



Docket: LR21028

Order: LR21-28

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Tim Easter, against Order LD21-258 issued by the Director of Residential Rental Property and dated July 9, 2021.

BEFORE THE COMMISSION ON Wednesday, August 18, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, August 18, 2021

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the question of whether the Director erred in permitting a greater than allowable rent increase and the removal of electricity as an included service from a rental agreement.

BACKGROUND

Tim Easter (“Mr. Easter”) and Cathie Easter (“Ms. Easter”) rent half of a duplex located at 6 Sarah Court, Mermaid, PE (the “Premises”), from a landlord, D & W Rental Holdings Inc. (the “Landlord”). Rent for the unit is \$1,050 per month with electricity as an included service.

On May 7, 2021, the Landlord gave formal notice to Mr. and Mrs. Easter that it intends to raise their rent to \$1,250 per month. On May 7, 2021, the Landlord filed with the Director of Residential Rental Property (the “Director”) an application to increase the rent above the percentage allowed by regulation and to transfer electricity costs to Mr. and Mrs. Easter (“Form 12”).

In Order LD21-258 dated July 9, 2021, the Director ordered that:

- a) effective September 1, 2021, the maximum allowable monthly rent for the Premises shall be \$1,250 with electricity remaining as an excluded service.
- b) Electricity will become an excluded service, upon the Landlord having an operable heat pump installed in the Premises with the connection fee being the responsibility of the Landlord.

Mr. Easter appealed.

The Commission heard the appeal on August 18, 2021. Mr. Easter and the Landlord’s representative, William Zafiris (“Mr. Zafiris”), participated by way of telephone conference call. The tenant in the other side of the duplex did not appeal and did not participate in the hearing.

Disposition

The appeal is allowed and Director’s Order LD21-258 is reversed.

The Issue

The Commission must decide whether the requested rent increase and the removal of included electricity are justified.

Analysis

As an attachment to his Notice of Appeal, Mr. Easter filed an analysis of the Landlord’s application and the Director’s decision in Order LD21-258 (see pages 2 through 5 of the file record). It includes discussion of the original purchase price and mortgage of the duplex, a refinancing which occurred in 2019, and submissions on the return on investment allegedly already achieved through that refinancing.

At the hearing before the Commission, Mr. Zafiris did not respond to or challenge Mr. Easter's analysis. He confirmed that the refinancing that occurred in 2019 did not result in capital investments in the duplex; he stated the funds were used to cover the operational losses across the Landlord's entire rental portfolio experienced since 2018, as well as to make some capital improvements to some of the other buildings owned by the Landlord.

Based on the information filed by the Landlord in its application before the Director, it does appear that some increase in rent may be warranted. However, the Commission finds that there was insufficient supporting evidence before the Director or the Commission to justify the requested increase in respect of the Premises.

Accordingly, the appeal is allowed.

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 LD21-258 is reversed.**

DATED at Charlottetown, Prince Edward Island, Wednesday, August 18, 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.