



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20042  
Order LR21-02**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act filed by Jeff Budd and Stephanie  
Budd against Order LD20-322 dated  
November 13, 2020 issued by the Director of  
Residential Rental Property.

**BEFORE THE COMMISSION**

on Tuesday, the 12th day of January, 2021.

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

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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 under Section 25 of the Rental of Residential Property Act filed by Jeff Budd and Stephanie Budd against Order LD20-322 dated November 13, 2020 issued by the Director of Residential Rental Property.

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# Order

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This appeal asks the question of whether the Director erred in ordering a greater than allowable rent increase, resulting from the removal of previously included electricity services.

## BACKGROUND

Jeff Budd (“Mr. Budd”) and Stephanie Budd (“Mrs. Budd”) (collectively the “Appellants”) rented one-half of a duplex building located at 250 Sleepy Hollow Road, Milton Station, PEI (the “Premises”) from Keyvan Ashenaei (“Mr. Ashenaei”).

On February 7, 2020 Mr. Ashenaei served the Appellants with a Notice of Increase in Rent of Residential Premises (the “Form 10”) to be effective June 1, 2020. On February 7, 2020, Mr. Ashenaei filed with the Director of Residential Rental Property (the “Director”) an Application by Lessor for Approval of Rent Increase Exceeding Percentage Allowed by Regulation (the “Form 12”).

On March 5, 2020 Mr. Ashenaei filed with the Director a Lessor’s Statement of Income and Expenses (the “Form 15”) for both the Premises and for 252 Sleepy Hollow Road, Milton Station (the “Adjacent Unit”).

Due to the Covid-19 Pandemic, the hearing of this matter by the Director was delayed until October 26, 2020. In Order LD20-322 the Director ordered that effective December 1, 2020 the rent for the Premises will be \$1,300 per month with electricity as an excluded service, and that Mr. Ashenaei reimburse the Appellants the electricity connection fee charged by the service provider. In Order LD20-322, the Director also made an order with regard to the Adjacent Unit.

The Appellants appealed; however, the tenant in the Adjacent Unit did not appeal Director’s Order LD20-322.

The Commission heard the appeal on January 6, 2021. The parties participated by way of telephone conference call. The Appellants were represented by their legal counsel Michael Fleischmann (“Mr. Fleischmann”).

## Disposition

The appeal is allowed. With respect to the Appellants and the Premises Director's Order LD20-322 is reversed and no rental increase is permitted. Director's Order LD20-322 continues to apply to the other tenant and the Adjacent Unit.

## The Issues

The Commission will consider the following questions in determining whether the Director properly ordered a greater than allowable rent increase:

1. Did the Director correctly calculate the Respondent's return on investment?
2. Is the removal of the service of electricity with a reduction in rent justified for the Premises?

## Analysis

Section 23 of the *Rental of Residential Property Act* (the "Act") and section 20 of the Regulations set out what factors the Director may consider in evaluating a proposed greater than allowable rent increase. They read as follows:

*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.*

*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.*

Counsel for the Appellants correctly argued, in the Commission's view, that all four factors set out in subsection 23(8) must be considered in the evaluation of an application for a greater than allowable rent increase. Notwithstanding, the Commission notes that the primary issue argued by the Appellants was the factor relating to the lessor's expectation of a reasonable return on capital investment. The Commission will also focus on this factor, and finds that it is ultimately determinative of this matter.

## Did the Director correctly calculate the Respondent's return on investment?

In his submissions to the Commission, Mr. Fleischmann referred the Commission to the Form 15. Mr. Fleischmann submitted that the Director erred in considering the replacement cost limit for insurance purposes set out in the Respondent's documents as the value of the property. Mr. Fleischmann submitted that the Form

15 is authorised under section 17 of the *Rental of Residential Property Act* Regulations (“the Regulations”). He further submitted that according to Form 15, an owner’s equity is calculated by subtracting the outstanding principal amount of mortgages and loans from the value of the property as determined by the Provincial Assessment.

The Commission finds that the Director erred in using the limit of insurance replacement cost, as set out in the insurance policy. This figure is the maximum amount the insurance company would pay out in the event of a loss. It is not an appropriate valuation upon which to evaluate the proposed greater than allowable rent increase.

The Commission finds that using the Provincial Assessment as the value of the property, as prescribed in Form 15, the Respondent’s return on investment for the Premises would be 7.4% based on the existing rent with electricity included. A return on capital investment of this magnitude does not justify the proposed greater than allowable rent increase.

### **Is the removal of the service of electricity with a reduction in rent justified for the Premises?**

In Order LD20-322, the Director determined a 3.63% return on investment with electricity as an included service for the Premises and a 6.4% return on investment for the Premises with the proposed exclusion of electricity as an included service and rent reduction. The Director stated that a 6.4% return on capital investment was “within a reasonable range”.

As the Commission has calculated that the Respondent’s return on investment for the Premises would be 7.4% based on the existing rent with electricity included, the Commission determines that the removal of the service of electricity with a reduction in rent as ordered for the Premises by the Director in Order LD20-322 is not justified.

**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. **Director’s Order LD20-322 as it pertains to 250 Sleepy Hollow Road, Milton Station, PEI is reversed.**

**DATED** at Charlottetown, Prince Edward Island, this **12th** day of **January**, 2021.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &  
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.*