



**Date Issued:** April 9, 2024  
**Docket:** LR23054  
**Type:** Rental Appeal

INDEXED AS: Tenants of 517 Malpeque Road, Charlottetown, PEI v. CAPREIT  
Order No: LR24-13

**BETWEEN:**

Tenants of 517 Malpeque Road, Charlottetown, PE

**Appellants**

**AND:**

CAPREIT

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner and  
Panel Chair  
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

# 1. INTRODUCTION

1. This appeal was heard by the Commission on November 23, 2023 and asks the Commission to determine whether the Office of the Director of Residential Rental Property (the “Director”) erred in determining a rent increase for a 23-unit apartment building.

# 2. BACKGROUND

2. A landlord, CAPREIT (the “Landlord”), rents units located at 517 Malpeque Road, Charlottetown, PE (the “Units”). Rents for the Units range from \$925.00 to \$1,168.57 per month.
3. On March 31, 2023, 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.
4. On April 5, 2023, the Landlord filed with the Director, pursuant to subsection 23.(3) of the Rental of Residential Property Act (the “Act”), an application to increase the rent above the percentage allowed by regulation (the “Application”) as follows.

Unit	Current Rent	Proposed Rent	Effective Date
1	\$1,168.57	\$1,308.80	July 1, 2023
2	\$1,140.00	\$1,276.80	July 1, 2023
3	\$930.21	\$1,041.84	October 5, 2023
4	\$939.13	\$1,051.83	July 1, 2023
5	\$1,021.00	\$1,143.52	August 1, 2023
6	\$1,112.00	\$1,245.44	July 1, 2023
7	\$1,073.14	\$1,201.92	November 1, 2023
8	\$1,167.00	\$1,307.04	March 1, 2024
9	\$1,161.83	\$1,301.25	October 1, 2023
10	\$995.00	\$1,144.40	May 1, 2024
11	\$1,067.20	\$1,195.26	July 1, 2023
12	\$962.84	\$1,078.38	October 1, 2023
13	\$1,167.30	\$1,307.38	July 1, 2023
14	\$1,113.94	\$1,247.61	August 1, 2023
15	\$1,193.37	\$1,336.57	October 1, 2023
16	\$1,204.00	\$1,348.48	March 1, 2024
17	\$1,168.00	\$1,308.16	December 1, 2023
18	\$966.76	\$1,082.77	July 1, 2023
19	\$1,168.00	\$1,308.16	January 1, 2024
20	\$925.00	\$1,036.00	July 1, 2023
21	\$1,194.00	\$1,337.28	July 1, 2023
22	\$1,194.83	\$1,338.21	July 1, 2023
23	\$1,242.97	\$1,392.13	July 1, 2023

5. On April 5, 2023, the Landlord filed with the Director a Form 15 Statement of Income and Expenses (the “Form 15”).
6. Given the timing of the Landlord’s application, the *Rental of Residential Property Act* (the RPPA”) was applied by the Director.

7. In Order LD23-337 dated July 19, 2023, the Director allowed the Application and ordered that the rents for the Units will be as follows:

<b>Unit</b>	<b>Rent</b>	<b>Effective Date</b>
1	\$1,309.00	August 1, 2023
2	\$1,277.00	August 1, 2023
3	\$1,042.00	October 5, 2023
4	\$1,052.00	August 1, 2023
5	\$1,144.00	August 1, 2023
6	\$1,245.00	August 1, 2023
7	\$1,202.00	November 1, 2023
8	\$1,307.00	March 1, 2024
9	\$1,301.00	October 1, 2023
10	\$1,144.00	May 1, 2024
11	\$1,195.00	August 1, 2023
12	\$1,078.00	October 1, 2023
13	\$1,307.00	August 1, 2023
14	\$1,248.00	August 1, 2023
15	\$1,337.00	October 1, 2023
16	\$1,348.00	March 1, 2024
17	\$1,308.00	December 1, 2023
18	\$1,083.00	August 1, 2023
19	\$1,308.00	January 1, 2024
20	\$1,036.00	August 1, 2023
21	\$1,337.00	August 1, 2023
22	\$1,338.00	August 1, 2023
23	\$1,392.00	August 1, 2023

8. The following tenants appealed: Jessica Praught, Carey Ousley, Melanie Stetson, Luann Watts, Doreen Martin and Donald MacInnis (collectively the “Tenants”). The Landlord did not appeal.
9. The Commission heard the appeal on November 23, 2023 by way of telephone conference call. The Landlord was represented by Ian Walker (“Mr. Walker”). The Tenants were represented by Rosalind Waters of the PEI Fight for Affordable Housing. The Tenants Jessica Praught, Luann Watts and Doreen Martin were present on the hearing conference call.
10. At the conclusion of the hearing, the Commission set a December 8, 2023 deadline for written submissions from the Tenants and a December 20, 2023 deadline for written submissions from the Landlord. The Tenants filed their initial written submissions on December 8, 2023. The Landlord requested an extension and filed their written submissions on January 8, 2024.

11. The Commission then provided the parties with further directions on additional filings. On January 23, 2024 the Tenants filed their questions for the Landlord. On January 30, 2024 the Landlord filed a response. On February 21, 2024 final written submissions were filed by both the Tenants and the Landlord.

### **3. DISPOSITION**

12. The appeal is dismissed and Order LD23-337 is confirmed.

### **4. ANALYSIS**

13. The Commission has reviewed the original hearing file record consisting of 1417 pages as well as the various post-hearing filings and submissions from the parties.

14. The Commission finds that the RRPA is the applicable legislation, as the Landlord submitted their application prior to the new Residential Tenancy Act coming into force on April 8, 2023.

15. In Order LD23-337, the Director followed the Commission's determination in Order LR22-39 that a 7.0% return on investment was reasonable where the tax assessed value of the Premises is used when calculating equity. The Director found in Order LD23-337 that the Landlord's proposed increase would result in a 6.5% return on investment.

16. On appeal, the Tenants took issue with the Landlord's various expenditures and the Director's Revised Statement of Income & Expenditures (Form 15) (Appendix "A" of Order LD23-337). The Tenants took issue with some expenses that the Landlord identified were incurred with various contracts and additional required expenses. The Tenants expressed concern that there were, in some cases, no invoices for these additional expenses. The Landlord stands by the findings of Order LD23-337 and claims that the findings were justified by the evidence presented by the Landlord. The Commission agrees with the Landlord's explanation of the various expenses and finds them to be reasonable.

17. The Tenants also took issue with what they termed unusual, non-recurring operating costs. They cited damage from post tropical storm Fiona as an example: submitting that such damage would be quite rare and not more frequent than once every 15 years.

18. The Tenants expressed concerns that the quality of common area cleaning had declined during 2022.

19. The Tenants expressed concerns about the inclusion of cable TV, stating that it is only for the common room, which is locked and only available to tenants when specifically booked. The Tenants are of the view that this should not be included as the cable TV is not an accessible service and the Tenants get little benefit. They do not feel they should be asked to pay for such a service through their rent.

20. The Tenants took issue with the Commission's finding in a past Order (LR23-74) where the Commission did not accept an argument to discount an optional property tax discount where a landlord agreed to forego a rental increase. The Tenants submit that the Commission should use the discounted figure.
21. The Tenants expressed concern that the Director did not explain how the amortized amount allowed for capital expenditures was calculated to be \$23,092.23. The Commission points out that the Landlord had initially claimed \$68,915.00 on Form 15, line 16, for Period A. Pages 87 and 88 of the file record reveal the breakdown for the original figure.
22. The Tenants expressed concern over the effective date of the increases, submitting that if the increases were confirmed that the Tenants would face large sums of retroactive rent owing and some tenants would risk losing their homes. They submitted that they were not the cause of the hearing delays. They submitted that any increase should be made effective immediately after the Commission issues its Order.
23. The Commission finds that Director's Order LD23-337 is sound. The rental increase applied for provides a return on investment which is less than the 7% standard applicable where equity is calculated the tax assessed value.
24. While the Tenants suggest that unforeseen damage, such as damage due to post tropical storm Fiona, should be amortized over a 15-year period, the Commission finds that the repair costs have been appropriately allocated. Damaging storms appear to be becoming more frequent. For example, post tropical storm Fiona, which occurred in 2022, was preceded by Hurricane Dorian in 2019.
25. Regarding the Tenants' concerns with the adequacy of common area cleaning and take that issue up with their staff or contracted cleaners, the Landlord should now be aware of the concerns. Nevertheless, the Landlord has incurred the cleaning costs and they are appropriate expenses. The Landlord should take reasonable steps to ensure that the services being provided are done to a sufficient standard.
26. With respect to the matter of a landlord forgoing a rental increase in order to obtain a property tax discount: that is a business decision for the Landlord to make and not a matter for the Commission to impose.
27. With respect to concerns expressed by the Tenants that making a rental increase retroactive to the dates set by the Rental Office was due to a delay for which they were not responsible, while the Commission agrees that the Tenants are not responsible for delays, the requested increases are justified as at the dates they were requested. The Landlord is also not responsible for the amount of time that has elapsed since the application was first filed with the Rental Office. This Appeal involved comprehensive submissions by the Tenants and the Landlord which were given close consideration by the Panel and which impacted the timelines of the Appeal. The effective dates as requested by the Landlord and ordered by the Rental office are confirmed by the

Commission; however, the Commission notes that the Landlord is not required to implement the increases as at the effective dates approved under this Order.

28. The Commission confirms the increases set by the Rental Office as these increases were based on a sound analysis that provides a return on investment under the 7% standard applicable where equity is calculated the tax assessed value.

29. Accordingly, the Commission dismisses the appeal and confirms Order LD23-337.

## 5. CONCLUSION

30. The appeal is dismissed, Order LD23-337 is confirmed and the approved rents for the various units and effective dates of May 1, 2024 are set out in the table below.

### IT IS ORDERED THAT

1. The appeal is dismissed.
2. Director's Order LD23-337 is confirmed.
3. The approved rents for the various units and the effective dates are set out in the table below:

Unit	Rent	Effective Date
1	\$1,309.00	August 1, 2023
2	\$1,277.00	August 1, 2023
3	\$1,042.00	October 5, 2023
4	\$1,052.00	August 1, 2023
5	\$1,144.00	August 1, 2023
6	\$1,245.00	August 1, 2023
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12	\$1,078.00	October 1, 2023
13	\$1,307.00	August 1, 2023
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15	\$1,337.00	October 1, 2023
16	\$1,348.00	March 1, 2024
17	\$1,308.00	December 1, 2023
18	\$1,083.00	August 1, 2023
19	\$1,308.00	January 1, 2024
20	\$1,036.00	August 1, 2023
21	\$1,337.00	August 1, 2023
22	\$1,338.00	August 1, 2023
23	\$1,392.00	August 1, 2023

**DATED** at Charlottetown, Prince Edward Island, Tuesday, April 9, 2024.

**BY THE COMMISSION:**

(sgd. Kerri Carpenter)

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Kerri Carpenter, Commissioner and Panel  
Chair

(sgd. Murray MacPherson)

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Murray MacPherson, Commissioner

**NOTICE**

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

(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.