



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11032
Order LR12-04**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Bruce and Patricia Craig
against Order LD11-310 of the Director of
Residential Rental Property dated December
2, 2011

BEFORE THE COMMISSION
on Monday, the 13th day of February, 2012.

John Broderick, Commissioner
Peter McCloskey, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal under
**Section 25 of the Rental of Residential
Property Act, by Bruce and Patricia Craig
against Order LD11-310 of the Director of
Residential Rental Property dated December
2, 2011**

Order

On December 5, 2011 the Commission received a Notice of Appeal from Bruce Craig on behalf of Patricia Craig and himself (the Appellants) requesting an appeal of Order LD11-310 dated December 2, 2011, said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on September 28, 2011 the Appellant filed with the Director the following forms:

- (a) Form 12 – Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation dated September 27, 2011;
- (b) Form 10 – Notice of Increase in Rent of Residential Premises dated September 27, 2011 addressed to Colin MacIsaac and Adrienne Gaudet (the Respondents); and
- (c) Form 15 – Lessor’s Statement of Income and Expenses dated September 27, 2011.

The matter was heard by the Director on October 27, 2011. In Order LD11-310 the Director denied the application and approved a rent increase of 2% for the premises in question for 2012.

The Commission heard this appeal on January 4, 2012. Both Appellants were present. Colin MacIsaac represented the Respondents.

EVIDENCE

The Appellants told the Commission that, when they appeared at the hearing before the Director, they had believed there was a mortgage on the carriage house property (the rental premises). They were then advised by their bank that there was no mortgage on the rental premises. They submit that, as they now have full equity in the rental premises, the monthly rent will need to be increased in order to have a reasonable return on equity, which they submit would be eight percent. They also expressed concern about grass cutting and snow removal not meeting community standards, noting that the responsibility for these items rests on the Respondent for both the rental premises and the main house pursuant to the rental agreement between the Respondents and the previous owners of the rental premises.

The Appellants expressed frustration with the *Rental of Residential Property Act* as that *Act* does not permit a new rental agreement to be entered into when the ownership of a rental property changes.

The Appellants also told the Commission that Mr. Maclsaac has a rock band and there has been considerable noise emanating from the rental premises. They acknowledged that there have been some improvements in recent months.

The Appellants are of the view that the rental premises constitute a two-bedroom home. The Respondents contend that it is only a one bedroom home.

The Respondent Colin Maclsaac submitted that he had previously cut the grass for both the rental premises and the main house as a courtesy to the previous owners. He submitted that there was no evidence that the rent payable was to be reduced in exchange for this service. He noted that the rental premises is an old structure. The monthly rent does not include heat. The rental premises has no foundation, it is cold in winter and it is costly to heat.

Mr. Maclsaac told the Commission that after receiving a letter of complaint he “really cut back on the noise”.

The Commission notes that the rent currently is \$781.00, reflecting a two percent increase effective January 1, 2012.

The Commission has carefully reviewed Exhibit E-25, which is the Form 1 Standard Form of Rental Agreement between the Respondents and the previous owner of the rental premises. On page two of that agreement it requires the lessee (the Respondents) to provide the following service:

Grass cutting, snow removal and steps/doorway entrance salting/snow removal

While it is not clear on page two of the agreement whether these services apply to the rental premises only or the rental premises and the main house, the first page of the agreement set out the residential premises as:

50 Mount Edward Road (50B)

The Commission finds that the grass cutting and snow removal services apply only to the rental premises, e.g. “50B”. There would need to be clear and unequivocal wording within the rental agreement in order for the Commission to determine that such services were also to be applied to premises not rented or occupied by the Respondents.

The Commission reminds the Respondents that they are responsible for grass cutting and snow removal services for the rental premises and it is expected that such grass cutting services will be applied to a standard consistent with the surrounding neighbourhood and such snow removal services will be applied to a standard consistent with what is required for reasonable public safety.

The Commission finds that the “second bedroom” is really more of a utility room than a bedroom, given the lack of a heating unit and the presence of a breaker/fuse panel in said room. The evidence of the Respondents is that this room is presently used as a laundry room.

With respect to the Appellants' application to increase the monthly rent for the rental premises, the Commission notes that new evidence presented by the Respondents support a finding that they have full equity in the rental premises. At first blush, this change in the equity position of the Respondents pertaining to the rental premises might suggest that an increase in rent is necessary in order to achieve a reasonable return on equity. However, as there is no mortgage payment to be made by the Appellants on the rental premises, the expenses incurred by the Respondents on the rental premises are significantly reduced, thus enhancing the profitability of the investment. Further, as the Appellants' investment in the rental premises is not leveraged, their investment risk is significantly reduced. The Commission finds that with a lower investment risk the expected return on equity is reduced.

Accordingly, notwithstanding the new evidence presented by the Appellants, the Commission agrees with the Director's decision in Order LD11-310 and the appeal is hereby denied.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

IT IS ORDERED THAT

1. **The appeal is denied.**
2. **Order LD11-310, issued by the Director on December 2, 2011 is hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this **13th** day of **February**, **2012**.

BY THE COMMISSION:

(sgd.) John Broderick
John Broderick, Commissioner

(sgd.) Peter McCloskey
Peter McCloskey, Commissioner

(sgd.) Jean Tingley
Jean Tingley, 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.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141y-SFN(2009/11)