



**Date Issued:** April 12, 2024  
**Docket:** LR24008  
**Type:** Rental Appeal

INDEXED AS:  
Order No: LR24-16

**BETWEEN:**

Patricia Millar

**Appellant**

**AND:**

Greener Properties Inc.

**Respondent**

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**ORDER**

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Panel Members:

M. Douglas Clow, Vice-Chair and  
Panel Chair  
Kerri Carpenter, Commissioner

Compared and Certified a True  
Copy

(Sgd.) Susan Jefferson  
\_\_\_\_\_  
Commission Administrator

## A. INTRODUCTION

1. In this appeal, which was heard by the Commission on March 5, 2024, the Appellant asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in allowing an increase in the Appellant's rent under subsection 50(1) of the *Residential Tenancy Act* cap. R-13.11 (the "Act").

## B. BACKGROUND

2. On January 24, 2024, the Rental Office issued Order LD24-025 allowing the applications by a landlord, Greener Properties Inc. (the "Landlord"). At the time of the application before the Rental Office, Units 55, 57, 59, 61, 63, 65, 67 and 71 had rents of \$1,247.00 and under the Order, the rent rates for each of those units was increased to \$1,322.00 effective January 1, 2024. The rent rate for Unit 69 Balcom Drive, Summerside, PE ("Unit 69"), being the unit rented by the Appellant, Patricia Millar (the "Tenant"), had a rent of \$1,389.00 and under the Order the Director ordered that the rent for Unit 69 could be increased to \$1,472.00 effective January 1, 2024. The Director's Order therefore allowed a 6% increase on all units for 2024, being the 3% permitted by the Director under section 49, as well as an additional 3% under section 50.
3. On February 8, 2024, the Commission received a Notice of Appeal from the Tenant. In her Notice of Appeal, she offered the following reasons for appeal:

*"When I moved into my unit on Nov 2, 2020, I was told that my rent was \$1,375.00 / mo and that when it was approved by IRAC I was not to dispute it as the rest of the units would be paying that rent in 2021. I was not aware of the rent I should have come in on at \$1132.00. This was the first time I was included in an order with the Balcom Dr. tenants and my eyes were opened!!"*

4. The Tenant then offered the following as to how she wanted Order LD24-025 changed:

*"In fairness my rent should be brought in line with the other 8 units in our complex. There is no difference in our units, no special privileges and no differences in the services provided. We are all seniors on pensions and should be treated equally."*

5. The Tenant attached to her Notice of Appeal a detailed history of her rent payments for Unit 69.
6. The *Residential Tenancy Act* (the "Act") applies to this appeal.
7. The hearing was held on March 5, 2024 by way of telephone conference call. The Tenant represented herself. Kevin Green ("Mr. Green") represented the Landlord.

## C. DISPOSITION

8. The appeal is allowed in part. Order LD24-025 is varied only as it relates to Unit 69, to remove the 3% increase under section 50 of the Act. The 3% increase under section 49 of the Act remains in effect regarding unit 69. The maximum allowable rent for Unit 69, effective January 1, 2024 is therefore \$1,430.67.
9. Order LD24-025 is confirmed in all other respects.

## D. ANALYSIS

10. The Tenant testified that she is appealing the difference in rent between Unit 69 and the other units. She stated her unit is exactly the same as the other units. When she moved in she signed the rental agreement which provided for rent in the amount of \$1,375.00 per month. She learned much later that the previous tenant was paying \$1,132.00 per month for the unit. She was concerned when, after she moved in, another new tenant moved into one of the other units for a much lower rent than the Tenant. The other new tenant was paying \$1,132.00 per month. In a Rental Office hearing in January, 2024 she became aware of the large discrepancy in rents between her unit and all of the other units in the premises. She would like her rent to be the same as the other units and for the Landlord to refund the overpayments. She acknowledged that the first time she participated in the process before the Rental Office was at the January 15, 2024 hearing of the Director that gave rise to Order LD24-025. She stated that she did not participate in earlier hearings as she was told by an employee of the Landlord not to dispute the application for a rent increase. She submits that the discrepancy is unfair as she believes that one out of nine tenants should not be paying an extra \$1800.00 per year for an identical unit.
11. The Tenant also testified to receiving a refund of overpayments of rent from the Landlord, after the Landlord was ordered to reimburse Ms. Millar for the rent increase from \$1,132.00 to \$1,375.00 that was applied to her unit, without receiving an order from the Rental Office permitting such increase. In the hearing that led to the order requiring reimbursement, the Rental Office approved the increase to \$1,375.00 on a go forward basis. Since that time, there was one more additional rent increase for Ms. Millar, to \$1,389.00 per month.
12. Mr. Green testified that the Landlord followed the legislation. He submitted that he felt that all of the units should be paying the rent approved for Unit 69. He submitted that such an increase should be for new tenants only; however, the legislation does not permit this as rent runs with the unit. With respect to the statement that an employee of the Landlord told the Tenant not to dispute her rent: Mr. Green stated that “we would not have said that”, but he acknowledged he did not have first hand knowledge of the discussion between the Landlord’s employee and the Tenant nor did he know which employee or employees communicated with her.
13. The *Act* does not prevent different rent rates for the same or similar units in rental premises, provided the rent rates are not the result of illegal increases under the current or former legislation. There can be various reasons why two units in the same property would have different rents without infringing the law, including situations where the units did not, from the beginning, have the same rents, or where a landlord increases one unit in accordance with the annual allowable increase but declines to increase the other unit. In this particular case, while the Landlord initially increased the rent for Unit 69 without an

order of the Rental office authorizing same, that illegal increase was later rectified when the Landlord was order to, and in fact did, reimburse the Tenant. From that point, the evidence established that the rent increases for Unit 69 were legal and the increases in rent prior to Order LD24-025 were not appealed by the Tenant and therefore the Commission is not able to address any increases other than the one sought in the current application.

14. In Order LD24-025, the Rental Office stated:

*[18] The Landlord is permitted to increase the rents by the annual allowable set by the Director in the amount of 3% and the Landlord is permitted to increase the rent by an additional 3% on the effective dates set below. A total rent increase of 6% is allowed.*

15. The 3% increase permitted by the Director, known as the “allowable increase” under Section 49 of the Act, cannot be overturned by the Commission in this Appeal. However, the Commission must consider whether an additional 3% increase for Unit 69 for what is known as a “greater than allowable” application under subsection 50(1) is justified when that unit is already contributing more to the Landlord’s operational revenues and return on investment than the other units.

16. Under Section 50, a scheme is set out for landlords to seek increases that go beyond the Section 49 increase. The Section 50 increase, pursuant to subsection 50.(7) shall not exceed 3% in a calendar year in addition to the maximum Section 49 increase.

17. In considering such an application, the Commission turns to Subsection 50.(3) which sets out the following factors that shall be considered:

*Factors*

*(3) The Director shall consider the following factors, as applicable, in deciding whether to approve an application for a rent increase under subsection (1):*

*(a) the rent history for the affected rental unit in the three years preceding the date of the application;*

*(b) a change in operating expenses and capital expenditures in the three years preceding the date of the application that the Director considers relevant and reasonable;*

*(c) the expectation of the landlord to have a reasonable return on the landlord’s capital investment;*

*(d) the expectation of the tenant that rent increases will remain within the annual guideline.*

18. In this appeal, the affected rental unit is Unit 69. Unit 69's rent history for the last three years is that its rent is significantly higher than the other eight units. Effective 2022, the rent increased for Unit 69 from \$1,132 to \$1,375 per month while the other units remained at \$1,132. The Commission finds that the rent increases over the preceding three years are a very significant factor in this particular case, when considering whether an additional increase under section 50 of the Act should be applied to Unit 69.
19. Additionally, the Commission considers the landlord's expectation of a reasonable return on investment and the Tenant's expectation that the increases will remain within the annual guideline. Again, in weighing these considerations, the Commission notes that given the rent history of Unit 69 in comparison to the other units in the premises, the considerations pertaining to the Tenants' expectations that the Unit would not be subject to more than the allowable increase are paramount.
20. In looking at the operating and capital expenditures over the preceding three years, the Commission agrees with the increases noted in paragraph 17 of Order LD24-025, and agrees that even allowing the increases requested by the Landlord would lead to a return on investment of only 2.1%, being significantly lower than the range of 4 to 7% previously permitted by the Commission. However, of paramount consideration in this particular case is the fact that the Tenant is contributing more than the other tenants in the premises to the Landlord's return on investment and will continue to do so whether the additional 3% sought under section 50 is granted or not.
21. In addition to the factors to be considered under subsection 50(3) of the Act, the Commission also looks at the general power under subsection 50(4) to consider other factors that the Director (and therefore the Commission) considers relevant. The Commission finds that in cases where there are varying rents among units of comparable size and quality, the Commission should consider whether it is appropriate to vary the amount of increase under section 50 given the disparity in the tenants' respective contributions to the Landlord's revenues and potential return on investment.
22. The Commission finds after balancing all of the considerations, that Unit 69 should not be subject to an increase under section 50 of the Act.
23. Accordingly, the Commission allows the appeal in part, and limits the increase for Unit 69 to the section 49 increase of 3% for 2024.

## **E. CONCLUSION**

24. The appeal is allowed in part. The maximum monthly rent for Unit 69, set at \$1,472.00 in Order LD24-025, is varied by the Commission to \$1,430.67, which includes the Director's allowable increase for 2024 under section 49 of the Act.

## **IT IS ORDERED THAT**

1. **The appeal is allowed in part.**

2. Order LD24-025 is varied to set the maximum monthly rent for Unit 69, effective January 1, 2024, to \$1,430.67 per month.
3. The maximum monthly rents for the other 8 units as set out in Order LD24-025 are unchanged.

**DATED** at Charlottetown, Prince Edward Island, Friday the 12<sup>th</sup> day of April, 2024.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair and Panel  
Chair

(sgd. Kerri Carpenter)

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Kerri Carpenter, Commissioner

#### **NOTICE**

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.