



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: June 15, 2023

Docket: LR23024

Type: Rental Appeal

INDEXED AS: Scott Babin v. Weymouth Properties Ltd.

Order No: LR23-25

BETWEEN:

Scott Babin

Appellant

AND:

Weymouth Properties Ltd.

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair
M. Douglas Clow, Vice-Chair

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on June 6, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in permitting a greater than allowable rent increase for an 11-unit building (the “Building”).

2. BACKGROUND

2. Scott Babin (“Mr. Babin”) rents a unit located at 94 King Street, Charlottetown, PE (the “Building”), from Weymouth Properties Ltd. (the “Landlord”). Rents in the Building range from \$1,409 to \$2,318.
3. On December 12, 2022, the Landlord gave formal notice to Mr. Babin, and to all the other tenants in the Building, that it intends to raise the rent to an amount 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. On February 3, 2023, the Landlord filed with the Director a Statement of Income and Expenses.
4. In Order LD23-116, dated March 31, 2023, the Director ordered that the maximum allowable monthly rent for the unit occupied by Mr. Babin shall be \$1,813.00, effective April 1, 2023. The maximum allowable monthly rent ordered by the Director for the other 10 units range from \$1,482.00 to \$2,438.00, with effective dates ranging from April 1, 2023, to October 1, 2023.
5. Mr. Babin appealed.
6. As this matter commenced prior to April 8, 2023, the Rental of Residential Property Act, RSPEI 1988 Cap. R13-1 (the “Act”) applies to this appeal.
7. The Commission heard the appeal on June 6, 2023. Mr. Babin participated. Quentin Bevan and Trevor Bevan represented the Landlord. Tracy Silliphant was also on the conference call for the Landlord, but provided no evidence.

3. DISPOSITION

8. The appeal is dismissed and Director’s Order LD23-116 is confirmed, subject to a correction on the calculation of property tax expenses, which had no bearing on the allowable rent increases.

4. ANALYSIS

9. 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.

10. 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)

11. Mr. Babin stated that there was an administrative error on Form 12 and he should have been listed as a co-tenant with Celine Leduc. Trevor Bevan confirmed that Mr. Babin is indeed a tenant and the Form 12 was in error on that point. Mr. Babin confirmed that he had taken part in the hearing before the Director.
12. Mr. Babin reviewed, in detail, his written submission attached to his Notice of Appeal. He stated that he had concerns about a 7% return on investment, the various costs and expenses claimed and the identified cost to build the apartment building. He submitted that there were errors of fact in property tax claims, electricity and mortgage payments.
13. Quentin Bevan agreed with Mr. Babin that there was an error with respect to property taxes and that the actual amount, verified by the tax bill, is \$2,514.15 less than stated in Order LD23-116. Mr. Babin confirmed that this difference was correct.
14. Mr. Babin stated that he added up the electricity invoices on file and the total falls well short of the claimed total for electricity expenses.
15. Quentin Bevan explained that the figure for electricity came from statements prepared by the Landlords external accountants. He explained that electricity is included in rent for each of the 11 units and the rent also includes heating and cooling. He noted that each unit has its own meter and a separate "house" meter for common areas. He stated that he believes the included invoices were only for the house meter and that it appears that

the invoices for the individual meters for each of the 11 units were not included. He undertook to file additional electricity invoices for the 11 units.

16. Mr. Babin also expressed concern with respect to the calculation of the mortgage payments, submitting that by his review of the bank statements filed it appeared that the actual payments were \$3,684.33 less than claimed. Quentin Bevan undertook to file clarification of the actual annual mortgage payments from the Landlord's financial institution.
17. Mr. Babin also expressed concern as to how the cost to build the apartment building was determined. Quentin Bevan provided a detailed explanation of the construction process, how the costs of same were financed by the Landlord through its own resources, and then the completed project was shopped to a financial institution for mortgage financing. Mr. Bevan stated this was a usual commercial practice for construction of a project and the Commission agrees with this assessment. Mr. Babin did not take issue with that explanation.
18. The hearing concluded, subject to the Landlord following up on the undertakings and Mr. Babin having an opportunity to comment, in writing, with respect to those additional documents.
19. Following the hearing, the Landlord filed the additional electricity invoices for the 11 units and a clarification on mortgage payments from the Landlord's financial institution showing the amount of mortgage costs were as originally claimed. Mr. Babin had an opportunity to review this information and did not take issue with any of it and appeared to be satisfied with this information. However, in his reply Mr. Babin brought up new issues with respect to whether some costs should be considered capital costs rather than annual expenses. Although raising such new issues after the close of the hearing is generally not permissible, the Commission has reviewed the submission and, to settle the matter, finds that the costs identified by Mr. Babin are not capital in nature, but are costs that would be normally expensed in the manner done by the Landlord.
20. The Commission finds that the Director did err and overstated the annual property tax expense by \$2,514.15. As previously noted, both parties agreed this was an error.
21. The Commission finds that the amount claimed for electricity is now confirmed by the additional invoices filed by the Landlord.
22. The Commission finds that the new evidence from the Landlord's financial institution confirms the mortgage costs as originally submitted are correct.
23. The Commission accepts the Landlord's rationale for valuing the cost to build the apartment building.
24. The Commission has adjusted the expenses to reflect a reduction in property tax expenses of \$2,514.15 per year. However, the Landlord is still operating at a loss, albeit a smaller one.
25. With respect to Mr. Babin's concerns, the decision of the Director to approve a maximum allowable increase did not provide the Landlord with a 7% return on investment. Rather,

the Director's reference to a 7% return on investment identified the maximum available return on investment where a rental property has not been valued by way of a private appraisal. In the present appeal, the Landlord will experience a loss, even with the allowed rental increase, and therefore there is no positive return on investment to the Landlord.

5. CONCLUSION

26. The Commission finds that the Director, subject to the minor error of \$2,514.15 in calculating the annual property tax expense, correctly determined the maximum allowable increase for Mr. Babin's unit and indeed all 11 units in the apartment building, and accordingly, this appeal is dismissed and Order LD23-116 is confirmed, subject to a variance to Appendix "A" Line 12, reducing said amount by \$2,514.15.

6. COMMENTARY ON GREATER THAN ALLOWABLE APPLICATIONS

27. At the hearing the Landlord inquired whether appeals of Orders of the Director granting greater than allowable rent increases were to be dealt with as an appeal of only the increase granted with respect to the apartment of the Tenant appealing or an appeal of the entire rent increase award for all apartments included in the Order. The Commission advised at the hearing and hereby confirms; an appeal of a greater than allowable rent increase is an appeal of the entire Order of the Director and all the allowable increases for all apartments covered in that Order. An appeal to the Commission is a complete review and rehearing of the Landlord's application for a greater than allowable increase for all of the rents for all of apartments in the premises for which the financial information has been submitted.
28. The Commission confirms that the responsibility of the Director in processing an application for a greater than allowable rent increase is to undertake a full and complete analysis of the application to ensure the financial information submitted fully supports the increase in rents requested. The same complete analysis must be undertaken regardless of whether any Tenants file objections. The duty of the Director in such applications is to determine whether the Landlord has provided sufficient evidence in its application to justify the requested increase in rents. If the Landlord has not done so, then the Director must deny the application or issue an order for a lesser or other amount of rent increase. Objections and evidence provided by Tenants must, of course, be considered by the Director in determining the application. However, in the absence of objections or evidence opposing, the Director must still go through the analysis and make a determination that the financial information supports the finding of the Director.
29. Lastly, the Commission confirms that an Order awarding a greater than allowable rent increase merely sets the "maximum" new rent that a Landlord is permitted to charge for the apartment(s) in question. The Director, and the Commission on an appeal of such an award of a rent increase, does not set the new increased amount as the rent that must be charged to the Tenant of the apartment. That is the sole prerogative of the Landlord. The Landlord may set the rent increase at a lower amount and, provided the new allowable maximum is not exceeded, may also phase in the allowable rent increase in multiple increases over time.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Director’s Order LD23-116 is confirmed, subject to a variance to Appendix “A”, Line 12, reducing said amount by \$2,514.15.
3. The maximum allowable rent for all 11 units remains as approved by the Director in Order LD23-116.

DATED at Charlottetown, Prince Edward Island, Thursday, June 15, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie, K.C.)

J. Scott MacKenzie, K.C., Chair

(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.