



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19058
Order LR19-36**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Octavian Group Inc. against Order LD19-406 dated October 8, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 11th day of October, 2019.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Octavian Group Inc. against Order LD19-406 dated October 8, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On September 26, 2019 the Commission received a Notice of Appeal from Blake Doyle (“Mr. Doyle”), the representative of a lessor, Octavian Group Inc. (the “Appellant”), requesting an appeal of Order LD19-406 dated October 8, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 22, 2019 Mr. Doyle, on behalf of the Appellant, filed with the Director a Form 12 – Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation together with a Form 15 – Lessor’s Statement of Income and Expenses dated the same date. Mr. Doyle also filed with the Director a Form 10 – Notice of Increase in Rent of Residential Premises addressed to a lessee, Vicki Bryenton (the “Respondent”).

The matter was heard by the Director on August 15, 2019 and in Order 19-406 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The maximum allowable rent for the residential premises located at Apartment 1 – 50 Grafton Street, Charlottetown, PE shall increase effective November 1, 2019 from \$785.00 to \$816.50 per month.”*

The Commission heard the appeal on October 8, 2019. Mr. Doyle represented and testified on behalf of the Appellant. The Respondent was also present.

EVIDENCE

Mr. Doyle testified that he believes the allocation of costs associated with the whole building should be spread over the number of bedrooms rather than the number of apartment units. Thus, rather than attributing 1/6 of the costs to the Respondent’s apartment, 3/11 of the costs should be attributed to her apartment.

Mr. Doyle stated that the Respondent is a great tenant. His objective is to get the rent up to fair market value.

The Respondent testified that she has lived in her apartment for 13 years. She testifies that she believes she is currently paying a fair rental rate considering the condition of the apartment as evidenced by the photographs on file. She contends that to justify a higher rent, repairs and updates would be required.

DECISION

The Commission denies the appeal and confirms Director's Order LD19-406.

The Appellant seeks a variance of the increase ordered by the Director by attributing common building expenses, such as the cost of heat, property tax etc. based on the Respondent's apartment containing 3/11 of the total number of bedrooms in the building while the Director apportioned these expenses on the basis of the Respondent's apartment representing one out of six apartments in the building.

The Commission finds that apportioning expenses based solely on the number of bedrooms is not a suitable basis for apportionment as the size of rooms could vary widely and thus this method of apportionment is not inherently objective.

No evidence was provided as to the square footage of the Respondent's apartment compared to the square footage of other apartments. In addition, an apportionment of common expenses for each of the other five apartments was not provided.

In the absence of the above information, the Director acted reasonably in calculating the apportionment on the basis of the number of apartments.

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. Director's Order LD19-406 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **11th day of October, 2019**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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.