



Date Issued: June 16, 2023
Docket: LR23018
Type: Rental Appeal

INDEXED AS: Arsenault et al. v. Arsenault Pondsides Inc.

Order No: LR23-26

BETWEEN:

Edward Arsenault, Muncey Shields, John Arsenault,
Joyce Ward, J. Earle Arsenault, and Marcel Arsenault

Appellants

AND:

Arsenault Pondsides Inc.

Respondent

ORDER

Panel Members:

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

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 7, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that an increase in the maximum allowable monthly rent for 28 units located at 30-52 J. Leonce Bernard Street and 23-53 Mount Carmel Road in Wellington PE (the “Premises”) are justified.

2. BACKGROUND

2. On various dates, Edward Arsenault, Muncey Shields, John Arsenault, Joyce Ward, J. Earle Arsenault, and Marcel Arsenault (the “Tenants”) entered into rental agreements for units located at 30-52 J. Leonce Bernard Street and 23-53 Mount Carmel Road in Wellington PE (the “Premises”) with (the “Landlord”). Rent for the Premises ranged from \$760.00 to \$889.00 per month.
3. As detailed in Director’s Order LD23-091, the Landlord applied for greater than allowable rental increases utilizing the required forms. The Director determined that a paper-based hearing was most appropriate. A full evidence package was provided to all tenants. Submissions were invited from all parties. Eight of the tenants filed written submissions.
4. The Director reviewed the evidence and submissions and allowed the Landlord’s application, resulting in new maximum allowable monthly rents ranging from \$1,027.77 to \$1,156.77 as detailed in Appendix “C” of Director’s Order LD23-091.
5. As this matter commenced prior to April 8, 2023, the Rental of Residential Property Act (the “RRPA”) applies to this appeal.
6. The Tenants appealed. The Commission heard the appeal on June 7, 2023. The following persons participated: Earl Arsenault; John Arsenault; Marcel Arsenault; Muncey Shields; Edward Arsenault; and Ernie Richard. The Landlord was represented by Ian Walker (“Mr. Walker”).

3. DISPOSITION

7. The appeal is dismissed and Director’s Order LD23-091 is confirmed.

4. ANALYSIS

8. Part IV of the RRPA 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.

9. 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)

10. The Tenants submitted that increases of 30% to 34% such as those applied for by the Landlord and approved by the Director were unreasonable and unaffordable for them. They noted that the Landlord initially sought the 5.2% maximum allowable increase for unheated premises set by the Commission. They expressed frustration with the actions of the Provincial Government following the nullifications of the Commission's maximum allowable increase. The Landlord then responded by filing for a greater than allowable increase which ranges from 30% to 34% depending on the unit. The Tenants expressed that they could afford a 5.2% increase but not a 30% to 34% increase. In the words of one Tenant: "5.2% was fine, 30% or 34% is not OK, I felt thrown under the bus. I blame the government. "
11. Mr. Walker stated that many landlords procrastinated on yearly allowable rental increases. He noted that the current allowable increase is 0% despite rising costs. He stated that the government changed the maximum allowable increase to 3% going forward which leaves landlords with no ability to catch up later. Thus, landlords were left with no choice but to seek a larger greater than allowable increase before the 3% cap came into effect. He stated that all expenses have gone up except expenses associated with air exchangers. He noted that government has increased assessed values of rental properties thus raising taxes for landlords. He noted that the cost of grass cutting and snow removal has gone way up due to increases in fuel and insurance costs for those grass cutting and snow removal contractors. The contractors then pass these costs on to their clients.
12. The Commission is sympathetic to the frustrations expressed by the Tenants and the Landlord. The Commission is bound by the legislation, cannot make policy and cannot change the law. With this appeal, the legislation is the RRPA as the new Residential Tenancy Act only came into force on April 8, 2023, while the Landlord's application was filed on December 7, 2022. In 2022, the Commission followed the requirements of the RRPA and researched, consulted and prepared a report setting a 5.2% maximum allowable rental increase for unheated premises. The government then decided to override that increase and set the allowable increase to 0%. The government did not pass

legislation to restrict the greater than allowable rental increases while the RRPA remained in effect.

13. The Tenants have not specifically challenged the numbers behind the Landlord's application and the Director's decision to approve said application.
14. The Commission has reviewed the application and the Director's decision and can find no error. The Commission has previously determined that, where a lessor relies on property tax assessment alone, a 7% return on investment is reasonable. Here the requested increases result in a 4.4% return on investment. Without the increase, the Landlord faces a negative return on investment. A negative return on investment is not sustainable as it would discourage continued investment in residential rental housing and further exacerbate the housing crisis on Prince Edward Island.
15. Accordingly, the appeal is dismissed and Director's Order LD23-091, which applies to all 28 units, is confirmed.

5. CONCLUSION

17. The Commission agrees with the Director that the rental increases sought by the Landlord are justified and therefore the Director's Order is confirmed.

6. COMMENTARY ON GREATER THAN ALLOWABLE APPLICATIONS

18. 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.
19. 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 LD23-091 is confirmed.**
3. **Specific rental rents for each unit are as set put in Appendix “C” of Director’s Order LD23-091.**

DATED at Charlottetown, Prince Edward Island, Friday, June 16, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

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.