



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR08-007
Order LR08-09**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Blue Ridge Holdings Inc. against Order No. LD08-174 of the Director of Residential Rental Property, dated April 10, 2008.

BEFORE THE COMMISSION
on Thursday, the 17th day of July, 2008.

Maurice Rodgerson, Chair
Ernest Arsenault, Commissioner
Gordon McCarville, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Blue Ridge Holdings Inc. against Order No. LD08-174 of the Director of Residential Rental Property, dated April 10, 2008.

Participants

1. **Appellant:** Blue Ridge Holdings Inc.
Represented by:
Cleve Myers (oral and written submissions)

2. **Respondents:** Residents of the Jeanne-Lin Mobile Home Park
Residents or representatives of residents who spoke at the hearing:
Charles Rockland Arsenault
Wayne MacCormack
Sterling Cole
Charles McFadden
Brenton Paynter
Residents or representatives of residents who filed written submissions prior to or at the hearing:
Sharon Beedie
Willis Paynter
John Kelly
Catherine Kelly
Charles McFadden
John MacCormack
Elsie MacCormack

Reasons for Order

1. Introduction

Blue Ridge Holdings Inc. (Blue Ridge) has appealed Order LD08-174 (Exhibit E-26) issued by the Office of the Director of Residential Rental Property (the Director) on April 10, 2008. The Island Regulatory and Appeals Commission (the Commission) received Blue Ridge's Notice of Appeal (Exhibit E-25) on May 2, 2008.

The Director's Order LD08-174 concerns an Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation (Form 12), pursuant to subsection 23(3) of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**) and section 14 of the Regulation. Blue Ridge filed two Form 12 application forms on January 24, 2008. The first form, labelled "Part I", concerns 23 mobile home sites in the Jeanne-Lin Mobile Home Park (the Park) and the second form, "Part II", concerns an additional 44 mobile home sites in the Park.

The allowable percentage increase set by the Commission for 2008 for a mobile home park site is 0%.

The remedy sought by Blue Ridge in its original application before the Director was a 41.25% increase in monthly rent for the 23 sites in "Part I" and a 42.67% increase in monthly rent for the 44 sites in "Part II".

In Order LD08-174, the monthly rent per site was increased from \$75.00 to \$87.00 for 44 sites and from \$80.00 to \$92.00 for the remaining 23 sites.

The appeal was heard in the Lion's Club Hall in Kensington, Prince Edward Island on Friday, May 30, 2008 commencing at 1:00 p.m. Approximately 34 residents, or their representatives, attended the hearing.

2. Submissions

Blue Ridge's Position at the Hearing

Amortization of Capital Expenditures

In Blue Ridge's Lessor's Statement of Income and Expenses (Form 15) (Exhibit E-8) and the attached Projected Statement of Costs for the years 2008 and 2009, both documents received by the Director on January 24, 2008, the following information is noted with respect to capital expenditures:

- Acquisition cost of pavement \$60,000.00 amortized over 10 years for an “annual write-off” of \$6,000.00.
- Acquisition cost of plumbing pipes, pumps, etc. of \$79,000.00 amortized over 20 years for an “annual write-off” of \$3,950.00.
- Total “annual write-off” (annual amortization costs) of capital expenditures of \$9,950.00.

In its written submission filed at the appeal hearing (Exhibit E-31), Blue Ridge submitted the following revised capital expenditure information:

- Acquisition cost of pavement \$35,200.00 amortized over 10 years for an “annual write-off” of \$3,520.00.
- Acquisition cost of plumbing pipes, pumps, etc. of \$80,400.00 amortized over 20 years for an “annual write-off” of \$4,020.00.
- Total “annual write-off” of capital expenditures of \$7,540.00.

Blue Ridge submitted that the costs noted in Exhibit E-31 have already been incurred and are allowed capital expenditures pursuant to Form 15; therefore, an amortization amount should have been included in Order LD08-174. Blue Ridge requested an additional monthly site rent increase in the amount of \$9.38 for all 67 sites, reflecting annual amortization costs, over and above the increase provided for in Order LD08-174.

Property Taxes

Order LD08-174 identified annual property tax expenditures as \$2,069.25. This figure was based on information obtained by the Hearing Officer from Provincial Treasury on March 27, 2008. At the time of filing its Notice of Appeal, Blue Ridge was unaware that this information was incorrect. It appears that only one parcel was considered in Order LD08-174. In actuality, there are two parcel numbers for the Park and recently received property tax bills note the following taxes payable for 2008:

- Parcel 472175 annual taxes of \$2,677.00
- Parcel 426338 annual taxes of \$829.36
- Total annual taxes of \$3,506.36

Order LD08-174 states that the property tax expense for 2007 was \$2,737.30 and Blue Ridge agreed with this statement. Blue Ridge used the amount of \$2,737.30 in making its original cost projections for 2008 and 2009. However, actual taxes for 2008 are now known to be \$3,506.36. Blue Ridge submitted that the actual annual property taxes of \$3,506.36 should be considered rather than the \$2,069.00 amount cited in error in Order LD08-174.

Blue Ridge requested an additional monthly site rent increase in the amount of \$1.79, reflecting annual property taxes, over and above the increase provided for in Order LD08-174.

Blue Ridge's Summary and Addendum

Given the above analysis, Blue Ridge originally requested an additional monthly site rent increase of \$11.00 over and above the increase of \$12.00 per site per month approved in Order LD08-174. This would have resulted in 44 sites renting at \$98.00 per month and 23 sites renting at \$103.00 per month. Blue Ridge submitted that these site rents are slightly lower than the average rental rates for other mobile home parks in Prince Edward Island.

However, during the Commission's post-hearing deliberations, questions for clarification purposes were forwarded to Blue Ridge's representative. In response, Blue Ridge's representative abandoned its request for a rental increase to cover amortization of capital expenditures.

Blue Ridge maintains its position that an additional increase, now specified as \$2.00 per month per site, is warranted to reflect the upward adjustment in property taxes.

Residents' Position

All but one resident who participated in the hearing process were opposed to further increases in site rent. A summary of the points expressed orally and in writing by residents of the park and their representatives follows.

- Most residents are either on a fixed income, or only receive small increases in wages. They cannot afford a large increase in their mobile home site rent.
- The streets within the Park are in poor condition with numerous potholes and broken pavement.
- Vacant lots are infrequently mowed.
- The Park should be improved before the site rent is increased.
- Concern that Blue Ridge will seek further increases in following years.
- Residents already face large increases in the cost of utilities, furnace oil and gasoline.
- The allowable mobile home park site rent rate of increase set by the Commission for 2008 is 0%. The Director approved a site rent increase of 15% for those paying \$80 per month and 16% for those paying \$75 per month. While residents were less than happy with these increases, they were prepared to live with it.
- By seeking to include amortization expenses, Blue Ridge is challenging the "analysis" of the Director. The Director had to adjust several of Blue Ridge's filed expenses, including insurance, maintenance, property taxes and management fee.
- Blue Ridge has stated that there is no specific amount to be spent on paving.
- Blue Ridge claims that the sites being charged \$80 per month are larger than those sites being charged \$75 per month. Blue Ridge also claims that the \$80 per month sites are located in the newer section of the park. However, in actual fact only the north side of Third Street, numbers 55 to 67 inclusive, forms the "newer" section of the Park. This newer section was completed about 10 years ago and features double paved driveways. The other sections of the Park have single driveways in deplorable condition. The other ten sites that are presently paying \$80 per month (numbers 2, 20, 43, 44, 47, 48, 49, 50, 52 and 54) are "overcharged".

- Residents should not be expected to pay for what appears to be a poor investment by Blue Ridge. What is Blue Ridge offering residents in return for higher site rent?

One resident was in favour of a further increase in the site rent within the Park:

- Even with the additional requested increase, the monthly site rent was a good value compared to the cost of land, installation of a well and septic system etc. that a resident would face if he or she were to purchase their own private lot.

With the one exception noted above, the residents urged the Commission not to grant any further increase for site rent in the Park.

3. Decision

The Commission allows the appeal for the reasons that follow.

Subsection 26(1) of the **Act** sets out the *de novo* (anew, afresh) nature of an appeal to the Commission:

26. (1) *An appeal to the Commission shall be by way of a re-hearing, and the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit and make such decision or order as the Director is authorized to make under this Act.*

Subsection 23(8) of the **Act** sets out the factors to be considered at a hearing of an application for a rental increase greater than the annual prescribed percentage rent increase:

23(8) *At the hearing both parties are entitled to appear and be heard and the Director shall consider the following factors:*

(a) whether the increase in rent is necessary in order to prevent the lessor sustaining a financial loss in the operation of the building in which the premises are situate;

(b) increased operating costs or capital expenditures as advised by the lessor;

(c) the expectation of the lessor to have a reasonable return on his capital investment;

(d) such other matters as may be prescribed by the regulations.

Sections 18 and 19 of the Rental of Residential Property Act Regulations (the Regulations) read as follows:

18. *For the purposes of subsection 23(8) of the Act, the following definitions shall apply:*

(a) "capital expenditures" includes replacement of plumbing, electrical or heating systems or appliances, and major structural repairs;

(b) "financial loss" means the difference between the total income from the building less operating costs;

(c) "income" means the rental fee assigned to each unit and revenue from facilities such as coin operated laundry machines and parking;

(d) "maintenance" includes repairs to plumbing, electrical or heating systems, or to appliances, or minor structural repairs, but does not include capital expenditures or replacement of capital assets;

(e) "management fee" means the actual cost thereof or 5 per cent of the gross rental income for the previous year, whichever is the lesser;

(f) "operating costs" excludes depreciation costs, but includes the basic expenses necessary for the operation of the building such as fuel, water, electricity, insurance, taxes, maintenance, management fees, staff wages or value of rental unit made available in lieu thereof, and financing costs of principal and interest on mortgages registered against the property. EC10/89.

19. (1) In considering capital expenditures pursuant to subsection 23(8) of the Act, the Director shall have regard to the cost of the item and the financing of it over a reasonable period of time in relation to the life expectancy of the item.

(2) The life expectancy chart set out in Form 16 is to be applied unless the lessor substantiates a shorter life expectancy for a particular item. EC10/89.

Form 16 provides the following capital expenditures life expectancy data:

Parking Lot, Driveways and Walkways Asphalt (or other materials) 10 Years

Plumbing Pipes, Pump, etc. 10 years

With respect to property tax expenses, the Commission notes that the property taxes of \$2,069.25 identified in Order LD08-174 are in error. With the benefit of information presented by Blue Ridge after having received its Notice of Assessment (which was not available at the time of the hearing before the Director) and based on the fact that the Park actually consists of two parcel numbers, the Commission finds that the actual allowable expense for provincial and municipal property tax is \$3,506.36.

Blue Ridge originally sought a monthly site rent increase attributable to capital expenses for pavement and plumbing, pipes etc. The annual capital expense originally claimed before the Director was \$9,950.00. This expense was rejected in Order LD08-174:

Based on the information and evidence before me, the Officer finds that the lessor has not provided any substantive evidence to support the capital expense of \$9,950.00 per annum. The lessor cannot build up a fund for capital related work. The Officer can only allow capital expense which has been incurred or will be incurred within a reasonable time, however, this is not the case in this matter. As a result, the Officer has removed this amount from the lessor's expenses.

The Commission finds that the above is a correct analysis based on the information presented at the original hearing.

During its deliberations, the Commission sought clarification from Blue Ridge's representative with respect to the depreciation of capital expenditures and its inclusion in the calculation of site rent.

Pursuant to section 17 of the **Act's** Regulations, principle and interest of a first and second mortgage are allowable expenses and can be included on Form 15. The Commission sought clarification from Blue Ridge as to whether the first and second mortgages funded the cost of the land as well as the capital improvements to and attached to the land (which would include pavement, water and sewer lines, wells etc.). The Commission was concerned that by recognizing mortgage principle payments for land and capital improvements as an allowable expense and also including depreciation on these same capital improvements, it appeared that these expenditures are recognized twice.

Blue Ridge's representative noted that there was an inconsistency in the **Act** and the Regulations. Blue Ridge noted that it would abandon its request for a rental increase to cover amortization of capital expenditures. Blue Ridge will request a rental adjustment if and when additional improvements are made which would warrant such a request.

Blue Ridge reiterated that the Director erred with the calculation of property taxes and submits that an additional \$2.00 per month per site will correct the matter.

The primary focus of the concerns expressed by the residents was that residents could not afford such a large increase and that the condition of the pavement was poor and in need of repair or replacement.

The Commission notes that the factors listed in subsection 23(8) of the **Act** do not include factors relating to a tenant's financial hardship or ability to pay. The relationship of lessor and lessee is one of contract.

The Commission notes that, even with the increases originally sought by Blue Ridge, the site rent at the Park would appear to be comparable to the average mobile home site rent in the Province.

Section 21 of the Regulations reads as follows:

21. Where the allowed percentage of increase in rent results in an amount which is some part of a dollar, the amount of increase may be rounded off to the nearest dollar. EC10/89.

The Commission finds that an additional monthly site rent increase of \$2.00 [\$1.79 rounded off to the nearest dollar] over and above the increase of \$12.00 per site per month approved in Order LD08-174 is warranted pursuant to clause (a) of subsection 23(8) of the **Act**. Effective August 1, 2008, the following site rent rates will apply:

- For the 44 sites in question, \$89.00 per month
- For the 23 sites in question, \$94.00 per month.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Blue Ridge Holdings Inc. against Order No. LD08-174 of the Director of Residential Rental Property, dated April 10, 2008.

Order

WHEREAS Blue Ridge Holdings Inc. appeals against Order No. LD08-174 of the Director of Residential Rental Property, dated April 10, 2008;

AND WHEREAS the Commission heard the appeal in Kensington on May 30, 2008;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **Effective August 1, 2008, mobile home site rent at the Jeanne-Lin Mobile Home Park in Kensington shall be increased as follows:**
 - **For the 44 sites in question, \$89.00 per month**
 - **For the 23 sites in question, \$94.00 per month.**

DATED at Charlottetown, Prince Edward Island, this 17th day of July, 2008.

BY THE COMMISSION:

Maurice Rodgeron, Chair

Ernest Arsenault, Commissioner

Gordon McCarville, Commissioner

NOTICE

Sections 26.(2), 26.(3), 26.(4) and 26.(5) of the **Rental of Residential Property Act** provide as follows:

26.(2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.

(3) The rules of court governing appeals apply to an appeal under subsection (2).

(4) Where the Commission has confirmed, reversed or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.

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