



**Docket: LR21055**

**Order: LR21-55**

**IN THE MATTER** of an appeal under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Jim McKenna against Order LD21-417 issued by the Director of Residential Rental Property and dated November 4, 2021.

**BEFORE THE COMMISSION ON** Thursday, December 16, 2021.

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

Hearing Date: Friday, December 10, 2021

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# ORDER

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(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

This appeal asks the question of whether the Director of Residential Rental Property (the “Director”) erred in calculating a greater than allowable rent increase.

## **BACKGROUND**

Jim McKenna (“Mr. McKenna”) rents half of a duplex located at 12 Ridgemount Court, Charlottetown, PE (the “Premises”), to Kenneth DesRoches (“Mr. DesRoches”) and Anne Marie DesRoches (collectively the “Tenants”). Rent for the Premises is \$1,100 per month due on the first day of the month.

On September 29 or 30, 2021, Mr. McKenna gave formal notice to the Tenants that he intends to raise their rent to \$1,300 per month.

On September 29, 2021, Mr. McKenna filed with the Director an application to increase the rent above the percentage allowed by regulation without a change to the included services.

Mr. McKenna submitted to the Director the Statement of Income and Expenses dated October 15, 2021, together with supporting documentation.

In Order LD21-417 dated November 4, 2021, the Director ordered that effective January 1, 2022, the maximum allowable monthly rent for the Premises will be \$1,219.60.

Mr. McKenna appealed.

The Commission heard the appeal on December 10, 2021. Mr. McKenna and Mr. DesRoches participated by way of telephone conference call.

## **Disposition**

The appeal is allowed and Director’s Order LD21-417 is varied to approve a maximum allowable monthly rent for the Premises of \$1,300 per month, effective January 1, 2022.

## **The Issue**

The Commission must decide whether the requested rent increase is justified.

## **Analysis**

Mr. McKenna indicated at the hearing of the appeal that he only wished to challenge two aspects of Director’s Order LD21-417.

### Heating Expenses

The first relates to heating expenses, and the Director’s decision to calculate ongoing heating expenses by taking the average of these expenses between 2020 and 2021. The Commission agrees with Mr. McKenna that heating expenses in 2020 were unusually low due to the large fluctuations in the price of oil given the onset of the COVID-19 pandemic. The Commission finds that the figures submitted by Mr. McKenna on appeal provide a more accurate sense of the cost of heating the Premises going forward.

### Calculation of Landlord's Equity

More significantly, Mr. McKenna submitted that the appraised value of the Premises should be used to establish equity in the property, without reference to the Provincial Assessment. Mr. McKenna's submission is that the appraised value is a more accurate statement of the value of the Premises.

The Commission notes that the Director did not have the benefit of the appraisal report provided to the Commission on appeal.

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.

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 should a correction in the market valuation occur.

### Mortgage Expenses

Returning to the current appeal, the Commission notes that the Director excluded the refinanced mortgage costs in the list of eligible expenses on the basis of the Commission's decision in Order LR21-32.

Order LR21-32 is distinguishable on its facts as in that appeal there was evidence to suggest that the proceeds of a refinancing were directed elsewhere in the landlord's business portfolio, and not used to make improvements or repairs to the premises. The landlord sought to recover the higher refinanced mortgage costs from the tenant, with no evidence of a corresponding benefit to the tenant. The Commission disallowed the application for a rent increase as a result.

In this case, there is no evidence to suggest that the refinancing was done for a purpose other than for normal operations of Mr. McKenna's rental venture, including significant renovations in 2009. Mr. DesRoches did not question the refinancing; he agreed that renovations and general upkeep had occurred and stated candidly that he did not take

issue with the increased rent sought by Mr. McKenna. Accordingly, the Commission wishes to make clear that the inclusion of a refinancing mortgage is acceptable where the evidence in general supports a finding that the proceeds of the refinancing mortgage were used in a manner that directly relates to the upkeep and operation of a rental premises.

Given a revised property valuation, the inclusion of the refinancing mortgage and a higher expense for heat, the Commission finds that an increase in rent from \$1,100 to \$1,300 is justified, 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.**
2. **Director's Order LD21-417 is varied to approve a maximum allowable monthly rent for the Premises of \$1,300 per month, effective January 1, 2022.**

**DATED** at Charlottetown, Prince Edward Island, Thursday, December 16, 2021.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell,  
Commissioner

(sgd. M. Douglas Clow)

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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.