



PRINCE EDWARD ISLAND

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

---

**Dockets: LR22017 and LR22018**

**Order: LR22-42**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Greener Properties Summerside Inc. and cross-appealed by Wayne and Mabel Gardiner, against Order LD22-040 issued by the Director of Residential Rental Property and dated February 17, 2022.

**BEFORE THE COMMISSION ON** Thursday, July 21, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Tuesday, May 10, 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 the calculation of greater than allowable rent increase for 24 units of the 26 units within the following buildings: one, 6-unit building on Sharp Drive, two, 6-unit buildings located on Corney Avenue and one, 8-unit building on LeClair Avenue, Summerside. Two units, 15 and 17 Corney Avenue, are excluded.

## Background

A landlord, Greenway Properties Summerside Inc. (the “Landlord”), rents units located at Sharp Drive, Corney Avenue and LeClair Avenue, Summerside, PE, (the “Units”) to each of Barrie and Beverly Millar, Percy and Louise Rushton, Maxine Casey, Marlene Clark, Irene Ramsay, Norbert and Eileen Rafferty, Joseph “Leo” Arsenault, Joyce Perry, Joyce DesRoches, Blye Cotton, Frank Gaudet and Anne Farrell, D. Alex MacDonald, Donald Ballum, Rose Gallant, Vera Dekker, Dan Potvin, Burton and Mary Wilcox, Margaret Marchand, Rena MacInnis, Allan and Pat Poirier, Kirsten Olson, Wayne and Mabel Gardiner, and Kevin and Dot Peddle (collectively the “Tenants”). At the time the appeal was filed with the Commission, 22 LeClair Avenue was vacant. Rent for the Units ranges from \$1,166 to \$1,192 per month.

On October 22, 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 October 26, 2022, the Landlord filed with the Director applications to increase the rent above the percentage allowed by regulation (“Form 12s”). On December 1, 2021, the Landlord filed with the Director a Statement of Income and Expenses.

In Order LD22-040 dated February 17, 2022, the Director ordered that:

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

Unit	Street	Rent	Effective Date
14	Sharp Drive	\$1,225	July 1, 2022
16	Sharp Drive	\$1,225	March 1, 2022
18	Sharp Drive	\$1,225	March 1, 2022
22	Sharp Drive	\$1,225	March 1, 2022
24	Sharp Drive	\$1,225	March 1, 2022
26	Sharp Drive	\$1,225	March 1, 2022
14	Corney Ave.	\$1,225	March 1, 2022
16	Corney Ave.	\$1,225	March 1, 2022
18	Corney Ave.	\$1,225	March 1, 2022
19	Corney Ave.	\$1,225	March 1, 2022
22	Corney Ave.	\$1,225	March 1, 2022
23	Corney Ave.	\$1,225	March 1, 2022

Unit	Street	Rent	Effective Date
24	Corney Ave.	\$1,225	June 1, 2022
25	Corney Ave.	\$1,225	March 1, 2022
26	Corney Ave.	\$1,225	March 1, 2022
27	Corney Ave.	\$1,225	March 1, 2022
14	LeClair Ave.	\$1,225	March 1, 2022
16	LeClair Ave.	\$1,225	March 1, 2022
18	LeClair Ave.	\$1,225	March 1, 2022
20	LeClair Ave.	\$1,225	March 1, 2022
22	LeClair Ave.	\$1,225	March 1, 2022
26	LeClair Ave.	\$1,225	March 1, 2022
28	LeClair Ave.	\$1,225	March 1, 2022
30	LeClair Ave.	\$1,225	March 1, 2022

The Landlord appealed. The Tenants in 28 LeClair Avenue, Wayne and Mabel Gardiner, cross-appealed (collectively the “Cross-Appellants”).

The Commission heard the appeal on May 10, 2022. The hearing was conducted by way of telephone conference call. Matthew Bowness and Kevin Green represented the Landlord and were assisted by legal counsel, Andrew MacDonald. The Cross-Appellants were represented by their son, Grant Gardiner. The following Tenants participated: Marlene Clark, Irene Ramsay, Donald Ballum, Rose Gallant, Margaret Marchand, and Rena MacInnis.

## Disposition

The appeal is denied and the cross appeal is allowed, resulting in a smaller increase than previously determined by the Director.

## The Issue

The Commission must decide what is an appropriate rent for the Units.

## Analysis

Part IV of the *Act* governs rent increases, and subsection 23(8) sets out the factors the Director shall consider in determining whether a rent increase beyond the annual allowable amount is justified. Subsection 23(8) reads:

*Factors considered*

*At the hearing both parties are entitled to appear and be heard and the Director shall consider the following factors:*

- (a) *whether the increase in rent is necessary in order to prevent the lessor sustaining a financial loss in the operation of the building in which the premises are situate;*
- (b) *increased operating costs or capital expenditures as advised by the lessor;*
- (c) *the expectation of the lessor to have a reasonable return on his capital investment;*
- (d) *such other matters as may be prescribed by the regulations.*

One additional matter is set out in the *Rental of Residential Property Act Regulations* (the "Regulations"):

*20. Additional factors*

*The following additional matter is to be considered under subsection 23(8) of the Act: The date and amount of the last rental increase. (EC10/89)*

The Landlord presented evidence on expenses and submitted that their proposal would phase in their requested increases over time for existing tenants only. The Landlord's representatives referenced an eight-page written submission where they submitted that the Director had erred in Order LD22-040 and that the Commission had erred in recent previous appeal Orders. In particular, they opposed the 4% return on investment referenced in recent Commission Orders, submitting that the Commission in Order LR14-02 found that a reasonable return on equity, after taxes, would be between 8% and 9%.

The Landlord submitted that, in the present appeal, an increase of monthly rent to \$1,470 as originally proposed would amount to a return on investment of approximately 7.8%.

The Cross-Appellants expressed concerns with respect to the practice of establishing the value of the premises through an averaging of the tax assessed value with the amount determined by the property appraisal. Their representative submitted that the appraisal was not relevant, reliable or fair as it is based on market rates and the rental rates that the Landlord is seeking.

The Cross-Appellants submit that the entire appraisal is subject to market rent and that, as market rent is not a factor to be considered, no rental increase is warranted.

As the Landlord has critiqued the Commission's recent use of a 4% return on investment as a guideline, stating that the dividend yield of blue chip stocks, such as Canadian Bank stocks, would give a roughly equal rate while not requiring active management, the Commission offers the following:

- Blue chip stocks offer a dividend that varies but is relatively reliable. Blue chip stocks may also offer share value accretion that is generally quite favourable over time, but are subject to day to day fluctuations in the market, and are also subject to general economic downturns and recessions.

- Residential real estate rentals may offer an annual profit but also offer the possibility of appreciation in the value of the real property asset.
- A recent check of annual dividend yields for the “Big 5” Canadian banks indicates a range of from 4.08% to 5.23% which is an increase over recent past yields.
- Real property values on Prince Edward Island are generally increasing at a significant rate and, in recent years, at a very significant rate. While this current rate will likely level off to more modest growth, such growth is favourable over time.
- Unlike stocks, including blue chip stocks, residential real estate is moderately isolated from negative market conditions, especially when demand for housing is high and vacancy rates are low.
- While the Commission’s current 4% return on investment guideline is calculated before taxes, dividend yields are also before taxes. In addition, dividends may be subject to fees.
- Dividend yields do not include the costs of financing the acquisition of shares. The Commission’s current 4% return on investment guideline is calculated after including any financing e.g. mortgage costs required to purchase the rental real estate asset.

Accordingly, the Commission, in the absence of a professional analysis filed by the Appellant setting out an appropriate rate of return on investment for residential rental properties, concludes that a rate of 4% is appropriate in an environment where the real estate market value is increasing at a significant rate and that increase is taken into account when determining equity and return on investment. A leveling off of real estate market values or continued rising interest rates could potentially warrant a raising of the 4% rate.

The Commission has recently allowed the averaging of the tax assessed value of a residential rental property with an appraisal of said property when calculating a landlord’s return on investment. Such an appraisal must be based on the then current value of the property using current income conditions.

The Landlord submitted a detailed professional appraisal report dated May 11, 2021. This appraisal report considered the valuation of 55 townhouse-style residential rental suites, including the 24 units which are the subject of this present appeal. The appraisal report was prepared “... for the purpose of providing an estimate of the market value for the subject property denoted herein.” The appraisal report also states:

*The market value opinion found within this report assumes the value “As If Rents Have Been Adjusted to Market Rent” as is fully utilized as a multifamily residential townhouse/garden home development.*

[Note: quotation marks and capitalization of words are as contained in the appraisal report]

The above quote was stated in both the extraordinary assumptions and limiting conditions section of the report, as well as the hypothetical conditions section of the report.

The appraisal report goes on to calculate monthly and annual rental income using projected rent:

*The provided schedules outline the current rent roll for the subject property legally identified as PID #935619. All of the (26) residential suites are leased inclusive electricity and heat. Residential tenants are responsible for payment of their own electrical and hot water usage. The projected base rent of \$1,400 is suggested plus the cost of heat and electricity which averages \$70.00 per month for each unit with the exception of unit #16 on LeClair Avenue which does not have a garage. The current total monthly rental income for the subject property is an estimated \$30,111.00 per month, which equates to an annual rental income of \$361,332.00. The projected monthly rent is estimated at \$38,300.00, which equates to an annual rental income of \$459,600.00.*

...

*The purpose of this report is to calculate the market value based on market rents for the property. It is the appraisers understanding the property owner will use this report to apply to (IRAC) for a rental increase.*

As noted at the beginning of this Order, the request for a rental increase only concerns 24 out of the 26 units. However, the income and expenses data provided by the Landlord was based on 26 units.

The Commission wishes to emphasize again that market value is not a factor listed in subsection 23(8) of the *Act* or in section 20 of the Regulations.

The Commission finds that it cannot use the appraisal report for the calculation of return on investment as the appraisal report is based on market value and projected rent. Accordingly, the Commission is left with the tax assessed value of the property and information establishing the actual purchase price.

In Director's Order LD21-304, referenced in Commission Order LR21-51, the Director referred to a return on capital investment of 5.62% and then went on to state:

*This rate of return is below what would be considered reasonable for residential rental premises (typically between 6.0 and 8.0%).*

Given that the valuation is limited to the tax assessed value of the property and information establishing the actual purchase price, both of which are conservative valuations of the real estate rental property owned by the Appellant, the Commission will proceed to calculate equity and then determine the appropriate rents based on a 7% return on investment.

As the actual purchase price was higher than the tax assessed value of the property, the Commission calculates equity using the actual purchase price, weighted and adjusted for 26 units. Given the mortgage information provided to the Commission, also weighted and

adjusted for 26 units, the equity is determined to be \$1,070,894.36. A return on equity of 7% would thus be \$74,962.61. The Commission has calculated revised annual expenses as \$305,322. Adding the 7% return on equity, the required annual revenue would be \$380,284.61.

Although this Order determines rent for only 24 of the 26 units, the data and all calculations are for 26 units. The Commission determines the appropriate maximum monthly rent to be \$1,218.86 per month, based on the following:

\$380,284.61 annual revenue divided by 12 months = \$31,690.38 monthly revenue

\$31,690.38 monthly revenue divided by 26 units = \$1,218.86 per month

As for the effective date of the rental increase, the Director used March 1, 2022 for 22 of the units, June 1, 2022 for 1 unit and July 1, 2022 for 1 unit. While the Director determined these dates on a rational basis, the Commission wishes to avoid a pattern of retroactive rent payments, which for 22 of 24 units would be quite significant. Accordingly, the effective date of the increase to \$1,218.86 is determined by the Commission to be August 1, 2022 for all 24 affected units.

**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 and the cross-appeal is allowed.
2. The maximum monthly rent for the 24 units affected by this Order is \$1,218.86, effective August 1, 2022.

**DATED** at Charlottetown, Prince Edward Island, Thursday, July 21, 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.