



Docket: LR22002

Order: LR22-14

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by James Trainor against Order LD21-492 issued by the Director of Residential Rental Property and dated December 20, 2021.

BEFORE THE COMMISSION ON Wednesday, March 23, 2022.

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

Hearing Date: Wednesday, February 23, 2022

ORDER

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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 approving a rent increase.

BACKGROUND

A landlord, James McKenna (“Mr. McKenna”), rents premises located at 16 Rosemount Drive, Charlottetown, PE (the “Premises”), to James Trainor (“Mr. Trainor”). Rent for the Premises is \$1,050 per month.

On September 30, 2021, Mr. McKenna gave formal notice to Mr. Trainor that he intends to raise his rent to \$1,300 per month. On September 30, 2021, Mr. McKenna filed with the Director an application to increase the rent above the percentage allowed by regulation. On November 18, 2021 Mr. McKenna filed with the Director a Form 15 Statement of Income and Expenses (“Form 15”).

In Order LD21-492 dated December 20, 2021, the Director approved Mr. McKenna’s application and ordered that the maximum allowable monthly rent for the Premises would be \$1,300.00 commencing January 1, 2022.

Mr. Trainor appealed.

The Commission heard the appeal on February 23, 2022. The hearing was conducted by way of telephone conference call. Mr. Trainor and Mr. McKenna participated at the hearing. Mr. Trainor was assisted by Pauline Howard, Jackie Ellis and Connor Kelly.

Disposition

The appeal is allowed. Director’s Order LD21-492 is varied to provide a maximum allowable monthly rent for the Premises of \$1,226.00 commencing January 1, 2022.

The Issue

The Commission must decide whether the requested rent increase or, in the alternative, a lesser increase, is 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.

Mr. Trainor told the Commission that he did not agree with the grass cutting and snow removal expenses because he and his parents have done this work for the Premises. He also disputes the 1994 purchase price of the Premises. He also felt that the expenses were generally overstated.

Mr. McKenna stated that the expenses reflect what grass cutting and snow removal actually cost. He expressed the view that the amount he claimed for heating oil will not

be sufficient, given rising heating oil prices. He stated that the units were totally renovated since 1994 with new siding, new flooring, remodeled bathrooms and new windows.

The Commission approves the following adjustments:

- A reduction in the heating oil expense (Line 8) to \$1,579.00, based on the cost of heating oil identified on the Form 15 for January 1, 2021 to December 30, 2021. The Commission rejects a speculative increase in heating oil prices given that heating oil prices rise and fall over time. The Act only allows for rental increases and has no mechanism to decrease rent when expenses decrease.
- The exclusion of truck costs of \$247.66 (Line 17, other) as truck costs are an expense related to the management and maintenance of the Premises, and both management and maintenance fees are already claimed.
- The exclusion of appraisal fees of \$460.00 (Line 17, other) as the appraisal was undertaken to justify a rental increase and it is not an operating expense of the Premises.

With the above adjustments in expenses, a 4% return on capital investment is achieved by a rent of \$1,226.00 per month. This represents a 16.8% increase in rent over the existing rent of \$1,050.00 per month.

Accordingly, the Commission varies Director's Order LD21-492 and approves a new rent of \$1,226.00 per month, 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 LD21-492 is varied to provide a maximum allowable monthly rent for the Premises of \$1,226.00 commencing January 1, 2022.**

DATED at Charlottetown, Prince Edward Island, Wednesday, March 23, 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.