



PRINCE EDWARD ISLAND

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

Docket: LR22049

Order: LR22-47

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by CML Development Limited, against Order LD22-211 issued by the Director of Residential Rental Property and dated June 23, 2022.

BEFORE THE COMMISSION ON Thursday, August 18, 2022.

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

Hearing Date: Tuesday, August 16, 2022

ORDER

Compared and Certified a True
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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 the calculation of greater than allowable rent increase for 5 units in an 8 unit building.

Background

A landlord, CML Developments Limited (the “Landlord”), rents units located at 216 Water Street, Summerside, PE, (the “Units”) to each of Tracey MacLean, Mike O’Leary, Chyrel Norberte and Jiehene Lagundino, Mike Arsenault and Lori Vautour (collectively the “Tenants”). Rent for the Units ranges from \$500 to \$750 per month.

From March 22 to March 29, 2022, 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 March 22, 2022, the Landlord filed with the Director a Statement of Income and Expenses. On March 23, 2022, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation (“Form 12”).

In Order LD22-211 dated June 23, 2022, the Director ordered that:

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

Unit	Rent	Effective Date
2	\$862.67	July 1, 2022
3	\$549.26	July 1, 2022
4	\$681.24	July 1, 2022
6	\$681.24	July 1, 2022
8	\$556.89	July 1, 2022

The Landlord appealed.

The Commission heard the appeal on August 16, 2022. The hearing was conducted by way of telephone conference call. Matthew Moase (“Mr. Moase”) represented the Landlord. The following Tenants participated: Jiehene Lagundino (“Ms. Lagundino”) and Lori Vautour (“Ms. Vautour”).

Disposition

The appeal is denied and Director’s Order LD22-211 is confirmed.

The Issue

The Commission must decide whether the landlord’s request for a greater than allowable rent increase should be granted.

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)

Mr. Moase referred to the grounds of appeal attached to the Notice of Appeal. He expressed concern with respect to the Commission’s established rate of return of 4%. He also expressed concern that certain units were undervalued with respect to others based on square footage, number of bedrooms and number of bathrooms.

Ms. Lagundino did not have any questions for Mr. Moase. Ms. Vautour did have some questions for Mr. Moase and expressed concern with respect to the pricing and amenities of her unit.

The Commission agrees with the reasoning offered by the Director in Order LD22-211, including utilizing a 4% return on investment.

The Commission considered the factors set out in subsection 23(8) of the Act and section 20 of the regulations cited above. The Commission agrees with the statement given in Order LD22-211:

The Officer is bound to consider the factors set out in the Act and the Regulations. What is not included in the list of factors to be considered is whether an increase is warranted because the current rent is below comparable market rents ...

The Commission is well aware that the rents for the various units within 216 Water Street varied greatly from one to another prior to the application of the rent increase. Mr. Moase argues that these should be balanced out to be more in line with market value. However, market value is not an included factor and neither is an extra-large increase in rents of some units solely for the purpose of bringing their rents up to be more balanced or equitable with respect to other units.

Accordingly, the appeal is denied and Director's Order LD22-211 is confirmed.

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 LD22-211 is confirmed.

DATED at Charlottetown, Prince Edward Island, Thursday, August 18, 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.