



PRINCE EDWARD ISLAND

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

Dockets: LR23013

Order: LR23-15

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Chris Ramsay, against Order LD23-080 issued by the Director of Residential Rental Property and dated March 3, 2023.

BEFORE THE COMMISSION ON Friday, April 28, 2023.

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

Hearing Date: Wednesday, April 26, 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 denying a rent increase for eight residential units.

Background

A landlord, Chris Ramsay (the “Landlord”), rents units located at 9 Sunset Drive, Kensington PE (the “Units”) to each of Tammy Arsenault, Jason Gallant, Dolly Scott, Darlene Peters, Judy Lewis, Kristine Dymont, Vickie Heeshen and Eileen Clark (collectively the “Tenants”). Rent for the Units ranges from \$450.00 to \$725.00 per month.

On December 27, 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 January 4, 2023, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation (the “Applications”) as follows.

Unit	Current Rent	Proposed Rent	Effective Date
1	\$700.00	\$775.00	April 1, 2023
2	\$725.00	\$800.00	April 1, 2023
3	\$725.00	\$800.00	April 1, 2023
4	\$725.00	\$800.00	April 1, 2023
5	\$725.00	\$800.00	April 1, 2023
6	\$450.00	\$495.00	April 1, 2023
7	\$620.00	\$685.00	April 1, 2023
8	\$620.00	\$685.00	April 1, 2023

On January 4, 2023, the Landlord filed with the Director a Statement of Income and Expenses.

In Order LD2-080 dated March 3, 2023, the Director denied the Application and ordered that the rents for the Units will be as follows:

Unit	Current Rent
1	\$700.00
2	\$725.00
3	\$725.00
4	\$725.00
5	\$725.00
6	\$450.00
7	\$620.00
8	\$620.00

The Landlord appealed.

The Commission heard the appeal on April 26, 2023. The Landlord participated by telephone conference call together with his legal counsel, Andrew MacDonald (“Counsel”). The following tenants participated by telephone conference call: Tammy Arsenault and Judy Lewis.

Disposition

The appeal is dismissed and Director’s Order LD23-080 is confirmed.

The Issue

The Commission must decide whether the Landlord is entitled to the increase in rents for which he has applied.

Analysis

The Commission confirms that, notwithstanding recent legislative amendments to laws governing the landlord and tenant relationship, the provisions of the *Rental of Residential Property Act*, RSPEI 1998, Cap. R-13.1 (the “Act”) which were in force at the time the application was made continue to apply, and the Commission must decide the matter in accordance with the Act.¹

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

¹ See section 112, *Residential Tenancy Act*, RSPEI 1988, C. R-13.11.

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 Director reviewed the financial information submitted by the Landlord, made some adjustments to the Landlord's statement of income and expenses, and concluded that the Landlord had not established that he was entitled to a greater than allowable increase in rents.

On April 24, 2023, Counsel filed written submissions on behalf of the Landlord. At the hearing, Counsel emphasized the following points summarized below:

- An appraisal provides a more accurate valuation of the building at 9 Sunset Drive. This is new information filed on appeal and was not available at the time of the Director's decision in LD23-080. This appraisal was sought to assist the Landlord in deciding whether or not to sell the building.
- Increases in energy costs, especially for heating, justify a reasonable increase in rent.
- The mortgage was completely paid early from the Landlord's personal finances and evidence of this was provided to the Commission. The Landlord feels he should get credit for this as a business expense.
- With respect to the cost of a new furnace and the re-building of the chimney, the sum of \$11,536.67 should be amortized as a capital expense, while the sum of \$9,443, financed through the furnace supplier based on a 36-month period, should be divided by three and each third deducted as an annual expense as a debt or loan.
- Without a rental increase now, and with the rents well below market rates, the Landlord will be "stuck on a treadmill" and will never be able to catch up given the "hard caps" contained in the new *Residential Tenancy Act*.

In LD22-055, issued by the Director on March 2, 2022, the Director awarded increases for all 8 units at 9 Sunset Drive. This document was not presented in evidence at the time of the hearing before the Commission on April 26, 2023. The Commission indicated it would obtain a copy of it and circulate it to the parties, which was completed on April 27, 2023.

In Order LD22-055, the Director stated in paragraph 15:

[15] The Officer finds, based upon all the factors set out in the Act, specifically sub-subsection 23.(8)(b), and (c), that the Landlord is entitled to an increase in rent. The Officer finds that the Landlord has shown substantial increases in his operating expenses for the Premises, with a likelihood of greater increases in the upcoming year. The Officer notes that by approving the Application, the Landlord will receive a return on his capital investment, which is higher than the 4.0% benchmark established by the Commission in many 2021 decisions. However, the Officer notes each and every application needs to be determined by its merits and facts. In this case, the Officer notes that the operating costs for the Premises have almost doubled in the past year, and that the rents for the Premises are still considerably low (even after the proposed increases). The Officer further notes that the Tenants did not provide any adversarial position against the Application.

Therefore, the Officer finds that it is appropriate, in this case, to allow the Application.

The Commission takes notice that the Director in Order LD22-055 was mindful of the "...likelihood of greater increases in the upcoming year". The Director also approved an increase in rent even though the return on capital investment benchmark was exceeded as a result of that rental increase. The Commission finds that the Landlord had the benefit of a recent, substantial and generous increase in rent. While subsequent further increases in operating expenses may have lowered the Landlord's return on capital investment somewhat, the Landlord's rental business remains profitable.

In the present appeal, the Commission finds that the Landlord made a business decision to pay out his mortgage early, and thus there is now no mortgage on the property. This was his decision to make; it had an up-front cost but it also had the benefit of lowering his rental business expenses and increasing his equity in 9 Sunset Drive. The Commission finds that the Director was justified in not considering this business decision in determining this present application for a rent increase.

The Commission agrees that the cost of the new furnace and re-built chimney should be amortized but any adjustments to the Director's calculations do not warrant an increase in rent.

The Commission finds that a careful review of all of the noted items on the very last page of the appeal record calls into question the integrity of the appraisal and thus the Commission cannot give that appraisal any weight for the purposes of this appeal.

Accordingly, the Commission agrees with the decision of the Director in Order LD23-080 and the appeal is dismissed.

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 LD23-080 is confirmed.

DATED at Charlottetown, Prince Edward Island, Friday, April 28, 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.