THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LR20013
Order LR20-26

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "*Act*") by Mike Sirois against Order LD20-102 dated May 28, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Monday, the 21st day of September, 2020.

Erin T. Mitchell, Commissioner
M. Douglas Clow, Vice-Chair

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 (the "*Act*") by Mike Sirois against Order LD20-102 dated May 28, 2020 issued by the Office of the Director of Residential Rental Property.

Order

This appeal turns on the narrow question of the proper interpretation of sections 21 to 23 of the *Rental of Residential Property Act* (the "Act"), and whether a prospective lessor must apply to increase rent when no rental agreement is in place.

Background

The Appellant, Mike Sirois ("Sirois"), does not dispute with the findings of fact made by the Office of the Director of Residential Rental Property (the "Office of the Director") in Order LD20-102. By way of summary, Sirois and the Respondent, Gary Arsenault ("Arsenault") entered into a twelve month written, fixed-term rental agreement on August 30, 2019, for the premises located at 65 Hillsborough Street in Charlottetown (the "Premises"). They agreed that the rent for the Premises would be $1,400 per month.

Sirois purchased the Premises, which is a duplex, in July 2019. At the time of purchase, one side of the duplex was occupied. Sirois stated at the hearing before the Office of the Director that he did not investigate the rates of rent being charged for either unit prior to purchasing it, but had subsequently inquired of the previous tenants and previous owner and confirmed the rent had been $850. Sirois conducted renovations to the Premises, and then advertised the Premises for rent on Kijiji. Arsenault responded to the advertisement, and the deal was made.

A few months into his tenancy, Arsenault became aware that the previous tenants of the Premises had only paid $850 per month. He applied to the Office of the Director for a return of rent and part of his security deposit based on his belief that Sirois had not followed the proper procedure to raise the rent as is required by the Act. The Office of the Director agreed with Arsenault, and ordered Mr. Sirois to pay to Arsenault the sum of $4,710 in overpaid rent plus $550, being a portion of his security deposit. The Office of the Director further ordered that the monthly rent for the Premises remain at $850 until raised in accordance with the Act. Sirois appealed.

The Commission denies Sirois' appeal for the reasons set out below.

Did Sirois have to apply to raise the rent?

This is the central question of this appeal. To be successful, Sirois has to establish that the Commission's traditional interpretation of the provisions relating to rent increases, colloquially summarized as "the rent runs with the unit", is incorrect.

Sirois' Position

Sirois' argument is based primarily on principles of statutory interpretation. Sirois, through his counsel, rightly noted that the function of the Act is to promote certainty and predictability for landlords and tenants. He urged the Commission to read the provisions of the Act governing rent increases in the larger context of the Act as a whole. There are standardized provisions for rental agreements, rules regarding subletting premises, grounds for terminating rental agreements, and procedures for appeal. He argued that, based on a wide reading of the provisions of the Act, the associated regulations, and prescribed forms, the intention of the Legislature in passing the Act was to govern all aspects of the landlord and tenant relationship.

This is where Sirois makes his case. He argues that, at the time he set the rent at $1,400, the Act did not apply to him. There was no rental agreement in place. The Premises was vacant. He was not a lessor. He had no lessee. As such, he was not required to apply to change the rent for the Premises as there was no landlord and tenant relationship. He and Arsenault came to an agreement as to what was an appropriate rate of rent, and entered into a contract accordingly.

Part IV of the Act deals with rent increases. Section 21-23 govern when and how a rent increase can be made. They read as follows:

> ***21. Frequency of rent increase***
> *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.* [Emphasis added]
>
> ***22. Notice of rent increase***
> *Every notice of increase of rent for residential premises shall*
> *(a) be in writing in the form prescribed by regulation; and*
> *(b) be served on the lessee*
> *(i) in the case of a weekly agreement, at least three weeks before the date on*
> *which it is to take effect,*
> *(ii) in the case of a monthly agreement, at least three months before the date on which it is to take effect.*
>
> ***23. Permitted increase***
> *(1) Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.* [Emphasis added]
>
> ***Representations***
> *(2) The Director shall invite written representations from lessors and lessees to assist in establishing the annual prescribed percentage rent increase.*
>
> ***Application for additional increase***

(3) Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee. [Emphasis added]

Application for review by lessee
(4) Where the lessor seeks a rent increase equal to or less than the percentage amount permitted by subsection (1), the lessee may apply to the Director, not later than ten days after being served with the notice of rent increase, to have the Director review the rent increase being sought.

Form
(5) An application pursuant to subsection (3) or (4) shall be made on the form prescribed by regulation and a copy of the application shall be served on the other party.

Notice of hearing
(6) Upon receipt of an application pursuant to subsection (3) or (4), the Director shall within ten days give written notice to the lessor and lessee of the date, time, and place which he has fixed for a hearing of the application.

Information
(7) The lessor and lessee shall supply any information requested by the Director for the purpose of assessing the application, and all information provided to the Director shall be available to both parties, who shall preserve confidentiality with respect to it.

Factors 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.

Decision
(9) After hearing and considering the application the Director may

(a) approve the rent increase;
(b) approve a rent increase of such lower amount as he may specify, and shall give written notice of his decision, and the reasons therefor, to all parties within thirty days of the date of the hearing.

Increase frozen pending decision
(10) Where an application has been made pursuant to subsection (3) or (4), the lessor shall not charge or collect a rent increase pending the outcome of that application.

Sirois pointed to the requirements of a lessor to serve notice upon a lessee of an intended rental increase (sections 23(3) and 23(5)), to the forms which are addressed to the lessee (Forms 10 and 11), or that must be served upon the lessee (Form 12), as evidence that it is a prerequisite for a rental agreement to be in place before sections 21-23 of the Act can apply. He argued that the Commission would be incorrect to interpret the Act as requiring an action to be taken by someone not party to a rental agreement. Any obligation for him to take specific action must be grounded in the statute; and in this case, he contends, there is no such grounding, and therefore no obligation on him to seek permission to change the rent.

Analysis

Traditional Commission Interpretation

The matter of the proper interpretation of Part IV of the Act was considered in 1994 by this Commission in Order LR93-11, wherein the Commission noted that:

> *…the **Act** is unclear on the point whether or not there is any obligation on the lessor to give notice of a rent increase three months in advance when there is no lessee between the time of termination of a rental agreement and when the lessor enters into a new agreement with a new lessee. Section 22 requires that every notice be served on the lessee. If there is no lessee to be served then the **Act** appears to give the lessor the opportunity to increase the rent when a new amount is agreed to by a new lessee, provided the increase is within the allowable percentage (Section 23) and twelve months have elapsed since the last increase (Section 21).* [Emphases original]

The Commission did not conclude that the absence of a lessee absolves the lessor from the requirement to comply with sections 21 and 23 of the Act. We agree with this conclusion.

In Order LR96-6, dated June 17, 1996, the argument was made by a landlord that there was nothing in the Act "that defines what time period must elapse or expire before a residential premise can be declared *not previously rented*". The facts of that case are very similar to this one. The premises was vacant when the landlord took possession, and the argument put forward was that because that time period is not defined, the Commission should declare that the unit was "not previously rented" and permit the landlord to charge the rent that he wanted to *his* first tenant.

The Commission held as follows:

> *…the Commission finds that it cannot agree with the submission put forward by the Lessor. It is the Commission's view that a statutory provision cannot be read in isolation of the whole Act as to its general intent and purpose nor can any one phrase be read in isolation of the whole section within which the phrase is contained.*
>
> *The Commission finds that Section 21 is very clear as to its intent and purpose. The Commission finds that Section 21 provides clear instruction that no rent shall be increased until twelve months have gone by either from the date of the last rental increase for the residential premises or the date on which rent was first charged. The Commission finds that this is not the first time rent was charged and collected for occupation of the subject residential premises. The Commission cannot conclude that [the lessee] paid the first rent for the unit.*

It should be noted that there was no dispute of the fact that the Premises, when purchased by Sirois, was intended to be a rental unit. In the original hearing Sirois provided partial copy of a "Schedule A", which he confirmed on appeal was appended to his agreement of purchase and sale for the Premises. The agreement was subject to the following terms and conditions: "All leases to be transferred to purchaser on closing date. All deposits to be transferred to purchaser on closing date". The Premises was clearly known to be a rental unit when it was purchased by Sirois.

More recently, this Commission considered the issue of whether rent runs with the unit, and not the tenancy, in Order LR19-15:

> *In Prince Edward Island, the Rental of Residential Property Act (the "Act") provides for a system of rent control whereby rent runs with the residential unit. When a lessee surrenders possession of that unit to the lessor, that rate of rent still remains fixed to that unit. This rent applies to a subsequent lessee even if the unit has been vacant between the tenancies. Any agreement as to the amount of rent reached between lessor and lessee is null and void to the extent that it runs contrary to the rent control provisions of the Act.*
>
> *To balance out the rigours of rent control, Part IV of the Act sets out the process whereby rent increases may lawfully be made. If a lessor raises the rent of a unit without first following the process set out in Part IV of the Act, such an increase is illegal.* [Emphasis added]

We agree with the assertion of Sirois that section 21 of the Act cannot be read in isolation, but must be read and given meaning taking into account the context of the Act of the whole. Yet we arrive at a different conclusion. To accept the interpretation proffered by Sirois would result in a rental regime which would have few controls over the frequency of rental increases. Any period between the expiry of one rental agreement and the signing of another could be used to permit a landlord to change the rent without first seeking approval to do so. As will be discussed below, this is clearly not what the Legislature intended, and would result in a significant imbalance of power between landlords and tenants.

We further note that the language of section 21 is itself instructive. Though the balance of the Act deals with rights and obligations stemming from a rental agreement, section 21 refers to the “rent payable for residential premises”, and not the rent payable *pursuant to a rental agreement*. This distinction is an important one, and must be given meaning accordingly. We therefore confirm the traditional interpretation of section as meaning “the rent runs with the unit”. The lack of an existing rental agreement does not absolve a landlord from the obligation to seek approval to raise a rent beyond the allowable annual increase.

Sirois assertion that the parties entered into the rental agreement based on an agreed upon rate of rent cannot hold. Section 23(1) of the Act makes it clear that “notwithstanding the terms of any rental agreement”, a rent increase cannot exceed the annual allowable rate set by the Commission, unless application is made in accordance with section 23(3). A landlord and tenant cannot circumvent this provision by private contract (see, e.g., Order LR10-21).

Legislative Intent

The intention of the Legislature is one of the key considerations in any exercise of statutory interpretation. The *Rental of Residential Property A*ct was first passed in 1988. Second reading of the Bill was debated by Committee of the Whole House on April 22 and 26, 1988. Though the specific question before the Commission today was not directly considered by the Legislative Assembly, during the course of that debate, the following exchange occurred,[1] which is informative:

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

[1] The Hansard service for the Legislative Assembly of Prince Edward Island was established in 1996, therefore there is not an official a transcript for debates in the House prior to that date. The excerpt produced here was prepared on behalf of the Commission using official audio of those proceedings which is housed in the Public Archives and Records Office of Prince Edward Island.

> ***Madam Chairman****: Shall it carry? Twenty-two. Every notice of inc… I'm sorry. Twenty-one, shall it carry?*
>
> ***Q****. Does that [inaudible] have elapsed since the date of previous increase?*
>
> ***Minister****: One increase a year is the…*
>
> ***Q****. One increase a year?*
>
> ***Minister****: They can't increase it more than once a year.*
>
> ***Q****. Once a year. Maybe it's in this here Act some place or other but I'll ask it now, if a property is sold, and what are the rules governing that? Can the new lessor, can he, he, make everyone get out if he wants to renovate?*
>
> ***Minister****: I'll let you take that.*
>
> ***A****. Some of that goes on now under what they call vacant occupancy, and this Act is very clear [inaudible] there are only three grounds for having a person leave the building: non-payment of rent, just cause in terms of disruption and so on, and personal possession. In doing major renovations, he could take that action but he would have to go through the process of doing that. If he was just trying to get the building empty so he can to bring in new tenants and charge more rent, that is not a possibility any longer and cannot do that. [Emphasis added]*

The sponsor of the bill was explicit that the intention of section 21 was that rent could be increased only once a year, and if, due to renovations, a landlord wished to charge more rent "he would have to go through the process of doing that". This statement, along with the balance of the debate, makes clear that the goal of the Legislature in passing the bill was indeed to attempt strike an appropriate balance between the rights of landlords and tenants.

At the time of the issuance of this Order, the Government of Prince Edward Island is conducting consultations on a new Residential Tenancy Act. The Commission encourages the Legislative Assembly to ensure that any provisions relating to rental increases are clear and unambiguous if and when a new act is brought forward.

Conclusion

The Commission finds that Sirois did have an obligation to apply to the Office of the Director in order to raise the rent for the Premises beyond the annual allowable amount, notwithstanding the absence of a rental agreement.

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 LD20-102 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **21st day of September, 2020**.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)
Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)
M. Douglas Clow, Vice-Chair

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.