



**Dockets: LR23015 and LR23016**

**Order: LR23-17**

**IN THE MATTER** of appeals, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Peggy McKillop against Order LD23-072 and Emily Morrison against Order LD23-073 issued by the Director of Residential Rental Property both dated February 28, 2022.

**BEFORE THE COMMISSION ON** 15<sup>th</sup> day, May, 2023.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Friday, April 14, 2023

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# ORDER

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(Sgd.) Susan Jefferson  
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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 two units in a three-unit building.

## **BACKGROUND**

Peggy McKillop (“Ms. McKillop”) and Emily Morrison (Ms. Morrison”) (collectively the “Tenants”) each rent a unit (“Unit L” and “Unit M” respectively) located at 9 Imperial Street, Kensington, PE (the “Premises”), from WEL Holdings Limited (the “Landlord”). Rent for the units is currently \$1,330.00 per month.

On November 16, 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 the same date, the Landlord filed with the Director an application to increase the rent above the percentage allowed by regulation and a Statement of Income and Expenses.

In Order LD23-072 dated February 28, 2023, the Director ordered that the maximum allowable monthly rent for the Premises occupied by Ms. McKillop shall be \$1,470.00 effective March 1, 2023:

In Order LD23-073 dated February 28, 2023, the Director ordered that the maximum allowable monthly rent for the Premises occupied by Ms. Morrison shall be \$1,470.00 effective March 1, 2023.

The Tenants appealed.

The Commission heard both appeals on April 14, 2023. The hearing was conducted by way of telephone conference call. Ms. McKillop participated. Ms. Morrison was not present. Both Tenants were represented and assisted by Pat Morrison. Rodney Peters and David Webster represented the Landlord.

## **Disposition**

The appeal is allowed and Order LD23-072 and LD23-073 are reversed.

## **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)*

On April 12, 2023 Pat Morrison filed a written submission with the Commission. A copy of this submission was electronically provided to the Landlord. The Tenants also filed new additional documents (Exhibit E-36) and the Landlord filed additional documents (Exhibits E-37 and E-38).

Pat Morrison submitted at the hearing that Units L and M are two units of a three unit building, as part of a 20-unit complex spread out over several buildings. She submitted that Units L and M (along with Unit N which is not the subject of the present appeal) received a 6.2% increase, effective January 1, 2022 in Commission Order LR22-08, dated February 23, 2022. She submitted that the tenants in Unit N, as well as units I, J, K in the neighbouring building were not served with an increase for 2023. She submitted that units L,M,N, I,J and K were all built in 2016 and all shared expenses. She noted that Directors Order LD23-072 and LD23-073 set the rents for Units L and M at \$1470.00 per month and yet Unit N remains at \$1385.40 per month and Unit K remains at \$1264.00 per month. She expressed concern that it was not fair for 2 of 6 units to pay extra while the other 4 did not.

Pat Morrison noted that repairs for a refrigerator in Unit L were added as an extra expense. She also expressed concern that a "COVID-19 deferral" for 6 months led to higher monthly mortgage payments. She questioned the validity of the January 23, 2023 appraisal, noting it contained numerous errors. She noted that the Landlord filed an updated January 23, 2023 appraisal but no explanatory letter was provided to explain how it differed from the first. She observed that the July 5, 2021 appraisal report also contained some errors. She acknowledged that the December 20, 2021 appraisal did not appear to contain any errors. She submitted that the insurance contained increases due to level of coverage and deductible. She submitted that a landlord should reign in expenses before seeking an increase in rent. She expressed concern with management fees and payments to non-arms-length companies. She questioned the post-tropical storm Fiona cleanup expenses as that should not be an annual expense and she expressed concern as to why only Units L and M should have to pay a contribution to such expense. She does not agree with using the 2023 property tax assessment. She further questioned why the Director allowed a 4.3% rate of return for Unit M even though the Commission has established 4% as a benchmark.

The Landlord's representatives stated that a non-arms-length property management company would charge more than 5%. The Landlord's representatives noted that costs have gone up dramatically, including property taxes.

In a response to a question from the Commission panel, the Landlord's representative stated that they did not seek an increase for Unit N as they did not think it was worth it.

The Landlord's representatives stated that the I,J,K and L,M,N properties look similar, but they are different properties with different mortgage amounts and renewal dates. They acknowledge that they did use a mortgage deferral for May to October 2020. They noted that the insurance company rebate has already been included. They noted that they were returning to the original \$500.00 insurance deductible after the insurance company had increased the deductible to \$1000. Increases in the costs of snow removal and grass cutting are not only due to increased fuel prices but also increased wages. They largely agree with the Director's findings and outcome in both Orders, other than they agree to a 4% rate of return for both units – not 4.3 % for one and 4% for the other.

While the Landlord did submit a corrected version of the January 23, 2023 appraisal, the assessed value remained the same without any explanation for the errors from the appraiser. The Commission has recalculated the Landlord's equity calculation, excluding the two appraisals that contained errors, using an average of the property tax assessment with the error-free December 20, 2021 appraisal. As the provision of a refrigerator is an included service and thus the Landlord is responsible for providing a serviceable working refrigerator, the Commission rejects attributing the refrigerator repair to ongoing maintenance expenses to one unit alone. As a storm of the magnitude of Fiona is not anticipated to be an annual event, the Commission rejects adding the Fiona cleanup expense. With these adjustments, the return on equity is approximately 3.3%. It should be noted that there was no appraisal and only the property tax assessment were used, the return on equity would be approximately 16%.

The Commission is mindful that Order LR22-08 awarded a 6.2% increase for units L,M, and N just last year and the Landlord did not seek an increase for Unit N this year. As stated in section 20 of the Regulations, the Commission is required to consider the date and amount of the last rental increase in evaluating applications of this nature. Given that these units remain profitable for the Landlord and the recent greater than allowable rent increase awarded in 2022, the Commission finds that no increase is justified for Units L and M.

Accordingly, the Commission reverses the decisions of the Director in Orders LD23-072 and LD23-073 and finds that the rent for Units L and M shall remain as ordered in Order LD22-08; that is to say, \$1330.00 per month for each unit.

**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.**
- 2. Director's Orders LD23-072 and LD23-073 are hereby reversed.**
- 3. Rent for Units 9L and 9M shall remain at \$1330.00 per month as previously order in Order LR22-08.**

**DATED** at Charlottetown, Prince Edward Island, 15<sup>th</sup> day, May, 2023.

**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.