

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

BETWEEN:

8735 Selkirk Street Holdings Inc. and Vancouver No. 1 Apartments Partnership, Landlord

APPLICANT

AND:

Tenants of 8735 Selkirk Street, Vancouver, British Columbia, Tenants

RESPONDENTS

LANDLORD’S WRITTEN SUBMISSIONS

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

1. 8735 Selkirk Street Holdings Inc. and Vancouver No. 1 Apartments Partnership (collectively, the “**Landlord**”) applies to the Director for an order approving an additional rent increase for the apartment building located at 8735 Selkirk Street,

Vancouver, British Columbia (the “**Building**”) on the basis that it incurred a number of eligible capital expenditures relating to the Building, totaling \$198,459.68 (the “**Total Capital Expenditures**”).

2. If the Landlord is successful with this application, it means that the arbitrator will permit the Landlord to increase a tenant’s rent an additional amount in addition to the usual permitted annual rent increase. The total amount of the additional increase sought, per unit, is determined by using a formula which takes the Total Capital Expenditures (\$198,459.68), divides it by 22 rental units, and then further divides it by 120 months (the cost is amortized over 10 years). This comes to \$75.17 per rental unit per month. In the event \$75.17 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.
3. The Building was constructed in 1959 and the Landlord took over ownership and operation on April 13, 2021. This is the first time the Landlord has applied for an additional rent increase for this Building.

BC Assessment Information [Tab 1a]

Nominee Agreement [Tab 1b]

Building Condition Assessment Report – RJC Engineers (January 12, 2021) at page 2 [Tab 5]

4. In order to obtain the arbitrator’s approval for an additional rent increase, the Landlord must establish that they meet the legal requirements set out in the Regulation to the *Residential Tenancy Act*, SBC 2002, c 78 (the “**Act**”). The purpose of this submission is to explain why the Landlord meets the requirements to receive an order for an additional rent increase.
5. First, both 8735 Selkirk Street Holdings Inc. and Vancouver No. 1 Apartments Partnership meet the definition of a “landlord” in the Act, as owners of the Building. InterRent Holdings Manager Limited Partnership, also known as CLV Group (“**InterRent**”) also meets the definition of “landlord” as either an agent of the Landlord or as a person who acts on behalf of the Landlord. This explanation of the ownership

structure of the Landlord is provided in case there is any confusion with respect to why legal title refers to 8735 Selkirk Street Holdings Inc.. while all invoices and payment documents reference Vancouver No. 1 Apartments Partnership or InterRent.

6. 8735 Selkirk Street Holdings Inc. holds legal title to the Building. However, the Building is beneficially owned by Vancouver No. 1 Apartments Partnership (the “**Partnership**”). A partnership is not a separate legal entity at law and cannot therefore hold registered title to property directly. This means that for a partnership to own property, it must hold title to the property through a separate legal entity. In this case, the Partnership holds legal title to the Building through 8735 Selkirk Street Holdings Inc. InterRent manages the Building on behalf of the Partnership.

Title Summary of Building [Tab 1a]

Nominee Agreement [Tab 1b]

7. Second, the Total Capital Expenditures all relate to expenditures that were incurred in order to maintain the Buildings in a state of repair that complies with the health, safety and housing standards required by law, pursuant to section 32(1)(a) of the Act, to repair or replace a major system or major component that has failed or is close to the end of its useful life, or to reduce energy use and greenhouse gas emissions at the Building (as set out in section 23.1(4)(a)(i), (ii), and (iii)(A) of the *Residential Tenancy Regulation*, BC Reg 477/2003 (the “**Regulation**”).

8. The Building has 22 rental units and the work done at the Building benefitted all units.

BC Assessment Information [Tab 1c]

9. Finally, the Total Capital Expenditures were incurred in the 18-month period preceding the date of this application, are not expected to recur within the next 5 years, in accordance with sections 23.1(4)(b) and (c) of the Regulation.

10. A tenant’s legal authority to oppose this kind of additional rent increase application is very limited. It’s only as specifically set out in the Act, as explained in the policy guideline. So, for example, a tenant cannot argue that the replacements or repairs could have been handled a different way, or in their opinion, at a lower cost. A tenant cannot

argue that they were unnecessary. A tenant cannot argue that a landlord should have budgeted for the cost either. Also, an arbitrator lacks jurisdiction to apply discretion not to grant an additional rent increase, when the landlord has met the requirements, because the Act says the arbitrator “must” grant the additional rent increase when the criteria are met.

11. The tenants only have two defences, and the burden of proof is on the tenants to establish them with clear and convincing evidence. Those defences are as follows:

- a. the cost of the repairs or replacements is required because of inadequate repair or maintenance on the part of the landlord; or
- b. the landlord has been paid, or is entitled to be paid, from another source.

12. The Building has been sufficiently maintained, and none of the claimed capital expenditures were required due to inadequate maintenance. RJC Engineers provided a Building Condition Assessment Report in January 2021 and noted that “[o]verall, the building is in reasonable condition for its age and is generally maintained”. Pinchin noted that the “...Building appears to be in satisfactory condition, commensurate with its age and in comparable standing to other similar residential properties in the area”.

Building Condition Assessment Report – RJC Engineers (January 12, 2021) [Tab 5] at page 4

Building Condition Assessment Report – Pinchin (March 9, 2021) [Tab 18] at page 27

13. Eventually, all building components must be replaced, even if they are well maintained. As is explained in more detail in the tables below, the work in question has a life expectancy in excess of five years. Therefore, the Director must grant this application for an additional rent increase for capital expenditures pursuant to section 23.1(4) of the Regulation.

II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS

a. Overview of Additional Rent Increase Applications

14. Part II of the Landlord’s legal submissions describes the Landlord’s position on the legal principles which apply to this type of application.
15. Section 23.1(4) of the Regulation states that the Director must grant an application for an additional rent increase for capital expenditures that are:
- a. incurred in the 18-month period preceding the date on which the Landlord made the application;
 - b. not expected to recur for at least 5 years; and
 - c. incurred for one or more of the following reasons:
 - i. to install, repair or replace a major system or major component:
 - 1. in order to maintain the residential property in a state of repair that complies with section 32(1)(a) of the Act;
 - 2. that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;
 - 3. in order to reduce energy use or greenhouse gas emissions; or
 - 4. in order to improve the security of the residential property.
6. A capital expenditure is “incurred” when payment for it is made. The Landlord paid the Total Capital Expenditures by cheque on the dates set out in the table below in these submissions. The Total Capital Expenditures were therefore incurred within the 18-month period preceding the application.

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

7. The Total Capital Expenditures are not expected to recur in the next 5 years and involve replacements and repairs of major systems or major components of major systems and the installation of a building automation system, which reduces energy use and greenhouse gas emissions at the Building. These are eligible capital expenditures pursuant to sections 23.1(4)(a)(i), (ii), and (iii)(B).

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

8. None of the Total Capital Expenditures were due to the completion of routine maintenance or resulted from a failure by the Landlord to maintain the Buildings. This is explained in more detail in the tables, below.

BC Assessment Information [Tab 1a]

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

9. The Landlord relies on Residential Tenancy Policy Guidelines 37C (“RTPG 37C”) and (“RTPG 40”) for the proposition that the date an expense is incurred is the date payment is made by the Landlord, for the proposition that all invoices for the same project can be included in an additional rent increase application so long as one invoice is within the applicable 18-month period, and for the estimated useful life of building components.
10. Finally, the term “energy use” is not defined in the Regulation to the RTA. It is not defined in any policy guideline either. The Landlord submits that this term requires a broad and remedial interpretation, intended to allow a Landlord to seek an additional rent increase for a reduction in energy in a broad range of forms, including gas, electricity, water, and anything else used to provide utilities to a residential property. A restrictive approach that does not include this broad range is not a reasonable interpretation. A broad and remedial interpretation intended to carry out the intention of the legislature is the well known required approach to legislative interpretation, and is also required by section 8 of the *Interpretation Act* of British Columbia.
11. Although policy guidelines do not have the force of law, policy guidelines are instructive and intended to help guide how legislation is to be interpreted.
12. The additional rent increase application (“ARI”) regime is new, and policy guidelines are the only interpretive aids available to landlords and tenants at this time. RTPG 37C and RTPG 40 are more detailed than other policy guidelines. They are instructive about how to apply for an ARI.

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

- a. policy guidelines provide guidance with respect to the meaning and interpretation of legislation. This permits everyone subject to the legislation to govern their affairs in a manner which provides some certainty and confidence that if they are acting consistent with the policy guidelines, they are acting consistent with the legislation; and
- b. policy guidelines provide guidance to arbitrators such that decisions made by one arbitrator are consistent with decisions of another arbitrator. This does not mean that an arbitrator is bound to follow a policy guideline by law, but generally, an arbitrator's decision should be consistent with prior decisions by other arbitrators, and all decisions should be consistent with the applicable policy guideline. If a decision varies from past decisions and/or the applicable policy guideline, there should be a good reason for the deviation, which should be explicitly explained in the arbitrator's written reasons. Otherwise, the arbitrator's decision is vulnerable to being overturned on judicial review.

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

ARI Decision of Arbitrator R. Yee [Tab 8]

ARI Decision of Arbitrator M. Fox [Tab 9]

ARI Decision of Arbitrator K. Wang [Tab 10]

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

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

Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper, Ltd., 2013 SCC 34 at para 6 [Tab 12]

III. DESCRIPTION OF ELIGIBLE CAPITAL EXPENDITURES

Installation of Building Automation System (“BAS”) (Capital Expenditure 01)

Reason for Work: A Building Automation System (“BAS”) was installed in December 2023 in order to save energy at the Building. Gas and water usage data at the Building shows a decrease in gas consumption of 20.49% and a decrease of 40.09% in water usage in 2024 compared to 2023 [**Water Consumption Data at the Building – Tab 21 and Gas Consumption Data at the Building – Tab 22**]. Improving energy use is an eligible capital expenditure pursuant to section 23.1(4)(a)(iii)(A) of the Regulation. For photos of the BAS, see **Tab 6**.

Scope of Work Completed: The BAS is a centralized system that controls and monitors space heating, domestic hot water, ventilation system, and natural gas consumption. For space heating and domestic hot water, the BAS uses sensors and actuators to regulate the temperature and flow of water to maintain a comfortable and efficient environment. The system can be programmed to adjust setpoint temperatures based on occupancy schedules, weather conditions, and any other factors that are expected to affect heating requirements. It also optimizes the operation of boilers, pumps and other heating equipment by providing real-time data on equipment performance and system faults, allowing the Building manager to identify and address issues quickly [**Letter from Marek Kozlowski re BAS [Tab 13]**].

Timing of Last Repair/Upgrade: N/A

Anticipated Useful Life of Repair/Upgrade: The Landlord estimates that the useful life of the BAS is approximately 20 years [**Letter from Marek Kozlowski re BAS [Tab 13]**].

Expenditures Incurred in Past 18 Months: The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made. If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be incurred is the date the landlord issued the final cheque [**Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1**]. The final cheque for this capital expenditure is dated February 14, 2024. This means that the Landlord has until August 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.

Total Cost of Work Completed (Capital Expenditures): \$37,148.30

Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord						
Contractor	Invoice No.	Tab 2a Pg.#	Cost	Date Paid	Method of Payment	Tab 2a Pg.#
PID Controls	INV-2002-0118-002	2	\$188.30 of \$4,147.50*	February 15, 2023	12166	1 and 3
PID Controls	INV-2023-0023-001	5	\$9,240.00	August 15, 2023	12582	4 and 6
PID Controls	INV-2023-0023-002	8	\$24,024.00	January 5, 2024	12934	7 and 9
PID Controls	INV-2023-0023-003	11	\$3,696.00	February 14, 2024	13083	10 and 12
Total Cost			\$37,148.30			

Repair and Replacement of Heating and Boiler System (Capital Expenditure 02)

Reason for Work: Two Condition Assessment Reports estimated that the boiler for hydronic heating in the Building was installed in approximately 1996 and the two water heaters for domestic water used were likely installed in 2010 or 2011 [**Building Condition Assessment Report – RJC Engineers (January 12, 2021) [Tab 5]** at pages 4 and 8 and **Building Condition Assessment Report – Pinchin (March 9, 2021) [Tab 18]** at page 21]. In addition, one of the reports noted that the plumbing was likely original to the Building [**Building Condition Assessment Report – RJC Engineers (January 12, 2021) [Tab 5]** at pages 4 and 8]. Due to the ages of the boiler and hot water tanks, it was recommended that both the boiler and the two hot water tanks be replaced prior to 2026 [**Building Condition Assessment Report – Pinchin (March 9, 2021) [Tab 18]** at pages 22, 24, and 28]. In addition, a Rental Apartment Efficiency Program Report from FortisBC identified the existing boiler and hot water tanks as being at the end of their expected useful life and also that the boiler was low efficiency. The original boiler was also controlled by Direct Digital Controls which does not have modern internet security and is prone to security threats [**Tab 19** at pages 5-6 and 9]. FortisBC analyzed a number of apartment buildings and found that buildings noted 23% gas savings on average, as a result of updating their boilers to high efficiency boilers [**Tab 19** at page 8].

Heating systems generally have an estimated useful life of approximately 15 years and domestic hot water tanks have an estimated useful life of 10 years [**RTPG 40 – Useful Life of Building Elements [Tab 4]** at pages 12-13]. The boiler and the hot water tanks had exceeded their expected useful life at the time they were replaced and are therefore eligible capital expenditures pursuant to section 23.1(4)(a)(ii) of the Regulation.

The boiler system was not replaced due to inadequate maintenance. Both Building Condition Assessment Reports noted the Building was in satisfactory condition [**Building Condition Assessment Report – RJC Engineers (January 12, 2021) [Tab 5]** at page 4 and **Building Condition Assessment Report – Pinchin (March 9, 2021) [Tab 18]** at page 27]. The Boiler system was also regularly maintained [see **Boiler Maintenance Records [Tab 12]** and **Letter from PJB Mechanical Plumbing and Heating [Tab 14]**].

For before photos of the boiler and hot water tanks, see **Tab 18** at pages 28-29 and **Tab 19** at pages 5 and 9; For after photos of the boiler and hot water tanks, see **Tab 6**.

Scope of Work Completed: The existing mid-efficient heating boiler and hot water tanks were replaced with two NTI LX400 series high-efficiency boilers, an NTI LX400WH domestic water heater, and two new 120 gallon hot water storage tanks. The pipe and fittings were also replaced, along with all pumps, flow switches, LWCOs, wells, and sensors. New electrical was installed, including emergency disconnect switches and subpanel, and side wall vents were installed. Condensate neutralizers were installed and piped to the nearest drain, and pipe installation, ASJ pipe jacket, and bend covers were also installed [see **Contract for Boiler Replacement (July 12, 2023) [Tab 17]** page 38 of 41].

Timing of Last Repair/Upgrade: As noted above, the boiler was estimated to have been installed circa 1996, making it approximately 28 years old when it was replaced. As also noted above, the hot water tanks were estimated to have been installed circa 2010/2011 and were therefore approximately 13-14 years old at the time they were replaced. Boilers have an estimated useful life of 25 years and domestic hot water tanks have an estimated useful life of 15 years [**RTPG 40 – Useful Life of Building Elements [Tab 4]** at page 9]. The boilers and hot water tanks had therefore exceeded their expected useful life at the time they were replaced.

Anticipated Useful Life of Repair/Upgrade: The Landlord anticipates that the new boiler and hot water tanks will not require replacement in at least 15 years [see **Letter from PJB Mechanical Plumbing and Heating [Tab 14]**].

Expenditures Incurred in Past 18 Months: The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made. If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be incurred is the date the landlord issued the final cheque [**Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1**]. The final cheque for this capital expenditure is dated January 17, 2024. This means that the Landlord has until July 17, 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.

Total Cost of Work Completed (Capital Expenditures): \$152,885.08

Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord

Contractor	Invoice No.	Tab 2b Pg.#	Cost	Date Paid	Method of Payment	Tab 2b Pg.#
PJB Mechanical	8577	2-3	\$63,653.03	September 11, 2023	12632	1 and 4
PJB Mechanical	9030	14-15	\$63,653.03	December 6, 2023	12856	13 and 16
PJB Mechanical	9425	18-19	\$9,119.25	December 6, 2023	12856	17 and 20
PJB Mechanical	9295	22-24	\$15,158.37	January 5, 2024	12920	21 and 26
Technical Safety BC	02161165	6-7	\$923.70	January 5, 2024	12923	5 and 8
Technical Safety BC	02160817	10-11	\$377.70	January 17, 2024	12968	9 and 12
Total Cost			\$152,885.08			

Replacement of Toilets in Building (Capital Expenditure 03)

Scope of Work Completed: The toilets in the individual units in the Building were replaced with gravity fed 3.0 litre ultra high efficiency toilets [see **Toilet Retrofit Information [Tab 20]** at page 2]. The toilets in all 22 units were replaced [see **Toilet Retrofit Information [Tab 20]** at page 5]. For after photos of the toilets in the Building, see **Tab 16**.

Reason for Work: The Landlord does not know exactly when the toilets in individual units in the Building were replaced as this pre-dates its purchase of the Building. Prior to the toilet replacement, all toilets in the building were either 5.0 L or 6.0 L toilets. The new toilets are all 3.0 L toilets which use less water and are more efficient. The replacement of the toilets is an eligible capital expenditure pursuant to sections 23.1(4)(a)(ii) and (iii)(A) of the Regulation.

Timing of Last Repair/Upgrade: As previously noted, the Landlord does not know exactly when the toilets in individual units in the Building were replaced as this pre-dates its purchase of the Building.

Anticipated Useful Life of Repair/Upgrade: Toilets have an estimated useful life of approximately 20 years. The Landlord does not anticipate another replacement of the toilets in the Building for at least 20 years [**RTPG 40 – Useful Life of Building Elements [Tab 4]** and **Letter from Water Conservation Company Limited [Tab 15]**].

Expenditures Incurred in Past 18 Months: The date on which a capital expenditure is considered to be incurred is the date the final payment related to the capital expenditure was made. If a landlord pays for the capital expenditure by cheque, the date the capital expenditure is considered to be incurred is the date the landlord issued the final cheque [**Tab 3 – RTPG 37C Additional Rent Increase for Capital Expenditures at page 7 item 3 and footnote 1**]. The final cheque for this capital expenditure is dated April 4, 2024. This means that the Landlord has until October 4, 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.

Total Cost of Work Completed (Capital Expenditures): \$8,426.30

Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord

Contractor	Invoice No.	Tab 2c Pg.#	Cost	Date Paid	Method of Payment	Tab 2c Pg.#
Water Conservation Company Ltd.	2087	11-12	\$4,935.05 of \$111,935.88*	December 6, 2023	12865	10 and 13
All Professional Trades Services Inc.	139188	2	\$2,184.00	January 30, 2024	13039	1 and 3
All Professional Trades Services Inc.	140664	5	\$682.50	January 30, 2024	13039	4 and 6
All Professional Trades Services Inc.	140676	8	\$624.75	April 4, 2024	13206	7 and 9
Total Cost			\$8,426.30			