



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOUISE COURT HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ARI-C

Introduction

The Landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The Landlords ask us for an order permitting them to increase rent to account for:

1. \$268,328.55 spent restoring pipes in the rental building [the 'Pipes'];
2. \$96,000.00 spent replacing the building's boiler [the 'Boiler']; and
3. \$1,511.93 spent replacing a fire door [the 'Door'].

The corporate Landlords participated in this hearing by way of agents. Four of the 58 tenants participated.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Issues to be Decided

Can the Landlords increase rent because of:

1. having to restore the Pipes?
2. replacing the Boiler?
3. replacing Door?

Background and Evidence

Regarding the Pipes, the Landlords told us the following:

1. they took over this building in 2021, and incurred the cost of restoring these Pipes on 24 May 2022;
2. there are no written records of maintenance of these Pipes;
3. but the previous building manager informed the Landlords that the Pipes had been improperly repaired, *i.e.* had only been repaired with temporary fixes;
4. their insurance won't cover the cost of restoring the Pipes because this was a known issue when the Landlords acquired the property;
5. they restored only the Pipes on the east and west portions of the building, and they cannot say whether there might be further restoration needed next year.

As for the Boiler, they told us the following:

1. after a rebate of \$9,000.00, the new Boiler (which is more energy efficient) cost the Landlords \$96,000.00, which they paid on 24 October 2022;
2. the Boiler heats the entire building;
3. they have no records of the past maintenance of the old boiler; and
4. they do not expect to replace the Boiler again for another 15 to 20 years.

As for the Door, they told us the following:

1. it cost the Landlords \$1,511.93, which they paid on 18 April 2022;
2. it secures the building against unauthorised entry (as people had been breaking into the building via the old door) and so enhances the safety of the occupants;
3. they have no maintenance records for the old door, which was over 40-years old;
4. they received no rebates for the new Door, and as their insurance has a \$25,000.00 deductible, they were not entitled to;
5. they last had to purchase a door over 40 years ago, and the supplier of the new Door gave a life expectancy of 25 years.

Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above,

we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

Statutory Framework

Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for determining if a Landlord is entitled to impose an additional rent increase for capital expenditures.

A Landlord must prove the following, on a balance of probabilities:

1. the Landlord has not successfully applied for an additional rent increase against these tenants within the last 18 months (s. 23.1(2));
2. the number of specified dwelling units on the residential property (s. 23.2(2));
3. the amount of the capital expenditure (s. 23.2(2)); and
4. that the work was an eligible capital expenditure (s. 23.1(4)) [the 'Eligibility'].

Tenants may defeat an application for an additional rent increase for capital expenditure if they prove the capital expenditure was probably incurred because of inadequate repair or maintenance on the part of the Landlord (s. 23.1(5)(a)) [the 'Inadequate Maintenance'] or that the Landlord has probably been paid (or is probably entitled to be paid) from another source for that expenditure (s. 23.1(5)(a)) [the 'Alternate Funding'].

We note that the Tenants did not take issue with:

1. the fact that the Landlords had not already successfully applied for an additional rent increase against these tenants within the last 18 months;
2. the Landlords' statements that there was no Alternate Funding for these expenditures (save for the Boiler);
3. the number of specified units being 58; or
4. the amounts of the expenditures claimed by the Landlords.

The Tenants did argue, however, that there was Inadequate Maintenance of the Door, but offered no proof to support this argument. Absent any such proof, we do not accept that there was probably Inadequate Maintenance of the Door.

The Tenants also question whether the Pipes suffer from Inadequate Maintenance, as the Landlords did not submit maintenance records for these Pipes. While we accept that the Landlords have no written maintenance-records for these Pipes to submit (because they acquired the property from previous owners who did not keep such records), we note that the person who managed the building for the previous owners conceded to the

Landlords that the Pipes were not, in essence, properly maintained: they were only maintained with temporary fixes, which we take to indicate that more-appropriate fixes could've been made to the Pipes, but were not.

We find, therefore, that the Pipes were probably not maintained as they ought to have been and that, as a result, they probably needed to be restored now because of this failure to properly maintain them.

Eligibility of Capital Expenditure

As for the Eligibility of the expenditures, the Landlords must prove the following:

- A. the work was probably done to repair, replace, or install a major system or a component of a major system (S. 23.1(4));
- B. the work was probably undertaken for one of the following reasons:
 - a. to comply with health, safety, and housing standards (s. 23.1(4)(a)(i));
 - b. because the system or component:
 - i. was close to the end of its useful life (s. 23.1(4)(a)(ii)); or
 - ii. had failed, was malfunctioning, or was inoperative (s. 23.1(4)(a)(ii));
 - c. to achieve a reduction in energy use or greenhouse gas emissions (s. 23.1(4)(a)(iii)(A)); or
 - d. to improve the security of the residential property (s. 23.1(4)(a)(iii)(B));
- C. the capital expenditure was probably incurred less than 18 months prior to the making of the application (s. 23.1(4)(b)) [the 'Timeframe']; and
- D. the capital expenditure is probably not expected to be incurred again within five years (s. 23.1(4)(c)) [the 'Recurring Expenditure'].

The Tenants take no issue with Landlords' having met the majority of these Eligibility qualifications. But they do argue that the Pipes and Boiler will be a Recurring Expenditure. They also argue that the Door and Pipes were repaired outside of the Timeline.

As for the Timeline, the uncontested statements of the Landlords are that the cost of the Pipes was incurred on 24 May 2022 and the cost of the Door, on 18 April 2022. RTB records show that the Landlords filed this application on 15 September 2023. This means that the applicable Timeline is between 15 March 2022 to 15 September 2023. Inarguably, the costs of the both the Door and the Pipes were incurred within this Timeline.

Will the Boiler and Pipes be Recurring Expenditures?

The Tenants point out that, since the Boiler has been installed, it has had to be serviced and argue, therefore, that the Boiler will be a Recurring Expenditure.

The Landlords reply that such servicing is not uncommon when a new system is installed. We accept that Landlords' argument: the servicing of a new boiler does not necessitate that the boiler will need to be replaced all over again. In other words, we do not accept that the Boiler needing servicing after installment means that the replacement of the Boiler is a Recurring Expenditure.

As for the Pipes, the Landlords concede that they do not know if the Pipes will need further restoration come 2025. In light of this concession, it appears that the cost of restoring these Pipes could be expected to be incurred again within five years. That is, we do not find that the Landlords have proved that the Pipes will probably not need to be restored again within five years.

We also note that the Pipes were restored for only part of the building, but the Landlords offered no indication as to which of the 58 units benefited from that restoration.

Because of this and because of our finding that the Pipes were probably not properly maintained, we dismiss Landlords' application for an additional rent increase in respect of restoring the Pipes.

For the above-stated reasons, we find that presently only the capital expenditures for the replacement of the Door and Boiler are eligible capital expenditures, as defined by the Regulation.

Section 23.2 of the Regulation sets out the formula to be applied when calculating the amount of the additional rent increase as the number of specified dwelling units divided by the amount of the eligible capital expenditure divided by 120.

We find this sum to be \$14.01 [$\$1,511.93 + \$96,000.00 / 58 \text{ units} / 120$].

If this amount exceeds 3% of monthly rent, the Landlords may not be permitted to impose a rent increase for the entire amount in a single year.

The parties may refer to RTB Policy Guideline 37, section 23.3 of the Regulation, section 42 of the Act (which requires that Landlords provide Tenants three months'

notice of a rent increase), and the additional rent increase calculator on the RTB website for further guidance regarding how this rent increase made be imposed.

Conclusion

We grant the Landlords' application for an additional rent increase for capital expenditure in the amount of \$97,511.93.

The Landlords must impose this increase in accordance with the Act and the Regulation.

We order the Landlords to serve the Tenants with a copy of this decision in accordance with section 88 of the Act.

We make this decision on authority delegated to us by the Director of the RTB *per* section 9.1(1) of the Act; and on the traditional and unceded territory of the ləkʷəŋən speaking peoples, known today as the Esquimalt and Songhees Nations.

Dated: 12 February 2024

Residential Tenancy Branch