



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20002  
Order LR20-09**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act (the "Act") by Serita Newman  
against Order LD20-002 dated January 2, 2020  
issued by the Office of the Director of  
Residential Rental Property.

**BEFORE THE COMMISSION**  
on Tuesday, the 10th day of March, 2020.

Erin T. Mitchell, Commissioner  
M. Douglas Clow, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Serita Newman against Order LD20-002 dated January 2, 2020 issued by the Office of the Director of Residential Rental Property.

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# Order

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On January 20, 2020 the Commission received a Notice of Appeal from a lessee, Serita Newman (the "Appellant") requesting an appeal of Order LD20-002 dated January 2, 2020 issued by the Director of Residential Rental Property (the Director).

## BACKGROUND

By way of background, on October 4, 2019 the Appellant filed with the Director a Form 13 – Application by Lessee for Review of Proposed Rent Increase together with:

- (a) a Form 10 Notice of Increase in Rent of Residential Premises dated October 1, 2019 signed by a lessor, Jason Shakespeare (the "Respondent");
- (b) Order LD17-092 dated March 29, 2017 issued by the Director regarding the residential premises; and
- (c) an Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation dated October 1, 2019 signed by the Respondent.

The matter was heard by the Director on December 4, 2019 and in Order LR20-002 the Director found that:

***"IT IS THEREFORE ORDERED THAT***

1. ***The maximum allowable rent for the residential premises located at 18 Parkview Court, Cornwall, PE shall increase effective January 1, 2020 as follows:***
  - ***From \$1,000.00 to \$1,350.00 per month."***

The Commission heard this appeal on February 6, 2020. The Appellant was represented by Jill MacMillan ("Ms. MacMillan") and Jeannie Newman ("Ms. Newman"). The Respondent was present.

## EVIDENCE

Ms. MacMillan and Ms. Newman stated that the Appellant, who is their mother, moved into the residential premises in 2014. They submit that, as of March 2017, electricity was no longer included in the rent for the residential premises, effectively increasing the rent at that time by 35% as the premises are heated with electric heat. They submit that the Respondent has sought, and the Director approved, a further 35% increase in rent thus amounting to an effective 70% increase within three years. They also submit that no such recent increase was sought for the other side of the duplex. They submit that the Appellant is unable to afford this most recent increase. They submit that since rent runs with the premises, rent should not be affected by a new lessor purchasing the premises. They submit that \$1350.00 per month plus electricity would be higher than the comparable units set out by the Respondent in Exhibit E-11.

The Respondent testified that while the previous owner may have been able to cover their expenses, an increase is now needed so that he can cover his expenses. The Respondent stated that more recently he has also applied for an increase for the other side of the duplex as referenced in Exhibit E-11, which contains a Form 10 Notice of Increase in Rent of Residential Premises for 20 Parkview Court. The Respondent also referenced what he felt were comparable rental units listed in Exhibit E-11 and submitted that \$1350.00 was a reasonable rent. He stated that with his expenses that is the lowest rate that he can charge. He stated that when he purchased the property many expenses, such as mortgage, taxes and insurance, were reset.

The Respondent acknowledged that the Form 10 contained in Exhibit E-11 was not signed. He stated that the document filed with the Director was in fact signed.

## DECISION

The Commission denies the appeal and confirms Director's Order LD20-002.

Where a lessor seeks an increase greater than the allowable rate of increase, subsection 23.(8) of the Act sets out the factors to be considered:

*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.*

Section 20 of the Rental of Residential Property Act Regulations states:

*20. The following additional matter is to be considered under subsection 23(8) of the Act: The date and amount of the last rental increase. (EC10/89)*

The Commission has reviewed the calculations contained in Order LD20-002 which conclude that the Respondent lessor would incur a loss of \$1,558.53 even with the increase from \$1,000.00 to \$1,350.00 per year. The Commission finds these calculations to be accurate.

While an increase larger than 35% may have been warranted, the Respondent had sought a 35% increase in his application to the Director and stated in his testimony before the Commission that, with his expenses, \$1350.00 per month is the lowest rent that he can charge. The Commission finds that the factors set out in subsection 23.(8) of the Act justify the requested 35% increase.

While section 20 of the Regulations permits the date and amount of the last increase to be considered, the presence of even such a large previous increase is not of itself determinative and the factors in subsection 23.(8) of the Act still apply. The Commission notes that the Respondent lessor took ownership of the property in May 2019. The financial information provided by the Respondent demonstrates that together, both the March 2017 effective increase sought by the previous lessor and the January 2020 increase awarded to the Respondent in Order LD20-002 result in the Respondent still incurring a loss, albeit a relatively small one.

Though the resulting increase in the Appellant's rent is marked when compared with the rent payable prior to the March 2017 increase, the Commission also takes note of section 21 of the Act, which states:

*21. The rent payable for residential premises shall not be increased until twelve months have elapsed since the date of any previous increase or, in the case of residential premises not previously rented, the date on which rent was first charged.*

The elapsed time between the increase in March 2017 and the increase granted in Order LD20-002 effective January 2020 is 33 months, well beyond the 12 month period proscribed in section 21. The Respondent has provided evidence as to his costs resulting from assuming ownership of the premises, which the Commission accepts. Though the result will be disappointing to the Appellant, the Commission is bound to decide this matter in accordance with the provisions of the Act.

Accordingly, the Commission finds that the increase established by the Director in Order LD20-002 is justified and in accordance with the Act.

**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 LD20-002 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **10th** day of **March**,  
**2020**.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, 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.*