



**Docket: LR21060**

**Order: LR22-08**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Emily Morrison, Peggy McKillop and Sally Rankin against Order LD21-449 issued by the Director of Residential Rental Property and dated November 25, 2021.

**BEFORE THE COMMISSION ON** Wednesday, February 23, 2022.

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

Hearing Date: Friday, January 21, 2022

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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 permitting a greater than allowable rent increase for a three-unit building.

## BACKGROUND

Emily Morrison, Peggy McKillop and Sally Rankin (the “Tenants”) each rent a unit located at 9 Imperial Street, Kensington, PE (the “Premises”), from WEL Holdings Limited (the “Landlord”). Rent for the units in question range from \$1,252.34 to \$1,304.52 per month.

On September 21, 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 29, 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 LD21-449 dated November 25, 2021, the Director ordered that:

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

Unit	Rent	Effective Date
9L	\$1,502.34	January 1, 2022
9M	\$1,502.34	January 1, 2022
9N	\$1,554.32	January 1, 2022

The Tenants appealed.

The Commission heard the appeal on January 21, 2022. The hearing was conducted by way of telephone conference call. The following Tenants participated by way of telephone conference call: Emily Morrison, Peggy McKillop and Sally Rankin. Pat Morrison assisted the Tenants. Connor Kelly, with the PEI Fight for Affordable Housing, also provided assistance to the Tenants. Rodney Peters and David Webster represented the Landlord and were assisted by the Landlord’s legal counsel, Lynn Murray, Q.C. and Andrew MacDonald.

## Disposition

The appeal is allowed in part and Director’s Order LD21-449 is varied. An increase smaller than that allowed by the Director is justified and approved by the Commission.

## The Issue

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

## Preliminary Matter

At the outset of the hearing, counsel for the Landlord raised an objection to the participation of Mr. Kelly, arguing that as he was not legal counsel for the Tenants he should not participate. Counsel for the Landlord referred the Commission to section 21 of the *Legal Profession Act*, R.S.P.E.I. 1988, L-6.1.

Counsel for the Landlord did not lead evidence before the Commission as to Mr. Kelly's role with the PEI Fight for Affordable Housing. The PEI Fight for Affordable Housing website lists Mr. Kelly as its Tenant Coordinator. The Commission notes that Mr. Kelly did not make submissions on the appeal.

The Commission routinely permits litigants on rental appeals to have assistance from laypersons. The Commission has permitted representatives of the PEI Fight for Affordable Housing to participate in a number of rental appeals (see, for example, Commission Orders LR21-51 and LR22-02). In Order LR22-02, the Commission noted:

*In appeals pursuant to the [Rental of Residential Property 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.*

Accordingly, the Commission shall permit Mr. Kelly to participate as an assistant to the Tenants in this appeal.

If Counsel for the Landlord continues to have concerns over Mr. Kelly's participation at Commission appeal hearings, Counsel should raise the matter with the Law Society of Prince Edward Island as it is that Society which governs the practice of law in the Province of Prince Edward Island and is responsible for the administration and enforcement of the *Legal Profession Act*.

## **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 prepared by Accredited Appraisal Associates of July 5, 2021 and the K. P. Real Estates Appraisal of December 20, 2021 should be considered in a calculation of equity and that the Provincial property tax assessment should not be used in such calculation. The Commission is mindful of the full submissions of Counsel for the Landlord (see written submissions from pages 296 to 301 of Exhibit E-24). The Commission is also mindful that the Director, in Order LD21-449, used the one then available appraisal to calculate equity without including the Provincial property tax assessment.

Form 15 is the Lessor's Statement of Income and Expenses and is prescribed under section 17 of the Rental of Residential Property Act Regulations. Form 15 is attached to the Regulations and reads in part:

THE INFORMATION HEREIN IS PROVIDED BY THE LESSOR SOLELY FOR USE IN THE HEARING FOR A RENT INCREASE. THE INFORMATION SHALL BE AVAILABLE TO THE LESSEE(S) WHO SHALL PRESERVE CONFIDENTIALITY WITH RESPECT TO IT.

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OTHER INFORMATION

- 1. Value of Property as per Provincial Assessment: \$.....
- 2. Amount of Outstanding Mortgages, Loans:  
(Include only outstanding principal amounts) \$.....
- 3. Owner’s Equity in Property:  
(Subtract #2 from #1) \$.....
- 4. Year Property was Purchased: 20.....

Form 15 in isolation would seem to only permit the use of the Provincial property tax assessment to determine owner’s equity in the property. Given section 11 of the Interpretation Act, c. I-8.1, the Commission is cautious concerning such a strict approach. However, Form 15 has not been amended and thus the Provincial property tax assessment is still, at the very least, worthy of consideration.

If the Act provided a mechanism for rental decreases as well as rental increases, the Commission might very well accept the logic of the approach suggested by Counsel for the Landlord and followed by the Director in Order LD21-449.

However, as previously explained in several recent decisions of the Commission (see for example Orders LR21-56 and LR22-02), the Act does not allow for applications by tenants for rental decreases. Rental increases, once made, become permanent, and the Commission aims to ensure that any such increase is fully justified and in accordance with the principles of the Act that serve to protect tenants from unreasonable increases.

The Commission therefore continues to include the Provincial property tax assessment averaged, when available, with a valid appraisal in order to determine a sustainable property valuation and thus a reasonable and fair rental increase.

In the present appeal, the Commission disagrees with the approach used by the Director in LD21-449 and has averaged the July 5, 2021 appraisal with the Provincial property tax assessment in order to calculate equity.

The Commission excludes the cost of the life insurance policies placed on both of the Landlord’s principals.

As a result of the appraisal, the Landlord consulted with their insurance company and the insured value of the property was increased. The Commission includes the increased insurance premium associated with the Premises.

The Commission excludes the specific repair costs associated with unit 9L. Including major repair costs associated with one former tenant as an expected annual cost spread over a three-unit building is not reasonable as no evidence was provided that it was common or typical for the Landlord to suffer the cost of such damage on a regular basis.

After making the above adjustments, the Commission calculates the return on equity as 2.78% which is below the Commission's present benchmark of 4%. In order to achieve a 4% return on equity, the Commission has determined that a 6.2% increase in rent is justified. Accordingly, the effect on rents are as follows:

<u>Unit</u>	<u>Current Rent</u>	<u>New Rent – 6.2% increase</u>	<u>Effective Date</u>
9L	\$1,252.34	\$1,330.00	January 1, 2022
9M	\$1,252.34	\$1,330.00	January 1, 2022
9N	\$1,304.52	\$1,385.40	January 1, 2022

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 and now 2022. 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**

- The appeal is allowed in part.**
- Director's Order LD21-449 is varied to provide an increase of rent for each unit. The maximum allowable monthly rent for the Units shall be as follows:**

<u>Unit</u>	<u>Rent</u>	<u>Effective Date</u>
<b>9L</b>	<b>\$1,330.00</b>	<b>January 1, 2022</b>
<b>9M</b>	<b>\$1,330.00</b>	<b>January 1, 2022</b>
<b>9N</b>	<b>\$1,385.40</b>	<b>January 1, 2022</b>

**DATED** at Charlottetown, Prince Edward Island, Wednesday, February 23, 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.