



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 22, 2025

Dockets: LR25022

Type: Rental Appeal

INDEXED AS: McAllister and McAllister v. Stewart and Stewart

2025 PEIRAC 33 (CanLII)

Order No: LR25-32

BETWEEN:

Albert McAllister and Spencer McAllister (the “Landlords”)

Appellants

AND:

Elsie Stewart and Kim Stewart (the “Tenants”)

Respondents

ORDER

Panel Members:

Pamela J. Williams, K.C., Chair
Gordon MacFarlane, 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 May 21, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlords must pay the Tenants \$20,475, as a result of an unlawful rent increase.

B. BACKGROUND

2. This appeal concerns a rental unit located at 21720 Route 1, Albany, PEI (the “Rental Unit”). The Rental Unit is one-half of a duplex (the “Residential Property”). The Landlords live in the other half of the duplex.
3. On May 29, 1989, the Tenants and a previous landlord entered into a tenancy agreement for the Rental Unit. The Tenants indicated that a security deposit of \$275.00 was paid to the previous landlord at the beginning of the tenancy.
4. In February 2019, the Landlords purchased the Residential Property, and on March 1, 2019, the parties entered into a written month-to-month tenancy agreement. The rent was set to \$650.00, monthly.
5. The Tenants moved out of the Unit on October 31, 2024, and the tenancy ended.
6. On December 9, 2024, the Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Tenant Application”) with the Residential Tenancy Office (the “Rental Office”), seeking \$20,475.00 in compensation due to an unlawful rent increase.
7. On January 14, 2025, the Landlords filed a *Form 2(B) Landlord Application to Determine Dispute* (the “Landlord Application”) with the Rental Office seeking \$4,990.68 in compensation for the removal of appliances from the Unit.
8. On March 13, 2025, the Tenants and the Landlords participated in a teleconference hearing with the Rental Office in respect of both applications.
9. On April 2, 2025, the Rental Office issued Order LD25-127, which found that the Tenants had paid an unlawful rent increase and ordered that the Landlords pay the Tenants \$20,475.00 by June 2, 2025.
10. The Landlords appealed Order LD25-127 on April 22, 2025.
11. The Commission heard the appeal on May 21, 2025, by way of telephone hearing. The Landlords, Albert McAllister and Spencer McAllister, and the Tenants, Elsie Stewart and Kim Stewart, all participated in the telephone hearing.

C. DISPOSITION

12. The appeal is allowed in part. The Commission agrees with the findings of Order LD25-127, but varies the amount of compensation owed by the Tenants to the Landlords.

D. ISSUES

13. The issues for the Commission to consider on this appeal are:

- i) Was there an unlawful increase?
- ii) Do the Tenants owe compensation to the Landlords due to removing appliances from the Rental Unit?

E. SUMMARY OF EVIDENCE

- 14. The Landlords' documentary evidence before the Commission included a written statement, an Absolute Bill of Sale in respect of their purchase of the Residential Property, a summary of monthly expenses related to the Residential Property and various receipts and invoices to support those expenses.
- 15. At the hearing, the Landlords testified that back in 2019, they were told by the Residential Tenancy Office (formerly the Office of the Director of Residential Rental Property, at the material time) that they needed a new written lease agreement with the Tenants when they purchased the property.
- 16. With respect to the appliances, the Landlords state that when they purchased the Residential Property in 2019, the previous owner signed an Absolute Bill of Sale stating that all appliances were being sold with the Residential Property. The Landlords argue, therefore, that the appliances in the Rental Unit belonged to them.
- 17. The Landlords testified that they could not remember if they were told the monthly rent being charged to the Tenants when they purchased the Residential Property from the previous owner. The Landlords further testified that they did not have any paperwork to confirm what the monthly rent was before they signed the new tenancy agreement with the Tenants.
- 18. The Tenants' documentary evidence before the Commission included a copy of the Standard Form Rental Agreement between the parties, dated March 1, 2019, a written submission of the Tenants, and photocopies of receipts signed by a "D. McCallister" for various months from June 2019 to August 2020. The Tenants also submitted invoices for a stove (dated October 2018), a fridge (dated May 2019) and a washer and dryer (dated October 2021).
- 19. The Tenants testified that they moved into the Rental Unit in 1989 and were paying \$275.00 per month. The Tenants testified that at the time the Landlords purchased the Residential Property, they were paying \$325.00 per month to the previous owner. The Tenants did not have receipts to document this.
- 20. With respect to the appliances, the Tenants' evidence is that they had an agreement with the previous owner that they would purchase their own appliances and would take them with them if they ever moved. The Tenants testified that they purchased a fridge, stove, washer and dryer and they provided invoices to support this evidence. The Tenants did not know about the Absolute Bill of Sale that purported to sell the appliances in the Rental Unit to the Landlords.

F. ANALYSIS

A. Unlawful Rent Increase

21. As a preliminary comment, the Commission agrees with the finding of the Residential Tenancy Officer in Order LD25-127, at paragraphs [21] through [24], that this matter may proceed under the *Residential Tenancy Act* (the “RTA”).
22. The alleged unlawful increase in this case dates back to August 2019. The RTA came into force on April 8, 2023, repealing the former *Rental of Residential Property Act* (the “former Act”).
23. The RTA includes a transitional provision, at subsection 112(2), that allows discretion as to whether a contravention of the former Act, which took place before the RTA came into force, is dealt with under the former Act.
24. In this case, the legislative scheme surrounding lawful rent increases did not substantively change between the former Act and the RTA. Therefore, the Commission agrees that this appeal can be heard pursuant to the new RTA.
25. Order LD25-127 allowed the Tenant Application seeking compensation for an unlawful increase, finding that the Tenants had provided sufficient evidence to establish they had previously paid rent of \$325.00 per month. As such, the Landlords were ordered to pay the Tenants \$20,475.00, representing the amount of the unlawful increase from August 2019 to October 2024 (\$325.00 x 63 months).
26. Both the former Act and the new RTA include a scheme whereby rent cannot be increased by a landlord in an amount greater than the annual allowable amount (established by the Director per the RTA, and formerly ordered by the Commission under the former Act).¹ The *Residential Tenancy Act*, in particular, states:
 - 49. Allowable annual rent increase**
 - (1) No landlord shall increase the rent charged for a rental unit by more than the allowable annual increase, except in accordance with section 50.
 - [...]
 - 50. Request for additional increase**
 - (1) A landlord may request the Director’s approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.
27. In 2019, the annual allowable rent increase was 1.5% for unheated premises and 2.0% for premises heated with oil.²
28. In this case, we are satisfied that the evidence demonstrates the Tenants’ monthly rent was increased from \$325.00 to \$650.00 in August 2019, far exceeding the annual allowable increase in that year. Though the Tenants did not have documentary proof of the rent they

¹ See *Residential Tenancy Act*, s. 49 and 50; and *Rental of Residential Property Act*, s. 23(1) and 23(3).

² <https://peirentaloffice.ca/allowable-rent-increases/>

paid to the previous owner of the Residential Property, we found their testimony on this point to be credible. Further, we note that the receipts submitted by the Tenants indicate that in June and July 2019 they paid \$325.00. The receipt is signed by a "D. McCallister". The receipts dated August 2019 onward are for \$650.00. This is consistent with the evidence that the Landlords only started collecting the higher rent in August 2019.

29. For clarity, we wish to comment that the Commission is satisfied that there was no intentional wrongdoing on the part of the Landlords in this case. However, as an administrative tribunal we are bound by the legislation that authorizes us. In this case, both the former *Act* and the new RTA are clear that landlords cannot increase rent beyond the allowable annual amount without making application to the Director for approval. We are satisfied that legislative requirement was not followed in this case. In addition, even though there is no evidence before the Commission that the Tenants took issue with the rental increase until they vacated the Rental Unit, any implicit or explicit waiver of the protection under the *Act* is considered to be null and void under section 5 of the *Act*.
30. Therefore, the Commission finds that the Tenants were subject to an unlawful rent increase and are owed compensation by the Landlords.
31. However, we do make one variation to Order LD25-217. The Tenants' evidence is that they only realized that the rent increase in 2019 was unlawful when they were on the Rental Office's website in May 2024. Despite realizing this in May, the Tenants did not bring an application to the Rental Office until December 2024, after already moving out of the Rental Unit. In the Commission's opinion, the Tenants had a general duty to mitigate their losses once they became aware that they had been subject to an unlawful increase. However, in this case, the Tenants testified that they knew they were going to be moving, so they chose not to raise the issue until they moved out of the Rental Unit to avoid an uncomfortable situation until they left.
32. Based on the above, the Commission, therefore, varies the amount awarded to the Tenants to \$18,525.00, representing an unlawful rent increase of \$325.00 per month from August 2019 to April 2025 (\$325.00 x 57 months).

B. Compensation for Appliances

33. With respect to the Landlord's claim for compensation for the appliances in the Rental Unit, the Commission agrees with the findings of the Residential Tenancy Officer in Order LD25-127.

G. CONCLUSION

34. The appeal is allowed in part. The Commission agrees with the findings of Order LD25-127, but varies the amount of compensation owed by the Landlords to the Tenants to \$18,525.00. Given the significant amount being ordered for repayment, the Commission is extending the time to pay until September 1, 2025.
35. As a final comment, we wish to note that we do not accept that there was any evidence of intentional wrongdoing on the part of the Landlords.

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. The Landlords must pay the Tenants \$18,525.00, by September 1, 2025.

DATED at Charlottetown, Prince Edward Island, 22st day of July, 2025.

BY THE COMMISSION:

[sgd. Pamela J. Williams, K.C.]

Pamela J. Williams, K.C., Chair

[Gordon MacFarlane]

Gordon MacFarlane, 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.