



PRINCE EDWARD ISLAND

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

Docket: LR21058

Order: LR22-03

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Lori Pendleton against Order LD21-432 issued by the Director of Residential Rental Property and dated November 16, 2021.

BEFORE THE COMMISSION ON Thursday, January 20, 2022.

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

Hearing Date: Monday, January 10, 2022

ORDER

Compared and Certified a True
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(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 denying a rent increase for a four-unit building.

BACKGROUND

A landlord, Lori Pendleton (“Ms. Pendleton”), rents units located at 64-66 Spring Park Road, Charlottetown, PE (the “Units”), to each of Brenda Tuplin, Pauline Tuplin, Sydney Tuplin and Ian Chisholm (collectively the “Tenants”). Rent for the Units in question ranges from \$640 to \$765 per month.

On September 28, 2021, Ms. Pendleton gave formal notice to the Tenants that she intends to raise their rent to an amount that was set out in each notice. On October 15, 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 LD21-432 dated November 16, 2021, the Director found that the Units are operating profitably and are yielding a reasonable return of rent in the amount of 4.46% and therefore denied the Landlord’s application.

The Landlord appealed.

The Commission heard the appeal on January 10, 2022. The hearing was conducted by way of telephone conference call. Ms. Pendleton participated in the hearing. Brenda Tuplin joined the conference call near the end of the hearing, though she did not make submissions. Although advised of the date, time and method of participation in the hearing, Pauline Tuplin, Sydney Tuplin and Ian Chisholm did not participate.

Disposition

The appeal is allowed and Director’s Order LD21-432 is varied to permit a 9.3% increase in rent, an increase which is less than the requested increase.

The Issue

The Commission must decide whether the requested rent increases, or in the alternative lesser 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.

Ms. Pendleton requested an increase in allowable maintenance costs, based on documented maintenance expenditures. She also requested property management fees and an allowance for planned capital expenditures. She stated that there has been no rental increase over the previous ten years.

Ms. Pendleton also expressed surprise that the return on investment allowed by the Commission is 4% as the Director in the past allowed a range of 6% to 8%. She filed a publicly available Turner Drake report from 2019 which suggested that 5.7% was appropriate for residential rentals in Prince Edward Island. She also expressed concern about the methodology used in the various Forms, particularly Form 15.

The Commission has reviewed the evidence and notes that at the hearing before the Director the Tenants were not opposed to Ms. Pendleton's requested increase. There is no information before the Commission to indicate that the Tenants have changed their position.

The Commission approves the following adjustments:

- An increase in annual maintenance expenses of \$3,169 over the amount allowed by the Director;
- An increase in annual management fees over that allowed by the Director to the maximum allowable management fees of 5% of gross rental income for the previous year – see subsection 18(e) of the *Rental of Residential Property Act* Regulations (the "Regulations").

After factoring in the above adjustments, the return on capital based on current rents would be 3.23%. The Commission allows the appeal and varies Director's Order LD21-432 to permit a 9.3% increase in rent, effective February 1, 2022, which would result in a 4% return on capital.

With respect to Ms. Pendleton's submissions regarding the permitted return on capital investment, the Commission notes that since 2021, the Commission has, in most cases, permitted a return of 4%. This differs from historical permitted returns.

In Order LR21-18, the Commission conducted a detailed review of the legislation pertaining to greater than allowable rent increase applications, including relevant Commission jurisprudence which rejected the application of a hard and fast formula in calculating owners' equity,¹ and noted the need to balance the interests of landlords and tenants.² In settling on a rate of return of 4%, the Commission has attempted to permit landlords to make a return on investment, modest though it may be, while recognizing that expenses for tenants have also been increasing.

The Commission has also considered the 2019 Turner Drake report submitted by Ms. Pendleton, but as it is dated and does not consider recent market factors, such as the impacts of the COVID-19 pandemic, the Commission declines to give it weight.

Accordingly, the rents are increased as set out below, rounded to the nearest dollar as permitted in section 21 of the Regulations:

- Unit 64 - Current Rent \$640 per month - New Rent \$700 per month
- Unit 66-1 - Current Rent \$765 per month - New Rent \$836 per month

¹ LR14-02.

² LR95-04.

- Unit 66-2 - Current Rent \$640 per month - New Rent \$700 per month
- Unit 66-3 - Current rent \$640 per month - New Rent \$700 per month

The Commission wishes to point out that all the Forms, including Form 15, are prescribed by Regulation and thus cannot be varied or changed by the Director or the Commission.

The Commission notes that Ms. Pendleton has several improvements planned for 2022 and the Tenants are supportive of these improvements and the request for rental increases to fund them. The *Act* as currently written does not permit rent increases in contemplation of future capital expenditures. As such, Ms. Pendleton may in future request a further increase, where the cost of such improvements, once made, could be considered.

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 LD21-432 is varied to permit a 9.3% increase in rent, effective February 1, 2022.**

DATED at Charlottetown, Prince Edward Island, Thursday, January 20, 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.