



Date Issued: September 5, 2024
Dockets: LR24048
Type: Rental Appeal

INDEXED AS: Jason Lindsay v. Vacant Unit, 73 Lowther Drive
Order No: LR24-54

BETWEEN:

Jason Lindsay (the "Landlord")

Appellants

AND:

Vacant Unit, 73 Lowther Drive

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Cynthia McCardle, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on August 20, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in respect of their finding regarding the Landlord’s Form 9 Application to Request Additional Rent Increase.

B. BACKGROUND

2. This appeal concerns a rental unit located at 73 Lowther Drive, Cornwall (the “Rental Unit”). The Rental Unit has been vacant for over one year.
3. On May 17, 2024 the Landlord filed a Form 9 Landlord Application to Request Additional Rent Increase (the “Application”) with the Rental Office. The Application requested a rent increase above the annual allowable guideline established by the Director of Residential Tenancy. The Application provided the current rent, proposed rent, and effective date as follows:

Unit (Vacant)	Current Rent	Proposed Rent (+70%)	Date of Last Rent Increase	Proposed Effective Date
73 Lowther Drive	\$1,030.00	\$1,750.00	January 20, 2022	June 1, 2024

4. On June 18, 2024, a teleconference was held before the Rental Office. The Landlord participated at the hearing. Order LD24-215 was issued on July 5, 2024, and found that the Landlord was entitled to a rent increase. However, in accordance with the provisions of the *Residential Tenancy Act*, the Residential Tenancy Officer ordered that the approved additional rent increase be phased in over time at a maximum of 3% per year.
5. The Landlord appealed Order LD24-215 on July 17, 2024.
6. The Commission heard the appeal on August 20, 2024, by way of telephone conference. The Landlord attended the hearing.

C. DISPOSITION

7. The appeal is dismissed.

D. SUMMARY OF EVIDENCE

8. The Landlord’s evidence included written submissions and other documentary evidence to support his claim for an additional rent increase (e.g. property tax information, rent ledgers, mortgage statements, etc.).
9. At the hearing before the Commission, the Landlord testified that the Rental Unit has been vacant for over a year, and that he has no intention of renting it at the rate charged to the most recent tenants, which was \$1,030.00. He also testified that the Rental Unit is currently listed for sale.

10. He testified that he brought this Application for an additional rent increase on the advice of the Rental Office, and because he did not want to risk an application from a future tenant for an illegal rent increase should he set the rent to market value.
11. He testified that his position is that the Rental Unit does not meet the definition of “rental unit” under the *Residential Tenancy Act* because he has no intention of renting it at the current rent rate. However, he did testify that if his additional rent increase was allowed and he could charge market value, he would rent the Rental Unit.

E. ANALYSIS

12. The Landlord’s primary ground of appeal is that the Rental Office erred in finding that the premises located at 73 Lowther Drive was a “rental unit” as defined in the *Residential Tenancy Act*. The Landlord’s Notice of Appeal argues that where a landlord has no intention of renting a vacant property, the property is not a “rental unit” within the meaning of the *Act*. The Notice of Appeal states:

I want the order over turned [sic] and a finding made that the premises at 73 Lowther Drive is not a Rental Unit within the meaning of the Act and that should the owner decide to convert the property to a Rental Unit, the owner may set the rent without regard to the rate formerly charged for rent before the property was vacated.

13. Unfortunately for the Landlord, the Commission cannot accept this argument.
14. The Commission has previously considered, and rejected, similar arguments to the Landlord’s. For example, in Order LR20-26, the Commission considered an appeal similar to the present one. In that appeal, the Commission was asked whether a prospective lessor must apply under the former *Rental of Residential Property Act* to increase rent when a rental unit is vacant and there is no rental agreement in place. In that case, the landlord argued that at the time he set the rent, the former *Rental of Residential Property Act* did not apply to him because the premises was vacant, there was no lessee, and he was not a lessor. The Commission did not accept this argument. Instead, the Commission found that the landlord did have an obligation to apply to the Rental Office to raise the rent notwithstanding the absence of a rental agreement. The Commission commented:

The lack of an existing rental agreement does not absolve a landlord from the obligation to seek approval to raise a rent beyond the allowable annual increase.

15. In their analysis, the Commission highlighted that to find otherwise would mean that any period between the expiry of one rental agreement and the signing of another could be used to permit a landlord to change the rent without first seeking approval to do so, which was contrary to the to the intention of the legislation.
16. The Commission made similar findings in Order LR19-15. In that Order, the Commission considered a landlord’s appeal respecting a tenant’s application for compensation for an illegal rent increase pursuant to the former *Rental of Residential Property Act*. In that Order, the Commission commented that the former *Rental of Residential Property Act* provided for a system of rent control whereby rent runs with the residential unit, and that when a lessee surrenders possession of that unit to the lessor, that rate of rent still remains

fixed to that unit. The Commission went on to comment that “this rent applies to a subsequent lessee even if the unit has been vacant between the tenancies.”

17. Though both of these previous orders were with respect to appeals before the Commission pursuant to the former *Rental of Residential Property Act*, they remain applicable to the new scheme under the new *Residential Tenancy Act*. In both orders the Commission clearly accepted that “the rent runs with the unit.” Today, the *Residential Tenancy Act* sets out a comprehensive scheme governing rent increases and Act is clear that the obligations of a landlord with respect to rent increases continue to “run with the rental unit and not the tenant” (s. 47(2)).
18. For these reasons, the Commission does not accept the Landlord’s argument that because the Rental Unit is vacant and he has no intention to rent it at the current rate it is not a “rental unit” as defined in the *Residential Tenancy Act*, and he is, therefore, not bound to the provisions respecting rent increases.
19. The Landlord did not seek to appeal any of the findings in Order LR24-215 with respect to the amount awarded for an additional rent increase. Therefore, the Commission finds no reason to depart from the findings and conclusions of the Residential Tenancy Officer in that respect.
20. As a final comment, the Commission acknowledges the comments of the Landlord that to continue to rent this rental unit below market value will cause him to lose money. However, the *Residential Tenancy Act* is legislation developed by Government policy-makers and passed by the Legislative Assembly of Prince Edward Island. Both the Commission and the Rental Office are administrative bodies created by statute and authorized by the *Residential Tenancy Act* to carry out certain functions. Therefore, when the Rental Office and then the Commission are asked to decide an application for an additional rent increase, that decision must be made in accordance with the provisions of the legislation approved by the law-makers of the province. The Commission, as an administrative tribunal, has neither the authority nor discretion to change the Act or suspend its application to certain applicants on the basis of unique or extenuating circumstances. While the Commission understands and appreciates the position of the Landlord and the circumstances he finds himself in, a legislative amendment would be required in order to allow the exact relief requested by the Landlord and that is beyond the jurisdiction of the Commission to grant.

F. CONCLUSION

21. The appeal is dismissed. Order LR24-215 is confirmed.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD24-215 is confirmed.**

DATED at Charlottetown, Prince Edward Island, 5th day of September, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. Cynthia McCardle)

Cynthia McCardle, 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.