



**Dockets: LR22044 and LR22046**

**Order: LR22-52**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by WEL Holdings Limited against Order LD22-179 issued by the Director of Residential Rental Property and dated June 3, 2021.

- and -

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Fred Beirsto and Connie Arsenault against Order LD22-179 issued by the Director of Residential Rental Property and dated June 3, 2021. (CROSS-APPEAL)

**BEFORE THE COMMISSION ON** Thursday, September 15, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, July 20, 2022

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(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

# ORDER

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 two units in a three-unit building.

## BACKGROUND

Fred Beairsto and Connie Arsenault (the “Tenants”) rent units R and S located at 9 Imperial Street, Kensington, PE (the “Premises”), from WEL Holdings Limited (the “Landlord”). Rent for the units in question range from \$1,112.51 to \$1,121.89 per month.

On or about February 25, 2022, the Landlord provided Form 10 rent increase notices to the Tenants. On March 1, 2022, the Landlord filed with the Director a Form 12 application to increase the rent above the percentage allowed by Regulation.

In Order LD22-179 dated June 3, 2022, the Director ordered that:

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

Unit	Rent	Effective Date
R	\$1,271.59	July 1, 2022
S	\$1,271.59	July 1, 2022

The Landlord appealed. The Tenants cross-appealed.

The Commission heard the appeal and cross-appeal on July 20, 2022. The hearing was conducted by way of telephone conference call. The tenant Fred Beairsto participated by way of telephone conference call. The tenant Connie Arsenault did not participate. Pat Morrison and Don MacLean represented the Tenants. Rodney Peters and David Webster represented the Landlord.

## Disposition

Both the appeal and the cross-appeal are denied and Director’s Order LD22-179 is 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. 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 306 to 362 of the file documents), and made extensive submissions at the hearing of the appeal.

The Landlord submitted written submissions and evidence prior to the hearing (pages 262 to 305 of the file documents), and also made extensive submissions at the hearing of the appeal.

The Commission has considered all of the submissions and the evidence before it, and agrees with the Director in all findings. The Commission adopts the Director’s reasons as set out in Order LD22-179.

Going forward, the Commission adopts the traced approach used by the Director in Order LD22-179 for a refinanced mortgage where the funds in equity removed is unrelated to the upkeep, operation or improvement of the Premises.

Accordingly, Director’s Order LD22-179 is confirmed in its entirety.

**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 and cross-appeal are denied.**

**2. Director’s Order LD22-179 is confirmed in its entirety. The maximum allowable monthly rent for the Units shall be as follows:**

Unit	Rent	Effective Date
9R	\$1,271.59	July 1, 2022
9S	\$1,271.59	July 1, 2022

**DATED** at Charlottetown, Prince Edward Island, Thursday, September 15, 2022.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell,  
Commissioner

(sgd. M. Douglas Clow)

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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.