

INTRODUCTION

- [1] This decision determines an application filed with the Residential Tenancy Office (the "Rental Office") under the *Residential Tenancy Act* (the "Act").
- [2] The Tenant seeks a return of rent from the Landlord based upon two unlawful rent increases that occurred in May 2023 and May 2024.

DISPOSITION

- [3] The Tenant has established a total unlawful rent increase claim of \$11,700.00. This amount is offset by \$3,400.00 for the monthly rent of \$1,700.00 for July 2025 and August 2025.
- [4] The Landlord will not collect a monthly rent for the Unit greater than \$1,700.00 until the Landlord increases the Unit's rent in accordance with the *Act*.

BACKGROUND

- [5] The Unit is a four or five-bedroom, one-and-a-half-bathroom single family home that the Landlord purchased on October 17, 2018.
- [6] The Landlord and the Tenant entered into a written, fixed-term rental agreement for the Unit from March 1, 2021 to February 28, 2022. The Tenant paid a security deposit of \$1,700.00 on February 25, 2021. At the end of the fixed-term the agreement continued on a month-to-month basis. Rent is due on the first day of the month.
- [7] The parties agree that the following monthly rent payments are accurate:
- March 2021 to April 2023 - \$1,700.00
 - May 2023 to April 2024 - \$1,850.00
 - May 2024 to April 2025 - \$2,500.00
 - May 2025 to June 2025 - \$1,850.00
 - July 2025 - \$0.00
- [8] On May 5, 2025 the Tenant filed a *Form 2(A) Tenant Application to Determine* with the Rental Office claiming against the Landlord based upon an unlawful rent increase (the "Application").
- [9] On June 19, 2025 the Rental Office sent the parties notice of a teleconference hearing scheduled for July 17, 2025 along with a copy of the Application.
- [10] On July 9, 2025 the Rental Office emailed the parties an evidence package. The parties were later sent two supplementary evidence packages.
- [11] On July 17, 2025 the Tenant, the Landlord and an interpreter for the Landlord joined the teleconference hearing. The parties confirmed receipt of the evidence package and the two supplementary evidence packages. The parties confirmed that all documents submitted to the Rental Office were included. During the hearing the Tenant submitted into evidence an email with additional evidence.

ISSUE

- A. Did the Landlord unlawfully increase the Unit's rent?

ANALYSIS

[12] The parties submitted documentary evidence to the Rental Office and provided oral testimony during the hearing regarding the first rent increase from \$1,700.00 to \$1,850.00 and the second rent increase from \$1,850.00 to \$2,500.00. The Application is amended under clause 80(3)(f) for the determination of both of these rent increases.

[13] For the reasons below, I find that the these two rent increases are unlawful.

The Unit's Previous Rent

[14] The Landlord's documentary evidence states that the Unit's rent was previously \$2,500.00 before the Tenant moved in. The Landlord argues that the Tenant received a reduced rent of \$1,700.00 as a COVID-19 Pandemic discount.

[15] This written evidence essentially argues that the rent was not increased. Instead, the rent discount was removed.

[16] For the reasons below, I find that the *Rental of Residential Property Act* (the "*Former Act*") does not authorize rent discounts.

[17] The *Former Act* governed residential rent increases from January 18, 1989 to April 7, 2023. During this time the Island Regulatory and Appeals Commission (the "Commission") issued decisions regarding rent discounts.

[18] On October 17, 1995 the Commission issued Order LR95-12¹, which determined an unlawful rent increase matter. In this decision the Commission found that the *Former Act* did not permit rent discounts, stating as follows:

"Even more significant, however, is that rent control legislation does not permit a Lessor to vary the rent depending upon how many people reside in an apartment or what kinds of services are provided. A lessor is also not able to give a discount to one tenant but not to another. Rent is fixed by law. Each rent relates to a specific apartment, not a specific "situation". Changes in tenants are irrelevant.

This is not to say that the Act is inflexible. Any lessor who has extraordinary expenses may apply to the Director for an increase to cover those expenses (s.23). Any lessor who wishes to discontinue a service previously included within the rent may apply to the Director for permission (s.6)."

[Emphasis added]

[19] The Commission issued two further *Former Act* decisions which imply that rent discounts were not authorized by this earlier rental legislation.

[20] These further cases directly address the rent history argument raised by the Landlord.

[21] In both of these cases, a landlord had originally charged a higher rent for a unit, later lowered the rent, and then purported to increase the lower rent above the annual allowable percentage without a Rental Office order. The Commission found that, after charging a lower rent, the landlord was required to obtain an order to increase the rent even though historically the landlord had in fact collected a higher rent.

¹ Order LR95-12 is available at: <https://irac.pe.ca/wp-content/uploads/LR95-12.html>

[22] In the first decision, Order LR09-11², the Commission stated in part:

“While the evidence before the Commission is clear that the rent for the premises had been \$980.00 per month in 2006, the Commission finds that [the landlord] made the decision to advertise the premises at the rate of \$780.00 per month in order to attract a new tenant. [The tenant] agreed to rent the premises at that monthly rate. At that point, the established rental rate for the premises was set at \$780.00. For the purposes of the present appeal, the Commission accepts the evidence of [the landlord] that the reduction in rent was necessary because previous tenants left the premises in poor condition...

While [the tenant] did sign the August 18, 2007 rental agreement, the increase in rent was contrary to the Act as [the landlord] did not follow the required process to seek a rental increase. Accordingly, the Commission agrees with the findings contained in the Director's Order LD09-112 and the appeal is hereby denied.”

[23] In the second decision, Order LR22-18³, the Commission stated in part:

“The Commission accepts that the rent for the Premises was initially \$1,400 per month, but that rate was then reduced. While the Appellants may have requested rent higher than \$1,200 per month from the tenants immediately prior to the Respondents, the Appellants deposited the post-dated cheques as they came due and thus are deemed to have accepted rent at \$1,200 per month. Unfortunately for the Appellants, such acceptance established the rent for the Premises at \$1,200 per month and no application was made to the Director to lawfully increase the rent prior to the Respondents leasing the Premises.”

[24] The rent discount argued by the Landlord was not valid. The Landlord could only increase the Unit's rent in accordance with the *Former Act* and the *Act*.

[25] I find that the authorized rent is \$1,700.00 based upon the Landlord charging and collecting this rent for over two years, from March 2021 to April 2023.

Additional Landlord Arguments

[26] The Landlord argued that the Tenant agreed to the two rent increases, the Tenant has been repeatedly late paying rent, and the Landlord did not know the details of the rent increase restrictions in the *Act*.

[27] However, the *Former Act* and the *Act* do not permit rent increases by mutual agreement between a landlord and a tenant. The late payment of rent and lack of knowledge of the rent rules do not permit the Landlord to increase the rent. The rent increase restrictions applied regardless of the Landlord's knowledge of these restrictions.

[28] The Landlord also stated that his mortgage costs, taxes and other expenses had increased.

[29] However, increased expenses did not allow the Landlord to increase the rent without following the proper process under the *Act*.

Rent Increase Process

[30] Since the *Act* came into force on April 8, 2023 the maximum amount that rent can be increased without a Rental Office hearing has been limited to the annual guideline percentage (the “Guideline”). The Guideline is set each year by the Director of Residential Tenancy and ranges from 0.00% to 3.00% (subsection 49(3)). The Legislative Assembly of Prince Edward Island

² Order LR09-11 is available at: <https://irac.pe.ca/wp-content/uploads/LR09-11.html>

³ Order LR22-18 is available at: <https://irac.pe.ca/wp-content/uploads/Order-LR22-18.pdf>

- [31] A landlord can increase the rent by the Guideline by serving a tenant with a *Form 8 – Tenant Notice of Annual Allowable Rent Increase*. A landlord must typically serve their tenant with this notice three full months before the rent increase is charged (subsection 48(2)).
- [32] A landlord can seek to increase the rent above the Guideline by filing a *Form 9 – Landlord Application to Request Additional Rent Increase* with the Rental Office. A landlord can request a maximum 3.00% per year increase above the Guideline (subsection 50(7)). Above guideline rent increases can be phased in over multiple years (subsection 50(6)).
- [33] As part of this process a landlord would need to complete a *Form 10 – Landlord Statement of Income and Expenses* and provide evidence of the rental unit's income and expenses over a three-year period. The landlord would also need to provide evidence regarding the relevant factors for determining rent increases.

The Two Rent Increases

- [34] In this case the parties did not participate in any previous Rental Office hearings regarding the Unit.
- [35] On May 1, 2023 the Landlord increased the Unit's rent by \$150.00 from \$1,700.00 to \$1,850.00, being an 8.82% increase.
- [36] Subsection 49(4) of the *Act* restricted the 2023 Guideline to 0.00%, stating as follows:
- Notwithstanding subsections (2) and (3), the guideline for the 2023 calendar year is zero per cent.*
- [37] Therefore, this rent increase was 8.82% above the 2023 Guideline of 0.00%. This rent increase was not permitted by the *Act*.
- [38] On May 1, 2024 the Landlord increased the Unit's rent from \$1,850.00 to \$2,500.00, being a further 35.14% rent increase.
- [39] The 2024 Guideline was 3.00%.
- [40] Therefore, this rent increase was 32.14% above the 2024 Guideline of 3.00%. This rent increase was also not permitted by the *Act*.
- [41] The rent increases charged were above the maximum possible percentage that could have been approved by the Rental Office under the *Act* through an Order.

CONCLUSION

- [42] The Landlord's rent increases from \$1,700.00 to \$1,850.00 and from \$1,850.00 to \$2,500.00 were unlawful. The Landlord must return the rent collected that was in excess of \$1,700.00 under subsection 50(8) of the *Act*.
- [43] I find that the Tenant has established a claim against the Landlord for the monthly rent collected in excess of \$1,700.00, for a grand total of \$11,700.00, calculated as follows:

Period	Rent Collected	Overpayment	Number of Months	Total
May 2023 to April 2024	\$1,850.00	\$150.00	12	\$1,800.00
May 2024 to April 2025	\$2,500.00	\$800.00	12	\$9,600.00
May 2025 to June 2025	\$1,850.00	\$150.00	2	\$300.00
			Grand Total	\$11,700.00

- [44] I offset the rent owing for July 2025 and the upcoming rent for August 2025, in the total amount of \$3,400.00, from the grand total of \$11,700.00 calculated above. The rent for these two months is considered paid due to this offset.
- [45] After deducting July 2025 and August 2025 rent, the net amount owed by the Landlord to the Tenant is \$8,300.00 (\$11,700.00 minus \$3,400.00).
- [46] The Landlord cannot collect a monthly rent for the Unit greater than \$1,700.00 until the Landlord increases the Unit's rent in accordance with the *Act*.
- [47] At the hearing the Tenant also stated that the Landlord removed water from being a service included in the rent.
- [48] I note that the parties can contact an Intake Officer at the Rental Office for information regarding their rights and responsibilities for the removal of a service.

IT IS THEREFORE ORDERED THAT

1. The Tenant's monthly rent of \$1,700.00 for July 2025 and August 2025 is considered paid due to the offset in this Order.
2. The Landlord must pay the Tenant the net amount of \$8,300.00 by August 29, 2025 due to two unlawful rent increases.
3. The Landlord cannot collect a monthly rent for the Unit greater than \$1,700.00 until the Landlord increases the Unit's rent in accordance with the *Residential Tenancy Act*.

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

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.