



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Docket: LR21029

Order: LR21-32

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Robin MacLeod against Order LD21-261 issued by the Director of Residential Rental Property, dated July 9, 2021.

BEFORE THE COMMISSION ON Monday,
August 30, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, August 25, 2021

ORDER

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(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks whether the Director of Residential Rental Property (“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

Robin MacLeod (“Ms. MacLeod”) rents half of a duplex located at 22 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 Ms. MacLeod that it intends to raise her rent to \$1,250 per month. On May 7, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation and to transfer electricity costs to Ms. MacLeod (“Form 12”). The Form 12 applied to both sides of the duplex.

Ms. MacLeod challenged the increase.

In Order LD21-261 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 being an included 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.

Ms. MacLeod appealed to the Commission on July 30, 2021.

The Commission heard the appeal by way of telephone conference call on August 25, 2021. Ms. MacLeod appeared on her own behalf, along with Connor Kelley and Michelle Beaton. The Landlord was represented by William Zafiris (Mr. “Zafiris”) and David Feener (Mr. “Feener”).

Disposition

The appeal is allowed and Director’s Order LD21-261 is reversed.

The Issue

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

Analysis

Part IV of the *Act* governs rent increases, and sets out the factors the Director shall consider in determining whether a rent increase beyond the annual allowable amount is justified.

The onus rests, appropriately, with a landlord to provide sufficient relevant evidence in support of an application made under subsection 23(3) of the *Act*. As discussed most recently in Commission Order LR21-18, the intention of the Legislative Assembly in passing the *Act* is to balance the rights of landlords and tenants. The *Act* allows the Director, and the Commission, to consider only those factors prescribed in subsection 23(8) in assessing an application for a greater than allowable rent increase.

One of the main issues raised in this appeal relates to a refinancing of the property in 2019. Though the Director referenced a prior mortgage and the 2019 refinancing, there was no detailed examination of this transaction at the original hearing. The Director gave the Landlord the opportunity to provide additional documentation to show the original purchase price and mortgage amount for the property, but the Landlord did not do so.

Ms. MacLeod stated that the refinancing in 2019 resulted in a significantly larger mortgage than the original mortgage used to purchase the property, a fact which is supported by records publically available at the provincial Registry of Deeds. She testified that the proceeds of the refinancing were not used for repairs or improvements to the Premises. She submitted that if both sides of the duplex had continued with the original mortgage no increase in rent beyond the annual allowable rate would be necessary.

Ms. MacLeod also referenced the Commission's decision in Order LR21-28.

Mr. Zafiris testified that the refinancing in 2019 was used to cover operational losses across the Landlord's portfolio of rental properties (including the Premises), provide a cash reserve for future operational expenses and provide funding for anticipated future improvements and repairs. He also stated that the rent for the Premises was well below that being charged for similar units in the current market.

He did note that a new electric boiler was installed in the Premises. He explained that new heat pumps for both sides of the duplex as well as replacements to the decks were anticipated in the near future, though no arrangements had yet been made with contractors or tradespeople. A replacement roof, siding repair or replacement, and replacement of appliances were also possible future expenditures for both sides of the duplex.

Mr. Zafiris also spoke generally to various additional business expenses for the Landlord including accounting and legal fees relating to a change in structure of the Landlord's corporate holdings. The refinancing of the Premises in 2019 was part of this reorganization.

Of particular interest to the Commission is the Landlord's confirmation that the duplex is currently on the market for sale. Indeed, the Landlord advised the tenants of the duplex that the property would be put up for sale by an e-mail dated April 23, 2021:

Regretfully as the decision was made to sell the properties, we have also made the decision to pursue formal approval to increase the rents as it would certainly be preferred, if not required by any potential buyer.

Mr. Zafiris confirmed that the listing price for the duplex was determined using an anticipated monthly rent of \$1,250 for each unit.

In determining this matter, the Commission cannot take into account factors such as the comparable market rates of rents, attractiveness to prospective purchasers, and speculative future expenditures. Though the Landlord's motivation to increase rents may be understandable in the context of a potential real estate transaction, it is neither appropriate nor fair to expect the tenants to bear this burden, only to improve the Landlord's potential profit with no corresponding benefit to the tenants.

Other than the new electric boiler, there is no documentation to establish that the proceeds of the refinancing of both sides of the duplex was used to repair or upgrade the Premises or the other side of the duplex. There was no documentation provided to the Commission setting out any additional business expenses associated with the refinancing or change in structure of the Landlord's business. There was no documentation relating to the alleged losses experienced by the Landlord in advance of the 2019 refinancing.

While some increase in rent may be warranted, the Commission finds that the evidence and financial documentation provided to the Director and to the Commission does not support a rental increase.

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 LD21-261 is reversed.**

DATED at Charlottetown, Prince Edward Island, on Monday, August 30, 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.