

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

BETWEEN:

Burdette Apartments Holdings Ltd. and Burdette Apartments Limited Partnership, collectively, the
Landlord

APPLICANT

AND:

Tenants of 855 Vancouver Street, Victoria, 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. Burdette Apartments Holdings Ltd. and Burdette Apartments Limited Partnership (collectively, the “**Landlord**”) apply to the Director for an order approving an additional rent increase on the basis that the Landlord incurred eligible capital expenditures to replace the roof at the following building:

Apartment Building Information	
Address of Building	855 Vancouver Street, Victoria BC (the “ Building ”)
Age of Building	96 years old (constructed in 1930) (see BC Assessment Information for Property [Tab 1b])
Landlord	The Building is legally owned by Burdette Apartments Holdings Ltd. and beneficially owned by Burdette Apartments Limited Partnership [Tab 1a – Title Summary for Property]. The Building is managed by Hugh & McKinnon Realty Ltd. Collectively, Burdette Apartments Holdings Ltd., Burdette Apartments Limited Partnership, and Hugh & McKinnon Realty Ltd. 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 February 15, 2016.
Number of Units	16 (see BC Assessment Information for Property [Tab 1b])
Total Capital Expenditures	\$201,267.90
Monthly Additional Rent Increase per Unit	\$104.83

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 16 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 \$104.83 per month, was calculated using the following formula:

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

$$\text{ARI per Unit} = (\$201,267.90/16)/120$$

$$\text{ARI per Unit} = \$104.83$$

4. In the event \$104.83 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 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.

7. 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 must not have 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 (16 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 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 or major component of a major system that was at 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>

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 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]).

	<p>The roof of the Building was approximately 40 years old when it was replaced [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement]. Residential Tenancy Policy Guideline 40 [Tab 4] estimates that the original roof had an expected useful life of approximately 20 years. At approximately 40 years old, the roof had significantly exceeded the end of its estimated useful life and was due for replacement. The roof was also in poor condition due to its age, necessitating replacement as it could no longer be repaired [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement].</p>
<p>The capital expenditures must have been incurred in the 18 months preceding this application (section 23.1(4)(b) of the Regulation)</p>	<p>The Landlord paid the final invoice for this project by electronic funds transfer (EFT) on September 5, 2025. As a result, the Landlord had until May 5, 2027 to make this additional rent increase application.</p>
<p>The capital expenditures cannot be expected to recur in the five years following this application (section 23.1(4)(c) of the Regulation)</p>	<p>This capital expenditure will not recur in the five years following the roof replacement.</p> <p>The roof replacement project included a 40-year limited warranty on materials [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement, Tab 2 – Invoices and Proof of Payment Documents (Roof Replacement), page 8, and Tab 16 – Roof Warranty Information]. Residential Tenancy Policy Guideline 40 provides an estimated useful life for a new roof to be 20 years [Tab 4 – RTPG 40] and Roof Rider RR Ltd. estimates that the new roof could last as long as 30 years [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement].</p>
<p>Capital expenditures cannot be required due to inadequate repair or maintenance (section 23.1(5)(a) of the Regulation)</p>	<p>The roof was not replaced due to inadequate repair or maintenance.</p> <p>The roof had exceeded its expected useful life at the time it was replaced and the contractor who completed the work confirmed that the roof components were well past their expected service life [Tab 12 - RR Roof Rider Summary of Roof Condition and Roof Replacement Project and Tab 5 - Letter from RR Roof Rider Ltd. re Roof Replacement]. The Landlord has also provided maintenance and repair records showing regular maintenance and repairs (Tab 6 - Roof Maintenance and Repair Records).</p>

<p>Landlord cannot apply for an additional rent increase for capital expenditures that are not paid by it</p> <p>(section 23.1(5)(b) of the Regulation)</p>	<p>The Landlord incurred the total capital expenditure of \$201,267.90. The Landlord has not been paid, and is not entitled to be paid, from another source.</p>
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III. TENANT DEFENCES TO ADDITIONAL RENT INCREASE APPLICATIONS

8. A tenant’s legal authority to oppose this kind of additional rent increase application is very limited. An arbitrator lacks jurisdiction to apply discretion to decline 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.
9. There are only two defences a tenant can raise in response to an additional rent increase application, and the burden of proof is on the tenant to establish these defences with clear and convincing evidence:
 - 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.
10. Other concerns a tenant may have with the work are not a defence to an additional rent increase application. 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 the work was unnecessary. A tenant cannot argue that a landlord should have budgeted for the cost.
11. As explained in the section that follows, the work was not due to improper maintenance or repair of the Building by the Landlord. Eventually, all building components must be replaced, even if they are well maintained. The Landlord paid for the roof replacement work, and is not entitled to be paid from another source.

Letter from RR Roof Rider Ltd. re Roof Replacement [Tab 5]

IV. DESCRIPTION OF ELIGIBLE CAPITAL EXPENDITURE

12. The following table provides a detailed explanation as to how each of the legislative requirements for an additional rent increase have been established by the Landlord and why the Director must therefore grant this additional rent increase:

Roof Replacement (Capital Expenditure 01)

Reason for Work: The Building was constructed in 1930 [Tab 1b – BC Assessment Information Property]. The roof of the Building is mostly composed of steeply pitched roof sections, with part of the roof having a low slope [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement]. There is also a small storage shed that has a pitched roof [Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project, page 4].

The entire roof was estimated to be over 40 years old based on the materials used and the wear and tear on the roof. It had exceeded its estimated service life of approximately 20 years and required replacement as it could not longer be repaired [Tab 4 – Residential Tenancy Policy Guideline 40, Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement and Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project, pages 3-5 and 15].

The roof replacement work was done to repair or replace a major system or major component that had failed and had exceeded 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).

Steep Sections of the Roof (Including Storage Shed):

Prior to the roof replacement work, the steep portions of the roof were covered with three layers of wood and asphalt shingles. The top layer of shingles was a layer of T-lock asphalt roof shingles. The roof surface was shiplap planking, an interlocking plank that was used in the 1960s and 1970s [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement].

T-lock asphalt shingles are a type of heavy, interlocking shingle. T-lock asphalt shingles were popular in the 1930s to 1980s but were discontinued in the early 2000s when they were largely rendered obsolete by better shingle options, including architectural shingles. Since T-lock asphalt shingles have been discontinued, it is very difficult to repair or replace them, as it is nearly impossible to find matching replacement shingles. T-lock shingles also have a high risk of weather damage and are not as durable as architectural shingles [Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement].

Prior to the roof replacement, the roof shingles were de-granulated and curling up along their edges on both the pitched roof sections and the storage shed. The surface granules and asphalt component of the shingles were entirely eroded/depleted in some areas. The lower edges of the siding were damaged and needed to be mitigated with new flashing [Tab 2 – Invoices and Proof of Payment Documents (Roof Replacement), page 6, Tab 12 –RR Roof

Rider Ltd. Summary of Roof Condition and Roof Replacement Project, pages 4, 10 and 12, and **Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

Flat Portion of the Roof:

The flat portion of the roof was also old and needed replacing [**Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project**, page 5]. The low slope portion of the roof was covered with a torch-on style membrane roof. This type of roof uses flexible, polymer-modified bitumen sheets that are rolled out flat and heated with a propane torch to melt the underside, fusing the layers and seams into a watertight membrane. The surface under this section of the roof was composed of roof planking [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

The torch-on membrane on the flat roof section had deteriorated and was cracking [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]. There was water damage to the leading edges of the roof and the sheathing and a number of boards needed to be removed and replaced [**Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project**, pages 5-6].

Scope of Work:

Steep Sections of the Roof (Including Storage Shed):

To replace the steeply sloped sections of the roof, Roof Rider [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]:

- removed the existing three layers of shingles, including the top layer of T-lock asphalt shingles [see also **Tab 2**, page 6];
- removed the solar panels on the roof [see also **Tab 2**, page 6];
- installed standard 3/8” fir sheathing over the existing shiplap roof surface to form a suitable roofing deck [see also **Tab 2**, page 6];
- installed new GAF Premium Timberline HDZ asphalt architectural shingles [see also **Tab 2**, page 3];
- capped the roof ridges and hips with GAF TimberTex [see also **Tab 2**, page 3];
- coated the roof valleys and eave edges with GAF Weatherwatch Mat Self-Sealing Ice & Water barrier [see also **Tab 2**, page 3];
- covered the remaining deck with GAF Feltbuster synthetic underlay, GAF ProStart Starter strip and installed a metal drip edge along the eaves and gables [see also **Tab 2**, page 3];
- installed new metal valleys, plumbing boots, exhaust fans, and six permanent hidden stainless steel roof anchors [see also **Tab 2**, page 4];
- installed new seamless aluminum, 5” K-style gutters with thermoplastic sealant [see also **Tab 2**, page 8];
- installed two new 5/8” metal square aluminum downpipes, two new 3/8” metal downpipe outlets, and stainless steel fasteners [see also **Tab 2**, page 8]; and
- installed a new Alurex T-Rex gutter guard and hanging system with all corners composed of separate, removable pieces [see also **Tab 2**, page 8].

Architectural shingles were selected for the steeply sloped sections of the roof because they provide better water shedding than other roofing alternatives, making them ideally suited for steeply sloped roofs [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

Flat Portion of the Roof:

To replace the flat section of the roof, Roof Rider [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]:

- removed and disposed of the existing roof membrane [see also **Tab 2**, page 5];
- removed and disposed of the existing skylight and installed a new Velux 3x4 low E skylight [see also **Tab 2**, page 10];
- installed recovery board over the original roof planking [see also **Tab 2**, page 6];
- installed an IKO 2-ply bitumen flat roof with a Fast N Stick mechanically fastened base system [see also **Tab 2**, page 5];
- installed armoubond on the perimeters of the roof (where the membrane wraps over the top of the roof edges) [see also **Tab 2**, page 5];
- installed a 250 Cap layer on the field, new exhaust vent, new plumbing stacks, a scupper, and new copper 2” drains [see also **Tab 2**, page 5];
- completed the necessary stucco work to install the flashing under the siding for a positive lap [see also **Tab 2**, page 10]; and
- reattached the fire scape, framed a platform around it to protect it from weather, and waterproofed it by re-sheeting most of the sub-roof slope and installing 2-ply, flat roof membrane system [see also **Tab 2**, page 12].

A 2-ply bitumen flat roof was installed on the flat section of the roof because this type of roofing material creates a watertight surface, preventing leaks on flat roofs where water tends to sit for longer periods of time compared to sloped roofs [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

Building Maintenance: Concerns about inadequate maintenance and repair do not preclude an additional rent increase if the work done was to replace a major system or major component of a major system that had met or exceeded its estimated useful life. In this case, the entire roof had significantly exceeded its estimated useful life [**Tab 4 – Residential Tenancy Policy Guideline 40** and **Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

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 exceeds) 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, gutters, downspouts, and skylights were confirmed to be well past their estimated service life and required replacement [**Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project**, pages 3-5 and 15 and **Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]. As a result, even if inadequate maintenance and/or repairs could be proven (which is denied), this would not make the roof replacement work ineligible for an additional rent increase application.

However, the Landlord did not fail to complete necessary maintenance and repairs to the roof. The Landlord has provided records showing repair work to the roof, the gutters and flashing, and the drain filter as well as cleaning for the roof, gutters, and downspouts. The Landlord also completed preventative maintenance work by installing stainless steel filters in the gutters/downspouts to prevent clogs and by repairing the roof leading up to the replacement [**Tab 6 – Roof Maintenance and Repair Work**]. RR Roof Rider Ltd. confirmed that the roof replacement work was not due to inadequate maintenance or repair [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**].

Timing of Last Repair/Upgrade: The Landlord estimates the entire roof was last been replaced in the late 1970s or early 1980s. Roof Rider confirmed the roof components were well past their estimated service life, and the roof was approximately 40 years old [**Tab 12 –RR Roof Rider Ltd. Summary of Roof Condition and Roof Replacement Project**, pages 3-5 and 15, and **Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]. The Landlord took over ownership and operation of the Building in February 2016 and has not completed a roof replacement in that time.

Anticipated Useful Life of Repair/Upgrade: The roof replacement work done by RR Roof Rider Ltd. includes a 40-year limited warranty on materials. With proper maintenance, architectural shingles and 2-ply bitumen roofs can last as long as 30 years [**Tab 5 – Letter from RR Roof Rider Ltd. re Roof Replacement**]. Residential Tenancy Policy Guideline 40 estimates that a bitumen roof and asphalt shingles both have an estimated useful life of 20 years [**Tab 4, page 7**].

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 electronic funds transfer (“EFT”) or cheque, the date the capital expenditure is considered to be incurred is the date the landlord transferred the funds electronically or the date of 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 was made by EFT dated September 5, 2025. This means that the Landlord has until March 5, 2027 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): \$201,267.90

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.#
RR Roof Rider Ltd.	192771	26	\$1,015.09	May 16, 2024	Cheque (1746)	27-29
RR Roof Rider Ltd.	192840	20	\$23,000.00	September 18, 2024	Cheque (1770)	19 and 21-22
RR Roof Rider Ltd.	192862	6	\$50,000.00	October 24, 2024	Cheque	5 and 7-8
RR Roof Rider Ltd.	192888	10-13	\$97,895.42	July 18, 2024	EFT	23-25
				December 6, 2024	Cheque	9 and 14-15
RR Roof Rider Ltd.	192907	18	\$10,040.79	June 18, 2025	EFT	16-17
RR Roof Rider Ltd.	192918	2-3	\$19,316.60	September 5, 2025	EFT	1 and 4
Total Cost			\$201,267.90			