



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20003  
Order LR20-10**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by James, Ewen and Donna Marjerrison against Order LD20-007 dated January 3, 2020 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on Tuesday, the 12th day of May, 2020.

Erin T. Mitchell, Commissioner  
M. Douglas Clow, 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

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## BACKGROUND

On January 15, 2020 the Commission received a Notice of Appeal from a lessor, James Marjerrison ("Mr. Marjerrison") on behalf of himself and two other lessors, Ewen Marjerrison and Donna Marjerrison (collectively the "Appellants"), requesting an appeal of Order LD20-007 dated January 3, 2020 issued by the Director of Residential Rental Property (the "Director").

By way of background, on October 29, 2019 the Appellants, filed with the Director a Form 12 – Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation together with:

- (a) a Form 10 – Notice of Increase in Rent of Residential Premises addressed to a lessee, Ryan Dugay ("Mr. Dugay") dated November 1, 2019;
- (b) a Form 10 – Notice of Increase in Rent of Residential Premises addressed to a lessee, Shane Stordy ("Mr. Stordy") dated November 1, 2019; and
- (c) a Form 10 – Notice of Increase in Rent of Rental Premises addressed to a lessee, Kelly O'Brien ("Ms. O'Brien") E dated October 1, 2019.

On December 5, 2019 Mr. Marjerrison, on behalf of the Appellants, filed with the Director a Form 15 – Lessor's Statement of Income and Expenses dated December 4, 2019.

The matter was heard by the Director on December 17, 2019 and in Order LD20-007 the Director ordered:

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

1. *The maximum allowable rent for the residential premises located at 20 Barrymore / 5 Deblois Street, Charlottetown, PE shall increase effective February 1, 2020 as follows:*
  - *Basement Unit: from \$700.00 per month to \$900.00 per month;*
  - *Unit 5A: from \$975.00 per month to \$1,100 per month; and*
  - *Unit 5B: from \$825.00 per month to \$975 per month."*

The Commission heard the appeal on February 10, 2020. Mr. Marjerrison was present to represent all the Appellants. The Respondents Mr. Stordy and Ms. O'Brien were present and explained that the Respondent Mr. Dugay was unable to attend.

## EVIDENCE

Mr. Marjerrison stated that he appealed the decision of the Director as he felt that although the amount of return to expect for a building of its age and condition was correct, he did not agree with the way the return was calculated. He explained that the Director had based the return on expenses rather than capital. He referenced various calculations he had previously filed with his appeal. He submitted that a vacancy rate of 5% would be reasonable and this reflects a need for a reserve to be built up.

Mr. Marjerrison also referred to a list of upcoming capital expenditures noting that some, such as siding, would need to be done this year, others, such as roofing, may need to be done this year while other items may be able to wait.

Ms. O'Brien stated that the current vacancy rate is approximately 0.5% and thus questioned the use of a 5% vacancy rate for calculations. She submitted that the Appellants were seeking a 70% increase in rent for her unit. She acknowledged that some increase would be fair but the 70% increase sought by the Appellants is egregious. She characterized the list of updates as a wishlist. She stated that although the washing machine included in her unit was recently replaced, the replacement was used and was not as good as the previous washing machine. She stated that the replacement was loud and bothering another tenant.

Mr. Stordy stated that the building has not been updated for a long time. He does not object to a \$200.00 increase but does object to a 70% increase in rent.

## DECISION

The Commission denies the appeal and confirms Order LD20-007.

In the Appellants' Form 12 Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation, the following increases were sought:

- Basement - 71%
- 5A - 43%
- 5B - 70%

The rationale for the rent increase was stated as:

*Current rents are not allowing for any maintenance or repair for the building. The building is in need of some capital expenditures in the near future but is currently negative cash flow based on expenses.*

Subsection 23.(8) of the Act sets out the factors to be considered:

*(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 17. of the Regulations reads:

*At least five days prior to a hearing pursuant to subsection 23(8) of the Act, the lessor shall serve on the Director and the lessees who are parties a statement of income and expenses in Form 15. (EC10/89)*

The Form 15 filed by the Appellants considers the income from the residential premises and allows expenses, including payments for both principal and interest for both first and second mortgages, to be deducted.

Mr. Marjerrison referenced an attachment to the Notice of Appeal (see Exhibit E-10). On page 38 of the file the Appellants seek a reasonable return on their invested capital.

On page 39 of the file (also part of Exhibit E-10) the Appellants state:

*Our invested capital into this building came from a line of credit. This amounted to \$X.XX [redacted by the Commission for privacy]. This amount included a 25% down payment we had to make to secure a mortgage, as well as legal fees and other miscellaneous municipal and provincial charges and closing adjustments. This is our invested capital.*

Page 19 of the file, part of Exhibit E-6, provides a copy of a “Line of Credit Home Equity”. The specified payment exactly matches the payment specified for the “second mortgage” noted on the Form 15. This suggests to the Commission that payments for both principal and interest for the Line of Credit Home Equity, at a specific snapshot in time, have been accounted for as a monthly expense in the Form 15.

Given that the “invested capital” appears to be fully financed, that the Appellants made a choice to include both principal and interest of that financing as fully deductible expenses as a “second mortgage” on Form 15, and that Form 15 does not address invested capital but speaks in terms of owner’s equity with an identified calculation [value of property as per Provincial assessment minus outstanding mortgages and loans] the Commission denies the appeal.

**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 and Order LD20-007 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **12th day of May, 2020**.

**BY THE COMMISSION:**

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(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

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(sgd. M. Douglas Clow)

M. Douglas Clow, 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.*