12 | Photos of Roof After Roof Replacement |
| Tab 13 | Signed Bidders Worksheet from Tectra Group Inc. |
| Tab 14 | Change to Scope of Work by Tectra Group Inc. |
| Tab 15 | Letter from Robin Connelly at Tectra Group Inc. |
| Tab 16 | Roof Service Requests (2021-2025) |
| Tab 17 | Warranty Letter from Tectra Group Inc. re Roof Replacement |
| Tab 18 | Warranty Certificate (Roof Replacement) |
| Tab 19 | Roof Maintenance Records (2019 to Roof Replacement) |

I. SUMMARY OF THE LANDLORD’S REQUEST FOR AN ADDITIONAL RENT INCREASE

1. Terraces on Tenth Apartments Ltd. and CAPREIT Limited Partnership (collectively, the “**Landlord**”) apply to the Director for an order approving an additional rent increase on the basis that it incurred eligible capital expenditures to replace the roof at the following building:

| Apartment Building – Terraces on Tenth | |
|---|--|
| Address of Building | 333 Tenth Street, New Westminster (the “ Building ”) |
| Age of Building | 57 years old (constructed in 1968) (see BC Assessment Information for Building [Tab 1b]) |
| Landlord | The Building is legally owned by Terraces on Tenth Apartments Ltd. and beneficially owned by CAPREIT Limited Partnership. Collectively, Terraces on Tenth Apartments Ltd. and CAPREIT Limited Partnership are the Landlord as defined in section 1 the <i>Residential Tenancy Act</i> , SBC 2002, c 78 (the “ Act ”). |
| Landlord’s Purchase of Building | The Landlord took over ownership and operation of the Building on September 25, 2015. |
| Number of Specified Dwelling Units | 41 |
| Total Capital Expenditures | \$644,845.82 |
| Monthly Additional Rent Increase per Unit sought | \$131.06 |

2. The Landlord makes this single application pursuant to section 43(3) of the *Residential Tenancy Act*, SBC 2002, c 78 (the “**Act**”) to increase the rent for all 41 rental units in the Building for eligible capital expenditures incurred in the 18-month period preceding the

date of this application, pursuant to sections 23.1(1) and (3) of the Residential Tenancy Regulation, BC Reg 477/2003 (the “**Regulation**”). The Landlord has not made a previous application for an additional rent increase in the last 18-months (section 23.1(2), Regulation).

3. The total amount of the additional rent increase (“**ARI**”) sought, per unit, of \$131.06 per month, was calculated using the following formula:

$$\text{ARI per Unit} = (\text{Total Capital Expenditures} / \text{Total Number of Units}) / 120$$

$$\text{ARI per Unit} = (\$644,845.82 / 41) / 120$$

$$\text{ARI per Unit} = \$131.06$$

4. In the event \$131.06 is more than 3% of the current monthly rent for a rental unit, then the remaining portion of the approved increase in excess of 3% must be applied in a later year and cannot be imposed all at once upon a tenant.

Residential Tenancy Policy Guideline 37C [Tab 3] at pages 14-16

II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS

5. The Director must grant an application for an additional rent increase for capital expenditures when the criteria set out in section 23.1, *Residential Tenancy Regulation*, BC Reg 477/2003 (the “**Regulation**”) are met.
6. The evidentiary onus is on the Landlord to show that the criteria set out in section 23.1 are met. Once the Landlord has met that onus, the Tenants only have two defences, set out in section 23.1, and the evidentiary onus is on the Tenants to prove them. One defence is that the capital expenditures were “for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord”. The other defence is that the Landlord has been paid, or is entitled to be paid, from another source.

7. To be clear, once the Landlord has established that the capital expenditure in question is the type of eligible capital expenditure contemplated by section 23.1(4), the ability of the Tenants to resist this type of application is limited. The Tenants cannot, for example, argue that the capital expenditures were unnecessary, that they were too expensive, that the Landlord does not deserve to receive the additional rent increase for any reason, or that the Landlord should be otherwise prevented from receiving this additional rent increase for some other reason. Section 23.1 does not give any room for such arguments, or any discretion for an arbitrator to refuse to grant the increase, once the Landlord has proven the requirements are met. This interpretation is directly supported by the plain language of section 23.1, and by Residential Tenancy Policy Guideline 37C.
8. The following section includes a detailed description of how the Landlord has established all the necessary requirements for the Director to grant this application, including a detailed description of the work that was done, why the work was done, and past maintenance and repairs at the building.
9. In addition to providing a detailed analysis in the next section, the Landlord has also provided the following summary table explaining the requirements set out in the Regulation that the Landlord must meet for the Director to grant this application and a brief explanation of how each requirement is established by the Landlord:

| ARI Requirements Established by Regulation | How Requirement Met by Landlord for the Building |
|---|--|
| <p>The Landlord has not applied for an additional rent increase in the 18 months preceding this application</p> <p>(section 23.1(2) of the Regulation)</p> | <p>The Landlord has not applied for an additional rent increase in the 18-months preceding this application.</p> |
| <p>The Landlord must make a single application to increase the rent for all units on which the Landlord intends to impose the ARI if approved</p> <p>(sections 23.1(1) and (3) of the Regulation)</p> | <p>The Landlord has made this single application to increase the rent for all rental units (41 units total) in the Building on which the Landlord intends to impose the ARI if approved.</p> |

| | |
|---|---|
| <p>The capital expenditures must have been incurred for one (or more) of the reasons set out in section 23.1(4)(a)(i), (ii), or (iii) of the Regulation</p> | <p>The roof of the Building was between 19 and 25 years old when it was replaced. Residential Tenancy Policy Guideline 40 [Tab 4] estimates that the original roof had an anticipated useful life of approximately 20 years. As a result, it had met or exceeded the end of its estimated useful life and was due for replacement. Parts of the roof were also in poor condition, necessitating replacement. The roof is a major system or major component of the Building (see Residential Tenancy Policy Guideline 37C at page 4 [Tab 3]).¹</p> <p>The roof was replaced in order to replace a major system that was at or close to the end of its useful life and had failed, was malfunctioning, or inoperative pursuant to section 23.1(4)(a)(ii) of the Regulation. In addition, the roof (a major system) needed to be replaced in order to maintain the Building in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32(1)(a) of the Act, as set out in section 23.1(4)(a)(i) of the Regulation.</p> |
| <p>The capital expenditures must have been incurred in the 18 months preceding this application. The date of incurrence is determined exclusively by reference to the date when the final invoice for the project was paid.</p> <p>(section 23.1(4)(b) of the Regulation and pages 7-8 of Policy Guideline 37C)</p> | <p>The Landlord paid the final invoice for this project by electronic funds transfer (EFT) on May 14, 2024. As a result, the Landlord had until November 14, 2025 to make this additional rent increase application.</p> |
| <p>The capital expenditures cannot be expected to recur in the five years following this application</p> <p>(section 23.1(4)(c) of the Regulation)</p> | <p>The roof replacement project included a 20-year warranty on materials and labour (see Tab 17 – Warranty Letter from Tectra re Roof Replacement and Tab 18 – Warranty Certificate (Roof Replacement)). This capital expenditure will not recur in the five years following the roof replacement. The requirement of section 23.1(4)(c) of the Regulation is met.</p> |

¹ Residential Tenancy Policy Guidelines do not have the force of law. However, these policy guidelines are important interpretive aids and are frequently relied on by RTB Arbitrators to interpret the Act and Regulation (see ARI Decisions of Arbitrators R. Yee [Tab 8], M. Fox [Tab 9], and K. Want [Tab 10]. Although prior RTB decisions are not precedential or binding on future arbitrators the way court decisions are, an arbitrator's decision can be set aside as unreasonable on judicial review if it deviates from prior tribunal decisions without a very good reason (see *Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at page 6 [Tab 11]). Courts in British Columbia routinely refer to policy guidelines when interpreting the Act and Regulation (see *Li v Virk*, 2023 BCSC 83 [Tab 7]).

| | |
|--|--|
| Capital expenditures cannot be required due to inadequate repair or maintenance (section 23.1(5)(a) of the Regulation) | The roof was not replaced due to inadequate repair or maintenance. The Landlord provided maintenance records for the roof (see Tabs 16 and 19) and the contractor who completed the work confirmed that the work was not due to inadequate maintenance or repair (see Tab 15). |
| Landlord cannot apply for an additional rent increase for capital expenditures that are not paid by it (section 23.1(5)(b) of the Regulation) | The Landlord incurred the total capital expenditure of \$644,845.82. The Landlord has not been paid, and is not entitled to be paid, from another source. |

III. DESCRIPTION OF ELIGIBLE CAPITAL EXPENDITURE

10. The following table provides a detailed explanation as to how each of the above-noted requirements have been established by the Landlord and why the Director must therefore grant this additional rent increase.

| Roof Replacement (Capital Expenditure 01) |
|---|
| <p>Reason for Work: Tri-Tech Pinnacle Group Inc. (“Tri-Tech”) inspected the roof at the Building on May 22, 2018 (the “Inspection”). The results of Tri-Tech’s inspection are enclosed in the Roof Condition Report at Tab 6. Tri-Tech opined that the roof condition varied between the east and the west halves of the roof. The west half of the roof was in very poor condition and was approximately 20 years old at the time of the Inspection (estimated installation date of 1998) [Tab 6, page 3]. Tri-Tech noted several specific issues with the west half of the roof, including blistering and riding and failing counterflashing. The east half of the roof was estimated to be in fair condition and appeared to have been replaced approximately 14 years prior to the Inspection (estimated installation date of 2004) [Tab 6, page 13]. Before pictures of the roof are included at Tab 6, pages 3-14. Photos taken of the roof after the roof replacement work was completed are included at Tab 12.</p> <p>Tri-Tech opined that both the west and east portions of the roof would likely reach their estimated useful life with proper maintenance [Tab 6, pages 3 and 13], but also recommended that the west half of the roof be replaced within 4-5 years after the date of the Inspection [Tab 6, page 3], or by May 22, 2023. The roof replacement took place between July 15, 2023 and November 30, 2023 [Tab 5, page 1]. At the time of replacement, the west half of the roof was approximately 25 years old and the east half of the roof was approximately 19 years old.</p> <p>The existing roof was a 2-ply modified bitumen roof membrane over ½ inch fibreboard insulation and a wood deck [Tab 6, pages 3 and 13]. A bitumen roof has an estimated useful life of 20 years [Tab 4 – Residential Tenancy].</p> |

Policy Guideline 40 – Useful Life, at page 7]. As a result, the west half of the roof reached its estimated 20-year life expectancy in 2018, five years before the roof replacement work, and the east half of the roof was within one year of its estimated useful life when it was replaced.

The roof replacement work was done to repair or replace a major system or major component that has failed or is close to the end of its useful life and to maintain the Building in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act (sections 23.1(4)(a)(i) and (ii) of the Regulation).

Scope of Work: The Landlord retained Tectra Group Inc. (“**Tectra**”) to replace the entire roof of the Building (both the west and east halves) [**Tab 5 - Contract for Roof Replacement**]. On June 9, 2023, Tectra provided a signed bidder’s worksheet explaining the work to be completed at the Building (the “**Scope of Work**”) [see **Tab 13 – Tectra Group Inc. Signed Bidder’s Worksheet** at pages 6-7 and 12]:

- supplied all materials, labour, and equipment to remove and dispose of existing roof components and assembly down to the existing roof deck and install a new 2-ply modified bitumen conventional roofing assembly and all associated components;
- all roof accessories were replaced including roof drains, stack jackets, vent cones, pitch pockets, duct/pipe/gas-line/cable tray supports, walkway pavers, metal flashing, metal counterflashing, metal cap flashing, and sealant;
- supplied all materials, labour, and equipment to disconnect and reconnect all mechanical and electrical equipment, including lifting of equipment as required to complete the roofing work and testing of all equipment;
- supplied all labour, materials, and equipment to remove and replace damaged and deteriorated wood decking with new exterior grade plywood sheathing;
- supplied all labour, materials, and equipment necessary to replace the existing roof hatch, including building the required curb to have the opening a minimum height of 12” from the finished roof level;
- built roof curbs as required to accommodate the new roofing system; and
- supplied all materials, labour, and equipment required to install new wooden patio and related components on the main roof area, including installing new metal guardrails to meet current code requirements and installation of 2” insulation below supporting points.

On November 27, 2023, Tectra provided a quote to increase the Scope of Work to include all materials, labour, and equipment required to remove existing fascia and supply and install new exterior grade plywood sheathing wrapped with blue-skin [**Tab 14 – Change to Scope of Work by Tectra Group Inc.**].

Unanticipated repairs that are discovered during a capital expenditure project are not unusual and are specifically contemplated by Residential Tenancy Policy Guideline 37C. If the work required is more extensive than originally thought, this additional work may also be eligible for an additional rent increase [**Tab 3**, pages 9-10]. In this case, the additional work was necessary and is eligible for an additional rent increase because the existing fascia needed to be replaced due to weather damage and it was observed to be at the end of its useful life [**Tab 14**, page 2].

The additional work was required to repair or replace a major system or major component that has failed or is close to the end of its useful life and to maintain the Building in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act (sections 23.1(4)(a)(i) and (ii), Regulation).

Building Maintenance: The policy rationale for making capital expenditures ineligible for an additional rent increase if they are due to improper maintenance or failure to adequately repair building components (section 23.1(5)(a), Regulation) is to incentivize landlords to take care of the rental property and to ensure that major building systems and components are in use for their approximate expected useful life. When a major system, such as a roof, is replaced at or near the end of its estimated useful life, this capital expenditure is eligible for an additional rent increase even if that system was not adequately maintained. This is made clear by this Tribunal in its policy guideline regarding additional rent increases for capital expenditures [**Tab 3 - Residential Tenancy Policy Guideline 37C at page 9**]:

An example of an ineligible capital expenditure due to the inadequate repair or maintenance of a landlord would be if a landlord knew or ought to have known that the roof was leaking but did not act promptly to fix the leak adequately and, as a result, had to repair structural damage, remediate mould, and replace drywall. The roof expenditures would be eligible because the roof was at the end of its service life. However, if the extent of the repairs or replacement necessary is due to a landlord's inaction, the full amount may not be eligible. For example, if the leaking roof was not at the end of its useful life and could have been repaired instead of being fully replaced had a landlord acted sooner, then only the amount that reflects what the repairs would have cost would be eligible.

It is only when a major system of a major component is replaced before it has reached the end of its estimated useful life that maintenance and repair concerns are relevant. If the major system or major component reaches (or nearly reaches) the end of its estimated useful life, it is eligible for an additional rent increase even if it was not adequately repaired or maintained.

In this case, the roof was between 19 and 25 years old (approximate) [**Tab 6, pages 3 and 13**]. The estimated useful life for this roof was approximately 20 years [**Tab 4 – Residential Tenancy Policy Guideline 40 at page 7**]. The entire roof reached its approximate estimated useful life and was due to be replaced. As a result, maintenance and repair concerns are irrelevant.

However, the Landlord has provided evidence to show that the roof was not replaced due to inadequate maintenance or repair. Tectra provided a letter confirming that the roof replacement work was not required as a result of the Landlord's failure to maintain the Building or make necessary repairs [**Tab 15 – Letter from Robin Connelly at Tectra Group Inc.**].

The Landlord also provided maintenance records for the roof of the Building showing that the roof was regularly maintained through cleaning the roof and gutters, removal of debris, and by making repairs as needed [**Tab 16 – Roof Service Requests (2021-2025)** and **Tab 19 – Roof Maintenance Records (2019 to Replacement)**].

Timing of Last Repair/Upgrade: The roof was estimated to have last been replaced in 1998 (west half) and 2004 (east half), or approximately 19-25 years prior to the roof replacement work by Tectra [**Tab 6, pages 2-3**]. The roof was at the end of its anticipated useful life and was in very poor (west half) to fair condition (east half) when it was replaced [**Tab 4, page 7** and **Tab 6, pages 2-3**].

Anticipated Useful Life of Repair/Upgrade: The work done by Tectra is covered by a 20-year warranty for all labour and materials used in the roof replacement project. The warranty included confirmation that the roof work

completed was watertight, in good maintenance condition, and free of defects [Tab 17 – Warranty Letter from Tectra re Roof Replacement and Tab 18 – Warranty Certificate (Roof Replacement)].

Residential Tenancy Policy Guideline 40 estimates that a bitumen roof has an estimated useful life of 20 years [Tab 4, page 7]. Wood cladding or siding has an estimated useful life of approximately 15 years [Tab 4, pages 7 and 8].

The Landlord does not anticipate doing any similar work in the next 20 years. These capital expenditures will not be incurred for at least 5 years (section 23.1(4)(c), Regulation).

Expenditures Incurred in Past 18 Months: The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made. For example, if a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be incurred is the date the landlord issued the final cheque [Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1]. The final payment for this capital expenditure is dated May 14, 2024. This means that the Landlord has until November 14, 2025 to apply for an additional rent increase with respect to this capital expenditure. This application was therefore incurred within the 18 months prior to this application (section 23.1(4)(b), Regulation).

Total Cost of Work Completed (Capital Expenditures): \$644,845.82

The Landlord incurred these expenses in full and is not entitled to be paid from another source for this capital expenditure (section 23.1(5)(b), Regulation).

| Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord | | | | | | |
|---|------------------|------------|---------------------|-------------------|-------------------|------------|
| Contractor | Invoice No. | Tab 2 Pg.# | Cost | Date Paid | Method of Payment | Tab 2 Pg.# |
| Tectra Group Inc. | 1314 | 1 | \$215,865.22 | November 28, 2023 | EFT | 5 |
| Tectra Group Inc. | 1488-R1 | 2 | \$364,496.03 | February 6, 2024 | EFT | 3 |
| Tectra Group Inc. (10% holdback payment)* | 1314 and 1488-R1 | 1 and 2 | \$64,484.58 | May 14, 2024 | EFT | 4 |
| Total Cost | | | \$644,845.82 | | | |

*The holdback is shown on invoices 1314 and 1488-R1 as “Holdback 10%”. The 10% holdback, before applicable taxes, was \$22,842.88 for invoice 1314. The contractor charged 5% GST on invoice 1314 (shown under “Sales Tax Summary”), making the total holdback with applicable taxes \$23,985.02 for invoice 1314. The 10% holdback, before applicable taxes, was \$36,160.32 for invoice 1488-R1. The contractor charged 12% GST/PST on invoice 1488-R1 (shown under “Sales Tax Summary”), making the total holdback with applicable taxes \$40,499.56 for invoice 1488-R1. The total holdback paid to Tectra Group Inc., with applicable taxes, for invoices 1314 and 1488-R1 was \$64,484.58.