



Docket: LR21018

Order: LR21-20

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Jannie MacKinnon, against Order LD21-170 issued by the Director of Residential Rental Property and dated May 11, 2021.

BEFORE THE COMMISSION ON Tuesday, June 22, 2021.

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

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(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

Hearing Date: **Monday, June 21, 2021**

ORDER

This appeal asks the question of whether the Director erred in permitting the removal of included services from a rental agreement, resulting in a greater than allowable rent increase.

BACKGROUND

Jannie MacKinnon rented half of a duplex located at 22 Parkman Drive, Charlottetown, PE, from landlords Nicholas Dennis and Nicole Dennis. Rent for the unit is \$1,600 per month with electricity, hot water and heat as included services.

On April 1, 2021, the Landlords gave formal notice to Ms. MacKinnon that they intended to raise her rent by removing electricity costs from the included services in her rental agreement. The Landlords also applied to the Director of Residential Rental Property for approval to raise the rents for both sides of the duplex beyond the annual allowable rate.

Ms. MacKinnon challenged the increase. The occupant of the adjoining unit at 24 Parkman Drive did not participate in the original hearing or on appeal.

In Order LD21-170 dated May 11, 2021, the Director ordered that effective July 1, 2021, the maximum allowable monthly rent for Ms. MacKinnon's unit shall be \$1,600 with electricity, hot water and heat as excluded services. The rent for the other unit was ordered to increase effective January 1, 2022, in light of a rent increase made in January 2021.

Ms. MacKinnon appealed.

The Commission heard the appeal on June 21, 2021. Ms. MacKinnon and the Landlords participated by way of telephone conference call.

Disposition

The appeal is denied.

The Issue

The Commission must decide whether the removal of included electricity, hot water and heat services represent a justifiable increase in rent.

Analysis

Calculation of Equity

The Landlords purchased the duplex in March 2021. On appeal, Ms. MacKinnon took issue with the Director using the purchase price of the property in calculating the Landlords' equity. The Commission finds that in this case it is appropriate to use the actual purchase price to calculate the landlord's equity in the property, because it is the most accurate statement of their actual capital investment. This differs from circumstances in which a landlord is relying on desktop appraisals (e.g., Order LR21-18) or simple market comparisons to estimate the value of a property.

Rent for Each Unit

Ms. MacKinnon also argued that the costs associated with each unit in the duplex are different, as evidenced by the electricity bills and water utility bills included in the evidence. She believes this should be reflected in how much each unit should be required to pay in rent. Ms. MacKinnon also speculated that the two units could vary in terms of their condition and upkeep, noting her concern that her increased rent could be used to make improvements in the other unit and not her own.

The Commission does not agree that the evidence supports an unequal apportionment of rents between the two units. Ms. MacKinnon did not provide any new evidence on this point. The Commission does not accept that the difference in utility costs between the units is alone enough to warrant an adjustment to the rent. Utility costs are often tenant-specific, and are only one part of a landlord's overall expenses. The Commission finds there is insufficient evidence to justify an unequal assignment of rents between the units.

Operating at a Loss

Director's Order LD21-170 establishes that without the removal of electricity, hot water and heat services the Landlords would be operating at a significant annual loss, such loss would not be sustainable and would inhibit the Landlords' financial ability to maintain the units. This is an appropriate consideration in light of clause 23(8)(a) of the *Act*, and appropriately supports the Director's finding that an increase in rent is appropriate.

Reasonable Return on Investment

The Director calculated that removal of the services would provide the Landlords with a moderate profit and provide a 3.14% return on investment. The Commission finds that the return on investment as calculated by the Director is reasonable. Clause 23(8)(c) of the *Rental of Residential Property Act* requires us to consider the expectation of the landlord to have a reasonable return on capital investment. The Director carefully set out the basis for the decision, made necessary adjustments to the financial information provided by the Landlords, followed the law as set out in the *Act* and calculated a return on investment that is reasonable.

Conclusion

Mr. Dennis acknowledged that they were aware when they purchased the property that the existing rents would have them operating at a loss, and so they followed the appropriate process and filed supporting documentation to seek approval to change the rent for the unit. The Commission finds that the Landlords acted in accordance with the processes set out in the *Act*, and concludes that there is no basis upon which to interfere with the findings.

The appeal is therefore denied.

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 LD21-170 is confirmed.

DATED at Charlottetown, Prince Edward Island, Tuesday, June 22, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell,
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides 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.