



PRINCE EDWARD ISLAND

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

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**Docket: LR21057**

**Order: LR22-02**

**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 LD21-459 issued by the Director of Residential Rental Property and dated November 30, 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

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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 the calculation of greater than allowable rent increase for a four-unit building.

## BACKGROUND

A landlord, WEL Holdings Limited (the “Landlord”), rents units located at 9A, 9B, 9C and 9D Imperial Street (the “Units”), Kensington, PE, to each of Dorothy Beairsto, Wayne Rudderham, Thelma Moase, and Lorraine Grant (collectively the “Tenants”). Rent for the Units in question ranges from \$921.56 to \$975.00 per month.

On September 13 and 15, 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 13, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation and a Statement of Income and Expenses.

In Order LD21-459 dated November 30, 2021, the Director ordered that:

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

Unit	Rent	Effective Date
9A	\$1,064.58	January 1, 2022
9B	\$1,035.32	January 1, 2022
9C	\$1,055.20	January 1, 2022
9D	\$1,095.36	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: Dorothy Beairsto, Thelma Moase and Lorraine Gallant. Don MacLean (“Mr. MacLean”) assisted the Tenants, as did Connor Kelly (“Mr. Kelly”) with the PEI Fight for Affordable Housing.

## Disposition

The appeal is allowed and Director’s Order LD21-459 is varied. An increase in rent is justified and approved.

## 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 Mr. MacLean 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 Mr. MacLean 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 submits that only the property appraisal should be considered in a calculation of equity and that an average of the appraisal with the Provincial property tax assessment should not be used.

The Commission rejects that approach, having provided its rationale for using an average of the Provincial property tax assessment with a valid appraisal to create a sustainable rental increase as explained in numerous decisions issued during 2021 and most recently reiterated in Order LR21-56. Given that the *Act* does not permit rents to be decreased and rental increases are thus permanent, any increase in rent must be fully justified and must be sustainable.

The Landlord submitted various adjustments to the original Form 15, reducing several expenditures in accordance with the arguments put forward by the Tenants.

The Tenants submitted that only a \$15 per month increase was justified. The Commission notes, however, that the Tenants did not file a cross appeal.

The Commission finds that the following changes are to be made to Order LD21-459:

- Management fees to be decreased by agreed amount.
- Maintenance figures to be changed to Period A (July 31/21) only.
- Insurance increase as per new invoice.
- Owner's equity in property to be adjusted by using the amortized amount (principal balance).

The above results in an adjustment to the calculation of expenses, equity, net profit before increases and results in a current rate of return on investment of 1.04%.

An increase in rents is necessary in order to provide the Landlord with the Commission's benchmark return on investment of 4%. In order to achieve this, the Commission shall permit the following rents for each unit:

Unit	Rent	Effective Date
9A	\$1,144.70	January 1, 2022
9B	\$1,113.24	January 1, 2022
9C	\$1,134.61	January 1, 2022
9D	\$1,177.80	January 1, 2022

The Commission recognizes that this represents a significant increase for the Tenants. The Commission has attempted to balance the interests of all parties in accordance with the legislation which governs residential rental agreements, and by which the Commission is bound.

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 allowed.**

**2. Director's Order LR21-459 is varied to provide an increase in rent for each unit. The maximum allowable monthly rent for the Units shall be as follows:**

Unit	Rent	Effective Date
9A	\$1,144.70	January 1, 2022
9B	\$1,113.24	January 1, 2022
9C	\$1,134.61	January 1, 2022
9D	\$1,177.80	January 1, 2022

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

**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.