



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14039
Order LR15-05**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act, filed by Blue Ridge Holdings Inc. against Order LD14-326 issued by the Director of Residential Rental Property dated October 7, 2014.

BEFORE THE COMMISSION

on Tuesday, the 24th day of February, 2015.

John Broderick, Commissioner
Douglas Clow, Vice-Chair
Michael Campbell, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act, filed by Blue Ridge Holdings Inc. against Order LD14-326 issued by the Director of Residential Rental Property dated October 7, 2014.

Order

BACKGROUND

On October 29, 2014 the Commission received a Notice of Appeal from Cleve Myers (“Mr. Myers”) representative of a lessor, Blue Ridge Holdings Inc. (the Appellant), requesting an appeal of Order LD14-326 dated October 7, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 15, 2014 the Appellant filed with the Director a Form 12 – Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation in relation to the Jeanne-Lin Mobile Home Park located in Kensington, PE (the “Mobile Home Park”). At the same time, the Appellant filed a Form 15 – Lessor’s Statement of Income and Expenses together with a sample of the Form 10 – Notice of Increase in Rent of Residential Premises served on the Residents of the Mobile Home Park (the “Respondents”).

The matter was heard by the Director on August 27, 2014 and in Order LD14-326, the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The maximum allowable rent for the 45 residential premises (lots) in question located at Jeanne-Lin Mobile Home Park, Kensington, PE shall increase to \$124.23 per month effective January 1, 2015.*
- 2. The maximum allowable rent for the 24 residential premises (lots) in question located at Jeanne-Lin Mobile Home Park, Kensington, PE, shall increase to \$129.28 per month effective January 1, 2015.”*

The Commission heard the appeal at the Kensington Lions Club, Kensington, PE on December 1, 2014. Mr. Myers represented the Appellant. Andrew Heggie and Steven Baglolo testified on behalf of the Appellant. The Respondents were represented by Blair MacLean and Sharon Beedie.

EVIDENCE

Mr. Myers told the Commission that the Appellant seeks to repair and improve the roadways within the Mobile Home Park, as well as widen all driveways to double wide, at an estimated cost [including harmonized sales tax] of \$308,432.00. He submitted that the paving work needs to be done.

Mr. Myers filed Exhibit E-19, which is dated December 1, 2014. He submitted that a \$33.50 per lot monthly rent increase would result in an additional \$27,746.00 annually and represent a 7% rate of return.

When questioned as to the increase sought, Mr. Myers stated that the Appellant seeks an increase of \$37.25 per lot per month. Mr. Myers noted that the increase granted by the Commission in 2009 was not sufficient to resurface the streets.

The Respondents' representatives filed Exhibit E-18, which is their written submission in opposition to the rental increase sought by the Appellant. Mr. MacLean and Ms. Beedie submitted that neglect is at the heart of the sought increase. They submit that road maintenance already ought to be included within the lot rent paid by residents and the proposed increase effectively places the burden of road maintenance on the residents. They also expressed concern that the proposed increase is for a job that has not been done as yet.

The Respondents' representatives stated that the roads are "horrible".

In response, Mr. Myers indicated that the Appellant was not negligent but was attempting to maintain the streets within the limited financial means allowed by the existing monthly lot rents.

The evidence before the Commission is that the three roadways in the Mobile Home Park have never been fully resurfaced. Patching was performed over the years. The original street, 1st Street, appears to have been constructed on or about 1976. Both parties agree about the poor state of the Mobile Home Park's three streets, all of which are privately owned by the Appellant as contrasted to the public streets contained within the Town of Kensington generally.

DECISION

The Commission allows the appeal for the reasons that follow.

Subsection 26(1) of the **Rental of Residential Property Act** (the **Act**) sets out the 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

The Commission finds that all parties agree that the streets within the Mobile Home Park are in poor condition and need to be improved. It appears the streets have been in poor condition for some time, as residents had expressed similar concerns back in 2008 as noted in Commission Order LR08-09.

The Commission has reviewed the financial analysis contained in Director's Order LD14-326 and has reviewed Exhibit E-19. The Commission finds that the increase sought in the *Form 12 Application By Lessor For Approval Of Rent Increase Exceeding Percentage Allowed By Regulation* dated July 15, 2014 (Exhibit E-5) is justified once the capital expenditures have occurred.

The Commission allows the appeal and authorizes an increase of lot rent to a uniform rate of \$151.00 per month. This is an increase of \$28.00 per month for the 45 mobile home lots where the existing rent is \$123.00 per month. This is an increase of \$23.00 per month for the 24 mobile home lots where the existing rent is \$128.00 per month. The residents of the Mobile Home Park have lawful notice of these increases as these increases were set out by the Appellant in its *Form 12 Application By Lessor For Approval Of Rent Increase Exceeding Percentage Allowed By Regulation* dated July 15, 2014 (Exhibit E-5).

The above increase also reflects a representation made by the Appellant to the Director that the Appellant was seeking 70% recovery of the cost of the paving project and was thus prepared to absorb 30% of the project cost.

The residents have noted that the resurfacing work has not yet occurred. From the Commission's perspective, the sole reason for the requested increase is for the repaving of the streets and paving "double-wide" of all driveways within the Mobile Home Park. Given the wording of subsection 23(8)(b) of the **Act**, which in the Commission's view implies that the capital expenditures have already occurred, the Commission finds that the timing of the increase will commence on the first day of the month following verification by the Appellant to the Commission that the work has been completed and the Appellant has paid for the project, e.g. that the capital expenditures for the project have occurred and the benefits have been realized.

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 allowed.**
2. **An increase of lot rent to a uniform rate of \$151.00 per month per mobile home lot for all lots in the Jeanne-Lin Mobile Home Park located in Kensington, PE is hereby authorized, subject to the following requirement.**
3. **Once the work on the paving project has been completed and the Appellant has paid for the paving project, the Appellant shall file with the Commission verification that the work is complete and that said payment has been completely paid to establish that capital expenditures for the project have in fact occurred and the benefits have been realized. The above-cited increase shall then commence on the first day of the month following receipt of said verification.**

DATED at Charlottetown, Prince Edward Island, this **24th** day of **February**,
2015.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

(sgd. Michael Campbell)

Michael Campbell, 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)