



Docket: LR21051

Order: LR21-53

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Doreen MacLean, Florence Serviss, Floyd Serviss, Cheryl Noonan, Delmar Noonan, and Dianne Doucette against Order LD21-382 issued by the Director of Residential Rental Property and dated October 12, 2021.

BEFORE THE COMMISSION ON Monday, November 29, 2021.

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

Hearing Date: Wednesday, November 17, 2021

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 a four-unit building.

BACKGROUND

Doreen MacLean, Florence Serviss, Floyd Serviss, Cheryl Noonan, Delmar Noonan and Dianne Doucette (the “Tenants”) each rent a unit located at 9 Imperial Street, Kensington, PE (the “Premises”), from landlord WEL Holdings Limited (the “Landlord”). Rent for the units in question range from \$965.35 to \$991.43 per month.

On September 1, 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 August 26, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation. On September 1, 2021, the Landlord filed with the Director a Statement of Income and Expenses.

In Order LD21-382 dated October 12, 2021, the Director ordered that:

- a) the maximum allowable monthly rent for the Premises shall be as follows:

Unit	Rent	Effective Date
9E	\$1,250	January 1, 2022
9F	\$1,250	January 1, 2022
9G	\$1,250	December 1, 2021
9H	\$1,250	January 1, 2022

The Tenants appealed.

The Commission heard the appeal on November 17, 2021. The hearing was conducted by way of telephone conference call. The following Tenants participated by way of telephone conference call: Doreen MacLean (represented by Don MacLean and Calvin MacLean); Florence and Floyd Serviss; Dianne Doucette; and Cheryl Noonan (represented by Don MacLean). Connor Kelly with the PEI Fight for Affordable Housing provided assistance to the Tenants. Rodney Peters and David Webster represented the Landlord and were assisted by the Landlord’s legal counsel, Geoff Gibson.

Disposition

The appeal is allowed in part. Director’s Order LD21-382 is varied to provide a 2.3% increase in rent per unit, with the rent increase for unit 9G effective December 1, 2021, and units 9E, 9F and 9H effective January 1, 2022.

The Issue

The Commission must decide whether the requested rent increases 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.

One of the primary issues raised by the Tenants was the manner in which the Director calculated the Landlord's rate of return on capital investment. The Landlord submitted into evidence a market value appraisal of the Premises and sought to calculate its equity based solely on that value. The Director accepted this valuation in calculating the Landlord's equity in the property.

The Commission does not agree with this approach.

In Order LR21-18, the Commission considered how to calculate a reasonable return on capital investment, including how to calculate an owner's equity in property. The Commission conducted a lengthy examination of the relevant statutory provisions, past Commission orders, and an excerpt of the 1988 debate of the Legislative Assembly of Prince Edward Island in passing the *Act*. The Commission adopts the reasoning related to the calculation of property valuation contained in that Order.

The Commission finds it appropriate in this case to calculate the value of the Premises by taking the average of the market value appraisal and the most recent property tax assessment. Doing so enables a balancing of current rapidly increasing property values with a more conservative, long-term valuation approach. The Commission also notes that this valuation figure is similar, albeit slightly higher, to the bank appraisal used to obtain the mortgage.

As noted in Order LR21-18 [at page 9]:

"... while there is a mechanism under the Act to lawfully increase the maximum rent, there is no counterpoint mechanism to see a reduction of rent. Thus an increase in rent is permanent, while the valuation of a property may increase, and later decrease."

To only use the recent appraisal risks overstating the value of the property in the long term and correspondingly increasing rents, without a mechanism for lowering rents in the future.

With respect to total expenditures, both parties agreed to an adjustment to the insurance cost as a result of an insurance rebate. The Commission has taken this revised figure into account, and confirms the balance of the expenditures as determined by the Director.

The Commission has accordingly recalculated the financial information filed and determined that with existing rents the Landlord receives a 3.46% return on capital investment.

The Commission has previously determined in several Orders issued during 2021 that 4% is a reasonable return on capital investment. The Landlord stated on appeal that a 4% rate of return is acceptable. Accordingly, the Commission finds that a modest increase in rent is justified in order to provide the Landlord with a reasonable return on capital investment.

Accordingly, the appeal is allowed in part and Director's Order LD21-382 is varied to provide an approved increase in rent of 2.3% for the four units. The rent increase for unit 9G is effective December 1, 2021, and units 9E, 9F and 9H is effective January 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 in part.
2. Director's Order LD21-382 is hereby varied to provide an increase in rent of 2.3% for the four units. The rent increase for unit 9G is effective December 1, 2021, and units 9E, 9F and 9H is effective January 1, 2022.

DATED at Charlottetown, Prince Edward Island, Monday, November 29, 2021.

BY THE COMMISSION:

Panel Chair - Erin T. Mitchell,
Commissioner

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.