



PRINCE EDWARD ISLAND

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

Docket: LR22073

Order: LR23-01

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Darcy Campbell and Danielle Doiron, against Order LD22-405 issued by the Director of Residential Rental Property and dated November 14, 2022.

BEFORE THE COMMISSION ON Friday, January 13, 2023.

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

Hearing Date: Tuesday, January 10, 2023

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 permitting a greater than allowable rent increase for a side-by-side duplex.

Background

A landlord, 102070 PEI Inc. (the “Landlord”), rents a unit located at 1 Southport Drive, Stratford, PE, (the “Unit”) to Darcy Campbell and Danielle Doiron (collectively the “Tenants”). Rent for the Unit is \$1,605.90 per month.

On September 20, 2022, the Landlord gave formal notice to the Tenants that it intends to raise their rent to an amount set out in the notice. On September 20, 2022, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation (“Form 12”). On October 18, 2022, the Landlord filed with the Director a Statement of Income and Expenses (“Form 15”).

In Order LD22-405 dated November 14, 2022, the Director ordered that the maximum allowable monthly rent for the Unit shall be \$1,855.90 effective January 1, 2023.

It should be noted that Order LD22-405 related to both 1 Southport Drive and 5 Southport Drive. The tenant of 5 Southport Drive did not participate in the hearing before the Director, and did not appeal the Director’s order. The Tenants of 1 Southport Drive alone appealed.

The Commission heard the appeal on January 10, 2023. The hearing was conducted by way of telephone conference call. Both Tenants participated. The Landlord was represented by Steve Barber (“Mr. Barber”).

Disposition

The appeal is dismissed and Director’s Order LD22-405 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)

The Commission considered the factors set out in subsection 23(8) of the Act and section 20 of the regulations cited above.

The Tenants told the Commission that they are not against an increase, but that there are issues which, if resolved, may significantly decrease the Landlord's electricity and fuel oil expenses. They submit that any increase should be delayed until these matters are evaluated by professionals.

Mr. Barber explained that resolution of heating expenses has been investigated and will likely involve extensive work to re-plumb the hot and cold water pipes. He noted that there are numerous other expenses relating to the unit which he has not submitted, such as the heat pump that was recently installed in the Unit. He noted that he also is not including a management fee in his statement of expenses.

While it is possible that the Landlord may be able to reduce heating expenses through plumbing changes, and possibly electricity expenses through improved dryer venting, the Commission accepts the evidence of the Landlord that a significant financial outlay will likely be necessary which would at least partly offset savings on recurring expenses. In addition, the Commission notes that the Landlord has not claimed all eligible expenses.

The most recent prior increase was a one percent increase in rent, effective January 1, 2022 and thus the rent has not increased within the last 12 months.

The Tenants urged the Commission to consider recent legislative changes with respect to rent increases, but these changes have no bearing on this case. The current application does not relate to the maximum allowable rent increase for 2023 (see subsection 23(1.1) of the Act), and Bill No. 87, the new *Residential Tenancy Act*, has not yet been proclaimed in force. The Commission must decide this case pursuant to the existing provisions of the *Rental of Residential Property Act* relating to greater than allowable rent increases.

The Commission agrees with the findings of the Director that an increase in rents is justified. The Commission confirms the rents set by the Director for both 1 and 5 Southport Drive.

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 dismissed.
2. Director’s Order LD22-405 is confirmed.
3. Rent for 1 Southport Drive, Stratford, PE is established at \$1855.90 per month, effective January 1, 2023.
4. Rent for 5 Southport Drive, Stratford, PE is established at \$1739.75 per month, effective January 1, 2023.

DATED at Charlottetown, Prince Edward Island, Friday, January 13, 2023.

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.