



**Docket: LR22003**

**Order: LR22-15**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "*Act*"), filed by Rosie Keough, Bill Trainor, Donna Trainor, Kelly Allen and Janet Wood against Order LD21-494 issued by the Director of Residential Rental Property and dated December 21, 2021.

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

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

Hearing Date: Friday, February 11, 2022

---

# 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 permitting a greater than allowable rent increase for several townhouses.

## BACKGROUND

Rosie Keough, Bill Trainor, Donna Trainor, Kelly Allen and Janet Wood are the tenants of Units 3, 5, 11 and 15 (the “Tenants”) and each rent a townhouse on Redwood Lane, Charlottetown, PE (the “Premises”), from landlord, James McKenna (the “Landlord”). Rent for the units in question range from \$1,200 to \$1,500 per month.

On September 30, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation. On September 30, 2021, the Landlord gave formal notice to the Tenants that he intends to raise their rent to an amount that was set out in each notice. On November 22, 2021 the Landlord filed with the Director a Statement of Income and Expenses.

In Order LD21-494 dated December 21, 2021, the Director ordered that:

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

Unit	Rent	Effective Date
3	\$1,600	January 1, 2022
5	\$1,600	January 1, 2022
7	\$1,600	January 1, 2022
9	\$1,600	January 1, 2022
11	\$1,600	January 1, 2022
13	\$1,600	January 1, 2022
15	\$1,575	January 1, 2022

The Tenants appealed. The Commission takes note that the tenants of units 7, 9 and 13 did not file an appeal.

The Commission heard the appeal on February 11, 2022. The hearing was conducted by way of telephone conference call. The following Tenants participated by way of telephone conference call: Rosie Keough, Bill Trainor, Donna Trainor and Kelly Allen. Pauline Howard, represented Janet Wood and also assisted the other tenants. Connor Kelly with the PEI Fight for Affordable Housing also provided assistance to the Tenants. The Landlord, James McKenna, also participated.

## Disposition

The appeal is denied. The maximum allowable monthly rent for the various units within the Premises set out in Director’s Order LD21-494 (see table above) are confirmed.

## The Issue

The Commission must decide whether the requested rent 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.

The Tenants disagree with the findings of the Director. The Tenants submitted that the Landlord was, in part, the author of his own misfortune by failing to apply the annual allowable rent increase to the units over the last number of years. They submitted that the fair market value of rents or possible selling price of the Premises should not be considered when establishing a rental increase. They further expressed concern that the Director did not consider the financial hardship to the tenants which will be caused by the rental increases. They submitted that if the Landlord wishes to have a greater return on investment he should make different business decisions.

The Commission has reviewed the materials submitted by the parties, and has considered the oral submissions made during the course of the appeal.

The Commission confirms the methodology of averaging the Provincial property tax assessment with an appraisal to determine the value of the Premises. The rationale behind this approach is discussed in Commission Order LR21-18.

The Commission approves the following adjustments:

- A reduction in the heating oil expense (Line 8) to \$9,988.73, based on the cost of heating oil identified in the evidence for the 2021 calendar year. 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.
- As the Landlord testified that the tree trimming expense is required every three years, the Commission excludes 2/3 of the tree trimming expense so this expense can be properly characterized as an annual expense, thus reducing the maintenance fee (Line 15) to \$9,769.00.
- The exclusion of truck costs of \$1,763.00 (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.
- In the text of Order LD22-494 the Director included the cost of appraisal fees but these fees were not included in Appendix "A" under the heading *Proposed 2022*. Exhibit E-52, page 549 provides an invoice for appraisal fees in the amount of \$3,450.00. The Commission wishes to be clear that the appraisal fees are to be excluded as the appraisal was undertaken to justify a rental increase and it is not an operating expense of the Premises.

Given the rental increases approved by the Director, the above adjustments raise the Landlord's return on capital investment from 0.2% to 0.7%. As a 0.7% return is well below the Commission's current benchmark of 4%, the Commission finds that the rental increases approved by the Director are justified.

Accordingly, effective January 1, 2022, the maximum allowable monthly rent for the Premises shall be as follows:

- Unit 15 - \$1575
- Units 3,5,7,9,11 and 13 - \$1600 per unit

**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. **Director's Order LD21-494 is confirmed.**

**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.