



Docket: LR22042

Order: LR22-51

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by David Kiff, Sylvia Kiff, Burrows MacPhail and Florence MacPhail against Order LD22-169 issued by the Director of Residential Rental Property and dated May 27, 2021.

BEFORE THE COMMISSION ON Thursday, September 15, 2022.

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

Hearing Date: Tuesday, July 19, 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 permitting a greater than allowable rent increase for a three-unit building.

BACKGROUND

David Kiff, Sylvia Kiff, Burrows MacPhail and Florence MacPhail (collectively the “Tenants”) rent units O and P located at 9 Imperial Street, Kensington, PE (the “Premises”), from WEL Holdings Limited (the “Landlord”). Rent for the units in question range from \$1,033.18 to \$1,138.13 per month.

On February 17, 2022, the Landlord provided a Form 10 notice of rent increase to the Tenants and to a third party (the tenant of Unit Q who is not a party to this appeal). Also on February 17, 2022, the Landlord filed with the Director a Form 12 application to increase the rent above the percentage allowed by Regulation.

In Order LD22-169 dated May 27, 2022, the Director ordered that:

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

Unit	Rent	Effective Date
O	\$1,388.13	June 1, 2022
P	\$1,283.18	June 1, 2022
Q	\$1,203.33	June 1, 2022

The Tenants appealed.

The Commission heard the appeal on July 19, 2022. The hearing was conducted by way of telephone conference call. The Tenants participated by way of telephone conference call. Pat Morrison and Don MacLean assisted the Tenants. Rodney Peters and David Webster represented the Landlord.

Disposition

The appeal is allowed in part and Director’s Order LD22-169 is varied. An increase smaller than that allowed by the Director is justified and approved by the Commission.

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. 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 Tenants submitted written submissions and evidence prior to the hearing (pages 286 to 333 of the file documents).

At the hearing, the Tenants submitted that the Director did not consider the “basement issue” whereby one tenant had paid upfront 50% of the cost of the basement in exchange for reduced rent. The Tenants submitted that an adjustment (an increase for rent not collected) of \$1,080 be made to line 5 of the Form 15. The Tenants also spoke to an adjustment on line 6 as referenced on pages 320 to 325 (exhibit E-34). They also submitted that line 16 should be reduced as explained in their written submissions.

The Tenants referred to their mortgage calculation notes on pages 313 to 319 of the file documents (exhibit E-33) and their notes on equity on pages 320 to 325 (exhibit E-34). They submit that the Director erred by not making an adjustment for a withdrawal of equity unrelated to the units, as the refinanced mortgage was not used to improve the Premises or otherwise benefit the Tenants.

They also submitted that the amount for insurance should be adjusted as the policy was renewed early and thus covered 401 days rather than 365 days. They also submit that the insurance company rebate is going to be increased from 10% to 18%. They also submit the new insurance bill should not be in evidence as no cross appeal was filed.

They submitted that expenses such as booking and office supplies should not be included as they ought to be included in management fees. They also question maintenance fees, addressing landscaping, grass cutting and snow removal.

The Landlord submitted written submissions prior to the hearing (pages 255 to 285 of the file documents).

At the hearing, the Landlord submitted that the Director gave a fair outcome and correctly calculated the mortgage and the equity in this particular matter.

The Landlord explained that the “basement issue” related to the finishing costs for the basement of one unit. This deal occurred in 2013 when the unit was new and as such established the original rate of rent for that unit.

The Landlord submitted that an 18% rebate on insurance had not crystallized and that they only factored the established 10% rebate. The Landlord submitted that the insurance was only reported for 365 days.

The Landlord submitted that the ceiling of 5% for management fees is well below the “going rate”.

The Landlord submitted that while funds were taken out of equity as a result of refinancing no additional costs are being passed on to the Tenants.

The Landlord submitted that the new property tax bill should be considered.

The Commission has made the following analysis.

The Commission finds that the funds withdrawn from equity (10.7% of the remortgaged sum) as part of the remortgaging of the Premises were not used on the Premises for improvements, refurbishing or repair. Thus, only 89.3% of mortgage as of January 31, 2022 (page 44 of the file documents) is to be used in the calculation of equity. The valuation of the Premises continues as an average of market value and the property tax assessment as set out in Director’s Order LD22-169.

As for expenses, only 89.3% of the new mortgage cost may be utilized. Dues for the Residential Rental Association of PEI are not considered a valid expense and are removed. Travel costs are considered part of management fees and are removed.

The Commission finds that a return on equity of 4% remains valid.

In order to achieve a 4% return on equity, the Commission has determined that a 19% increase in rent is justified. Accordingly, the effect on rents are as follows:

<u>Unit</u>	<u>Current Rent</u>	<u>New Rent – 19% increase</u>	<u>Effective Date</u>
O	\$1,138.18	\$1,354.37	June 1, 2022
P	\$1,033.18	\$1,229.48	June 1, 2022
Q	\$953.33	\$1,134.46	June 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 in part.**
- 2. Director’s Order LD22-169 is varied to provide a smaller increase of rent for each unit. The maximum allowable monthly rent for the Units shall be as follows:**

<u>Unit</u>	<u>Rent</u>	<u>Effective Date</u>
9O	\$1,354.37	June 1, 2022
9P	\$1,229.48	June 1, 2022
9Q	\$1,134.46	June 1, 2022

DATED at Charlottetown, Prince Edward Island, Thursday, September 15, 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.