

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

BETWEEN:

3836 CARRIGAN COURT APARTMENTS LTD., Landlord

APPLICANT

AND:

Tenants of 3836 Carrigan Court, Burnaby, Tenants

RESPONDENTS

LANDLORD’S WRITTEN SUBMISSIONS

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I. INTRODUCTION

1. 3836 Carrigan Court Apartments Ltd. (the “**Landlord**”) applies to the Director for an order approving an additional rent increase for 3836 Carrigan Court, Burnaby, B.C. (the “**Building**”) on the basis that the Landlord has made a number of eligible Capital Expenditures relating to the building, totaling \$543,707.90 (the “**Total Capital Expenditures**”).
2. The Total Capital Expenditures relate to a single project to repair the balconies, parkade, and soffits at the building.
3. 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, and were incurred to repair or replace a major component or major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life. The Total Capital Expenditures were also required in order to repair or replace a major system or major component to maintain the Building in a state of repair that complies with section 32(1)(a) of the *Residential Tenancy Act*, SBC 2002, c 78 (the “**Act**”).
4. The Director must therefore grant this application for an additional rent increase for capital expenditures pursuant to section 23.1(4) of the *Residential Tenancy Regulation*, BC Reg 477/2003 (the “**Regulation**”).
5. The Building has 65 rental units that are affected by this matter. The total amount of the increase sought, per unit, is determined by using a formula. The formula takes the Total Capital Expenditure, divides it by 65 rental units, and then further divides it by 120 months (the cost is amortized over 10 years). This comes to \$69.71 per rental unit per month. In the event \$69.71 is more than 3% of the current monthly rent for a rental unit, then the remaining portion in excess of 3% must be applied in a later year, and cannot be imposed all at once upon a tenant.

II. SUMMARY OF LAW RELATING TO ADDITIONAL RENT INCREASE APPLICATIONS

6. 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. If a landlord pays for a capital expenditure by cheque, the date the capital expenditure is considered to be “incurred” is the date the landlord issued the final cheque.

Residential Tenancy Policy Guideline 37C – Additional Rent Increase for Capital Expenditures [Tab 3]

7. The Landlord paid the Total Capital Expenditures by direct deposit, and the final transfer for the expenditure was made on February 1, 2022. This application was made on June 8, 2023, and the Total Capital Expenditures were therefore incurred within the 18-month period preceding the application.

8. The Total Capital Expenditures are not expected to recur in the next 5 years. The estimated life expectancy of the repairs is 20 years, described in more detail in the section that follows.

Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements [Tab 4]

9. Finally, the Total Capital Expenditures were incurred due to the total failure or malfunction of a major system or major component. The Total Capital Expenditures were required to be made in order to maintain the Building in a state of repair which complies with section 32(1)(a) of the Act.
10. A major system or major component includes siding and load bearing elements such as walls.

Residential Tenancy Policy Guideline 37C – Additional Rent Increase for Capital Expenditures [Tab 3]

11. As will be described in more detail in the following section, the repairs were required to replace a system that was failing and permitting water ingress into the building. 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 Building.

III. DETAILED DESCRIPTION OF CLAIMS

Roof Replacement (Capital Expenditure 01)

Scope of Work Completed: Localized repairs to cladding performed. Removal of existing cladding at building A south elevation and reinstallation of new rain screen system with Hardie board cladding completed. Minor roof repairs to address missing shingles were completed (see Statement of Doru Co Cornescu [Tab 4] and Observation Reports of McIntosh Perry [Tab 5]).

Reason for Work: Water damage (rot) to the wood frame building structure was discovered requiring stucco removal and reinstallation of a new rain screen system to remedy the issues and prevent further deterioration (see Statement of Doru Co Cornescu [Tab 4] and Observation Reports of McIntosh Perry [Tab 5]).

Timing of Last Repair/Upgrade: No replacement of the rain screen system has taken place since the Landlord took over ownership and operation of the building in 2015.

Anticipated Useful Life of Repair/Upgrade: RTPG 40 [Tab 3] sets out the estimated useful life for waterproofing membrane as 15 years and stucco siding as 20 years and in the statement of the engineer supervising the project, the repairs are estimated to last for 20 years (see Statement of Doru Co Cornescu [Tab 5]).

Total Cost of Work Completed (Capital Expenditures): \$543,707.90

Detailed Description of All Work Done, Dates Costs Incurred, and Method of Payment by Landlord					
Work Done	Invoice No.	Tab 2a Pg.#	Cost	Date Paid (bank transfer)	Tab 2a Pg.#
CC MANAGEMENT SOLUTIONS – Project management services for balcony, parkade and soffits project	83734	1	\$12,153.56	August 17, 2021	54-55
Edge Group – Remove deteriorated balcony components, install new waterproofing membrane, etc.	48	3-4	\$184,796.64	August 17, 2021	56-57
Edge Group – Remove deteriorated balcony components, install new waterproofing membrane, etc.	56	15-16	\$184,796.64	February 1, 2022	56-57
Edge Group – Remove deteriorated balcony components, install new waterproofing membrane, etc.	72	28-29	\$92,398.32	February 1, 2022	56-57
CC MANAGEMENT SOLUTIONS – Project management services for balcony, parkade and soffits project	86675	40	\$12,153.56	February 1, 2022	54-55
CC MANAGEMENT SOLUTIONS – Project management services for balcony, parkade and soffits project	86676	41	\$6,076.78	February 1, 2022	54-55
Edge Group – Holdback invoice	73	43	\$51,332.40	May 1, 2022	56-57
Total Cost			\$543,707.90		

Conclusion

12. 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, and were incurred to repair or replace a major component or major system that had failed, was malfunctioning or inoperative, or was close to the end of its useful life. The Total Capital Expenditures were also required in order to repair or replace a major system or major component to maintain the Building in a state of repair that complies with section 32(1)(a) of the Act.

13. Therefore, the Director must grant this application for an additional rent increase for the Total Capital Expenditures pursuant to section 23.1(4) of the Regulation.

14. As set out above, the Building has 65 rental units that are affected by this matter. The total amount of the increase sought, per unit, is determined by using a formula. The formula takes the Total Capital Expenditure, divides it by 65 rental units, and then further divides it by 120 months (the cost is amortized over 10 years). This comes to \$69.71 per rental unit per month. In the event \$69.71 is more than 3% of the current monthly rent for a rental unit, then the remaining portion in excess of 3% must be applied in a later year, and cannot be imposed all at once upon a tenant.

All of which is respectfully submitted.

Dated: September 6, 2023



Michael L. Drouillard

Counsel to the Landlord