



Docket: LR22012

Order: LR22-19

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Matthew Brooks against Order LD22-042 issued by the Director of Residential Rental Property and dated February 18, 2022.

BEFORE THE COMMISSION ON Wednesday, April 13, 2022.

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

Hearing Date: Wednesday, April 6, 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

Atlantic Poppy Properties Inc. (the “Landlord”) rents premises located at 131 Cambridge Street, Summerside, PE (the “Premises”), to Matthew Brooks (“Mr. Brooks”). Rent for the Premises is \$1,090 per month.

On November 30, 2021, the Landlord’s property manager gave formal notice to Mr. Brooks that it intends to raise his rent to \$1,377 per month. On December 8, 2021, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation. On January 11, 2022, the Landlord filed with the Director a Statement of Income and Expenses (“Form 15”).

In Order LD22-042 dated February 18, 2022, the Director ordered that the maximum allowable monthly rent for the Premises would be \$1,283 commencing March 1, 2022.

Mr. Brooks appealed.

The Commission heard the appeal on April 6, 2022. The hearing was conducted by way of telephone conference call. Mr. Brooks participated at the hearing. The Landlord’s representatives, Susan Morrical (“Ms. Morrical”) and David Morrical (“Mr. Morrical”), also participated at the hearing.

Disposition

The appeal is allowed and Director’s Order LD22-042 is varied resulting in a maximum allowable monthly rent of \$1,274.31.

The Issue

The Commission must decide whether the awarded rent 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. Brooks took issue with the maintenance of the Premises, inferring that the management fees were not money well spent. He suggested that grass cutting and snow removal services were also below standard. He stated that the expense of a new propane boiler to replace an oil-fired boiler and electric hot water heater was not required when only the hot water heater needed replacement. However, he did not dispute or otherwise take issue with the numbers as set out on the Form 15 as amended by the Director.

Ms. Morrical and Mr. Morrical supported Director’s Order LD22-042. They stated that the old oil-fired boiler was so old its age could not be precisely determined, but was thought

to be about 60 years old. They also requested that a \$200 expense be added as they gave Mr. Brooks compensation for lost fuel oil when the oil tank was removed.

The Commission wishes to point out that the Landlord did not file a cross-appeal. In addition, the inclusion of a one-time expense such as compensation for lost fuel oil resulting from a tank removal, could distort what amounts to a permanent rental increase. Accordingly, the Commission does not add the \$200 compensation expense.

In past Director's Orders, the Director has included appraisal costs as an expense and the Commission disallowed such an expense on appeal. In Order LD22-042, the Director found the appraisal cost to be an atypical expense and divided it over a five-year period, in the yearly amount of \$103.50. While this is a step in the right direction, the Commission views an appraisal conducted for the specific purpose of seeking a rental increase as an expense which is not incurred in the actual operation and maintenance of the Premises. It is an expense incurred for the sole purpose of improving a landlord's net profit. Where an appraisal was incurred for a different purpose, inclusion or exclusion would need to be determined on the specifics facts of any such application.

While Mr. Brooks disputed the value offered for money expended, he did not dispute or take issue with the actual numbers set out on the Form 15 as amended by the Director. The Landlord's choice of replacing the boiler was within the Landlord's discretion and cannot be viewed as extravagant or unnecessary given the rough estimated age of the boiler, which was not disputed by Mr. Brooks.

However, the Commission has determined that appraisal expenses should be excluded and thus the total expenses are reduced by \$103.50. This results in a varied approved maximum allowable rent of \$1,274.31 per month, a small reduction from the amount awarded by the Director.

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. The maximum allowable monthly rent for the premises is \$1,274.31, effective March 1, 2022.**

DATED at Charlottetown, Prince Edward Island, Wednesday, April 13, 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.