



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission  
Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

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**Docket: LR21041**

**Order: LR21-51**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Christopher Gallant, Luke Peters, Abu Sufian Chowdhury, Jessica Praught, Cassie Acorn, Sheriff Asejere, and Alan McColl against Order LD21-304 issued by the Director of Residential Rental Property and dated August 13, 2021.

**BEFORE THE COMMISSION ON** Tuesday, November 23, 2021.

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

Hearing Date: Thursday, October 14, 2021

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# ORDER

This appeal asks the question of whether the Director of Residential Rental Property (the “Director”) erred in permitting a greater than allowable rent increase for six units in a nine-unit building.

## BACKGROUND

Christopher Gallant, Luke Peters, Abu Sufian Chowdhury, Jessica Praught, Cassie Acorn, Sheriff Asejere, and Alan McColl (the “Tenants”) each rent an apartment located at 91 Kensington Road, Charlottetown, PE (the “Premises”), from landlord Bruce Holdco Inc. (the “Landlord”). Rent for the apartments in question ranges from \$850 to \$1,010 per month.

On June 22, 2021, the Landlord gave formal notice to the Tenants that it intends to raise their rent to an amount that was set out in each notice. On July 7, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation (“Form 12”) as well as a Statement of Income and Expenses (“Form 15”).

In Order LD21-304 dated August 13, 2021, the Director ordered that:

- a) effective October 1, 2021, the maximum allowable monthly rent for the Premises shall be as follows:

Unit	Rent
1	\$990
2	\$1,010
3	\$971
4	\$1,007
5	\$850
6	\$1,061
7	\$1,061
8	\$1,073
9	\$1,061

The Tenants appealed.

The Commission heard the appeal on October 14, 2021. The hearing was conducted by way of telephone conference call. Tenant Jessica Praught (“Ms. Praught”) made submissions on behalf of the Tenants. The Tenants were also assisted by Rosalind Waters and Connor Kelly of the PEI Fight for Affordable Housing. All of the Tenants were afforded the opportunity to make submissions, including by way of written submission. Rodney Bruce (“Mr. Bruce”) was the Landlord’s representative.

## Disposition

The appeal is allowed. Based on the Commission’s determination of a reasonable return on capital investment, Director’s Order LD21-304 is varied to deny the rental increases

requested pursuant to subsection 23(3) of the *Act*, and approve a 1% increase for certain units as outlined below.

## **A Note on Procedure**

An appeal to the Commission of a matter under the *Act* is by way of re-hearing, and section 26 of the *Act* permits the Commission to accept on appeal such evidence and information as in its discretion it considers fit. As is standard procedure during rental appeals, both the Tenants and the Landlord were afforded an opportunity to present additional relevant evidence in advance of the appeal hearing, and both parties did so by e-mail on October 7, 2021.

At the commencement of the appeal hearing on October 14, 2021, the Tenants indicated that they had prepared a statement to read into the record, and offered to send the written version of this statement to the Commission and to the Landlord to assist in following along. The Commission, having accepted similar such written versions of oral statements in the past, agreed to receive this document and forwarded same to Mr. Bruce before the Tenants began their presentation. The Commission notes that its Rules of Practice and Procedure permit for additional documents to be filed during a hearing, with approval of the Panel Chair (Rule 47.1).

The written version of the oral statement consisted of nine single-spaced pages, containing several subheadings, calculations, submissions on perceived ambiguities in the *Act*, and reference to census data regarding affordable housing in Prince Edward Island. Ms. Praught, on behalf of the Tenants, read the submission in its entirety into the record, with some of the other Tenants interjecting from time to time.

At the conclusion of Ms. Praught's presentation, Mr. Bruce objected to the document, and indicated that he did not feel that it was fair to expect him to respond to such a lengthy and detailed document with no time to review and consider same. Given the detailed nature of the document and in the interests of fairness to all parties, the Commission heard oral submissions from Mr. Bruce at the hearing, but also afforded him an opportunity to prepare a written response, should he have one, to the nine-page document submitted by the Tenants.

Mr. Bruce submitted via e-mail a response document on October 19, 2021, which was shared with the Tenants. The Commission extended to the Tenants one further opportunity to reply, and the Tenants' reply was received on October 22, 2021.

In his October 19, 2021 submission, Mr. Bruce took issue with what he described as the late filing of the nine-page document. He alleged that this was the second time that the Tenants and the representatives of PEI Fight for Affordable Housing had submitted late evidence, the first time being in advance of the hearing before the Director. Mr. Bruce alleged that this was an unfair tactic employed twice by the representatives of PEI Fight for Affordable Housing.

It is within the Commission's discretion as to whether to accept new evidence during an appeal hearing. As was explained to the parties during the hearing, the Commission tries to ensure that the parties have an opportunity to both be heard and to adequately respond to the arguments being made by the other side. The Commission's decision to afford Mr. Bruce additional time to review the nine-page document and provide a further written

response was designed to remedy his concern that he did not have adequate time to prepare his response.

## **Are the Representatives of the PEI Fight for Affordable Housing Interveners?**

In his October 19, 2021 submission, Mr. Bruce argued that Rosalind Waters and Connor Kelly, who are representatives of the PEI Fight for Affordable Housing and assisted the Tenants in the preparation for and presentation of the appeal, should have not been allowed to participate as they had neither applied for, nor had they been granted intervener status. Mr. Bruce alleged that the nine-page document that was submitted by the Tenants was prepared by Mr. Kelly and Ms. Waters, and as they are not interveners it should not be accepted into the record.

In their October 22, 2021 reply, the Tenants responded as follows:

*“We believe that the Landlord is misinterpreting the definition of Intervener. The PEI Fight for Affordable Housing was contacted by the Tenants for support and to help us understand the laws in regards to Rentals of Residential Properties.*

*. . .*

*The PEI Fight for affordable Housing was not an Intervener. They were not an additional Party. They were simply there to assist us in preparing for the hearing and helping us with technology during the hearing. The response submitted during the hearing was submitted by the tenants of 91 Kensington Rd. – see the end of the submission. It was sent from Rosalind Waters’ computer because she was helping us with logistics during the hearing and was clearly submitted on our behalf. The email says ‘Please find attached the written version of the submission made by the tenants of 91 Kensington Road v. Bruce Holdco In. Docket LR21045. Thank you.’”*

The Commission has considered the arguments put forward by Mr. Bruce, but disagrees that the representatives for the PEI Fight for Affordable Housing are or should have been classified as either an added-party intervener or a friend of the Commission intervener.

A friend of the Commission intervener is defined in Rule 14.1(b) of the Rules of Practice and Procedure as “an individual or organization who represents the public interest and can meaningfully contribute to the proceeding. A friend of the Commission intervener is not ordinarily vested with all of the rights of a party.”

In this case, and as is noted by the Tenants in their October 22, 2021 submission, Mr. Kelly and Ms. Waters were involved to the extent that they were assisting the Tenants in the preparation for the appeal hearing. They were not making submissions on behalf of the PEI Fight for Affordable Housing; to the extent that either Mr. Kelly or Ms. Waters made submissions, it was in support of and on behalf of the Tenants.

Though Mr. Bruce’s position is that the nine-page document, as well as any oral comments made by the representatives for the PEI Fight for Affordable Housing during the hearing should be struck from the record, the Commission declines to do so.

## The Issue

The Commission must decide whether the requested rent increases are justified.

## Analysis

Subsection 23(8) of the *Act* and section 20 of the *Rental of Residential Property Act Regulations* set out the factors to be considered when the Director or the Commission considers a proposed greater than allowable rent increase:

### 23. (8) Factors Considered

*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. Additional Factors

*The following additional matter is to be considered under subsection 23 (8) of the Act: The date and amount of the last rental increase.*

In Order LD21-304 the Director stated:

*[20] The Officer has reviewed the Landlord's income and expenses and finds that, after the adjustments noted above have been accounted for, the Landlord yielded a profit in the operation of the Premises during Period A in the amount of \$21,350.15 and a return on capital investment of 5.62%. This rate of return is below what would be consider reasonable for residential rental premises (typically between 6.0 and 8.0%). In addition, the evidence also establishes that the Landlord incurred in excess of \$19,000.00 in capital expenditure costs in June 2021. The Officer finds, therefore, that a rent increase is warranted pursuant to subsections 23.(b) and (c) of the Act.*

The Commission has previously determined in several Orders issued during 2021 that 4% is a reasonable return on capital investment. In the present matter before the Commission, the existing rents provide a 5.62% return on capital investment. In the Commission's view, even with the capital expenditure incurred during 2021, the current rents for all units are sufficient to provide a reasonable return on capital investment. The Commission finds that there is no statutory justification for a rental increase beyond the annual allowable percentage set by the Commission.<sup>1</sup>

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<sup>1</sup> The maximum allowable rent increase approved by the Commission for 2022 is detailed in Order LR21-39.

Accordingly, the appeal is allowed. Director's Order LD21-304 is varied to deny the rental increases requested pursuant to subsection 23(3) of the *Act*.

However, as the Landlord's subsection 23(3) application otherwise prevented a subsection 23(1) application, the Commission will permit an increase of 1% for units 1, 3, 6, 7, 8 and 9, effective January 1, 2022. Units 2, 4 and 5 are not included because the earliest permissible date for their next increase is June 1, 2022.

**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 and Director's Order LD21-304 is varied.**
2. **The rental increases requested pursuant to subsection 23(3) of the *Act* are denied.**
3. **The Commission will permit an increase of 1% for units 1, 3, 6, 7, 8 and 9, effective January 1, 2022.**

**DATED** at Charlottetown, Prince Edward Island, on Tuesday, November 23, 2021.

**BY THE COMMISSION:**

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Panel Chair - Erin T. Mitchell,  
Commissioner

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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.