



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Docket: LR21056

Order: LR22-01

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by WEL Holdings Limited against Order LD21-448 issued by the Director of Residential Rental Property and dated November 24, 2021.

BEFORE THE COMMISSION ON Thursday, January 6, 2022.

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

Hearing Date: Monday, December 13, 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 of Residential Rental Property (the “Director”) erred in the calculation of a greater than allowable rent increase for a three-unit building.

BACKGROUND

A landlord, WEL Holdings Limited (the “Landlord”), rents units located at 9I, 9J and 9K Imperial Street (the “Units”), Kensington, PE, to each of Sidney and Linda Frost, Debbie Graham and Lance and Rose Thompson (collectively the “Tenants”). Rent for the Units in question ranges from \$1,252.34 to \$1,285.24 per month.

On September 21 and 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 September 21, 2021, the Landlord filed with the Director a Statement of Income and Expenses. On September 29, 2021, filed an application to increase the rent above the percentage allowed by regulation.

In Order LD21-448 dated November 24, 2021, the Director ordered that:

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

Unit	Rent	Effective Date
9I	\$1,298.09	January 1, 2022
9J	\$1,298.09	January 1, 2022
9K	\$1,264.86	January 1, 2022

The Landlord appealed.

The Commission heard the appeal on December 13, 2021. The hearing was conducted by way of telephone conference call. Rodney Peters, David Webster and legal counsel Geoff Gibson represented the Landlord. The following Tenants participated: Sidney Frost, Linda Frost, Debbie Graham, Lance Thompson, and Rose Thompson. Pat Morrison (“Ms. Morrison”) provided assistance to the Tenants, as well as Connor Kelly (“Mr. Kelly”) with the PEI Fight for Affordable Housing.

Disposition

The appeal is denied. The outcome of Director’s Order LD21-448 is confirmed, though the Commission takes a different approach to the valuation of the outstanding mortgage in the calculation of return on investment.

The Issue

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

Preliminary Issue

At the outset of the hearing, counsel for the Landlord raised an objection to the participation of Ms. Morrison and Mr. Kelly, arguing that as they were not legal counsel and had neither applied for, nor received status as interveners in this matter, they should not be heard.

The Commission nevertheless permitted both Ms. Morrison and Mr. Kelly to participate as assistants to the Tenants in this appeal. See Order LR21-51 for a recent discussion on this issue.

In appeals pursuant to the *Act*, it is a common practice of the Commission to permit assistants to participate and make submissions in support and on behalf of parties, many of whom are self-represented and who often feel more comfortable having help from a loved one or other individual during the hearing.

Subsections 3(7) and 3(8) of the *Island Regulatory and Appeals Commission Act* grant the Commission the authority to establish procedure and make rules governing practice and procedure at hearings. Subsection 3(9) gives the Commission authority to give directions to the parties with respect to the conduct of a hearing. Section 8 grants the Commission authority to decide all matters of procedure not otherwise provided for in the rules.

The Commission notes that its Rules of Practice and Procedure permit wide latitude to determine its procedures, and Rule 6 explicitly contemplates that the Commission may dispense or amend its rules where appropriate.

In summary, as a statutory administrative tribunal, the Commission is master of its own procedure and the Prince Edward Island Supreme Court *Rules of Civil Procedure*, including Rule 15, do not apply to Commission appeal hearings.

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 Landlord takes issue with the Director's decision to average the property appraisal with the Provincial property tax assessment. The Landlord submits that only the property appraisal should be used for the calculation. The Landlord also submits that the cost of insurance should be increased.

The Tenants are supportive of Director's Order LD21-448.

The Commission notes that, where appropriate, it has adopted the practice of averaging the Provincial property tax assessment with a valid professional appraisal supplied by a landlord. See, for example, Commission Orders LR21-18, LR21-51, LR21-53, and LR 21-55. In the Commission's view, the Director properly adopted this approach in Order LD21-448. The Commission's rationale has been explained in these decisions, but to reiterate:

- The *Act* provides a mechanism to increase rent, but the *Act* does not currently provide any mechanism to decrease or “pull back” rent.
- Provincial property tax assessments, in the Commission’s opinion, tend to provide a conservative approach to property valuation increases that focuses on a trend over time, rather than rapid fluctuations in property value.
- A valid professional appraisal provides an accurate “snapshot” of the value of a property on a particular date. This value may further increase in the future or it may decrease.
- Given that the *Act* only allows for an increase in rent, any increase must be justified on a sustainable rather than short-term basis. Potentially fluctuating property values must be balanced with a long-term trend over time.

The Director used the value of the original mortgage in its calculations of the Landlord’s equity in the property. The Commission does not accept the rationale provided by the Director in using this figure and instead accepts the balance owing on the mortgage as established in the evidence before the Commission. This is in accord with the language used in Form 15. The Commission also applies the increased cost of insurance in the calculations.

As a result, while the Director calculated the Landlord’s return on investment as 7.83%, the Commission calculates the return on investment as 5.9%. However, as this figure still exceeds the Commission’s 2021 benchmark return on investment of 4%, the Commission agrees with the rent increases as calculated by the Director.

Determining the appropriate valuation of property in the context of greater than allowable rent increase applications has been at issue before the Commission in numerous appeals during 2021. The Commission is aware that the legislative scheme governing residential tenancies is currently under review, and encourages the Legislative Assembly to provide additional clarity regarding rental increases and the considerations and calculations required to support them.

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 denied.**
2. **Order LD21-448 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Thursday, January 6, 2022.

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.