SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Killam v. Shamrock Estates*, 2023 NSSM 93

Date: 20231212
Docket: 5528994
Registry: Halifax

ON APPEAL FROM AN ORDER OF THE DIRECTOR OF RESIDENTIAL TENANCIES

Between:

Killam Apartment REIT

Appellant

v.

Communities of Shamrock Estates, Birchlee; Cardeil; Birch Hill; Fairview; Maple Ridge; and Mountainview

Respondents

Adjudicator:	Darrell Pink
Heard:	December 8, 2023, in Halifax, Nova Scotia
Decision:	December 12, 2023
Counsel:	Calvin DeWolfe, counsel for the Appellant

By the Court:

[1] This appeal involves to an order of the Director of Residential Tenancies (File # 202204604 – Shamrock Estates, 202204845 – Birchlee, 20224846 – Cardell, 202204847 – Birch Hill Estates, 202204848 – Fairview, 202204849 – Maple Ridge and 202204850 - Mountainview) dated July 27, 2023, that deemed the Appellant's applications for rent increases for residents of the Respondent lend-lease communities withdrawn.

[2] The Director's Order dealt with a preliminary matter – was the application for a rent increase deemed withdrawn under the Residential Tenancies Regulations? The relevant portions of the Regulations are attached as Appendix 1 to these reasons.

[3] The requirement for applications to the Director to increase the rent on land-lease properties was established by s.11B of the *Residential Tenancies Act*:

> **Annual allowable rent increase amount**
>
> **11B (1)** A landlord of a land-lease community shall not impose a rent increase in the land-lease community by an amount that is greater than the annual allowable rent increase amount calculated in accordance with the regulations.
>
> **(2)** Notwithstanding subsection (1), a landlord of a land-lease community may apply to the Director for permission to increase rents in the land-lease community by an amount that is greater than the annual allowable rent increase amount calculated in accordance with the regulations.
>
> **(3)** In reviewing an application by a landlord of a land-lease com- munity for permission to increase rents by an amount greater than the

> annual allow- able rent increase amount referred to in subsection (1), the Director shall consider any guidelines prescribed by regulation. 2010, c. 72, s. 12.

[4] The process to be used by an applicant is set out in Regulation 25D.

[5] This is the first time an appeal under these provisions has been considered by this Court.

Paper-based process on application and appeal

[6] Before the Court considered the appeal, the Appellant sought directions so the Court would have an opportunity to consider how the appeal process could effectively deal with the matter. The Appellant sought clarity on how it should proceed, particularly regarding service of any documentation on members of the affected communities. Because there are approximately 1500 residents in the lend-lease communities subject to the Appellants' application, the Court was desirous of judicial economy and the need to avoid an administrative burden that could swamp the Court's capacity if this number might participate in an appeal.

[7] Following a review of the Director's order and the reasoning of the Residential Tenancies Officer (RTO), the Court heard from counsel for the Appellant at a hearing scheduled to address the procedure to be utilized.

[8] The process for review of proposed rental increases is a paper process. Once an application is made and written input from residents and the landlord is obtained, there is no oral hearing. A decision is based exclusively on the applicable policy on the allowable basic rent increase, an applicant's submissions and financial information, comments from occupants of the community and responses from the landowner/applicant.

[9] Given the approach built into the Act and regulations, I have concluded this appeal should be addressed solely based on the record before the Court, which is the material the RTO had for consideration. On the issue that founded the RTO's decision, namely service, community members could not have any input. The regulations provide them an opportunity to address the proposed rent increase, but they are not able to address any procedural or other issues. The RTO addressed a preliminary matter and found there was no application to be considered. Her determination was made on her own motion. With no input from any party, she considered the documents before her and interpreted the regulatory framework. She ruled the Appellant's application was deemed to have been withdrawn.

[10] The Court heard from the Appellant's counsel, who reiterated his client's position as stated in its Notice of Appeal. As the Respondent community

members had no input on the procedural issues that were the basis for the Director's Order, I find there is no need to provide notice of this appeal to them. This Court can consider the issues and decide the matter based on the information before it, which is the same as the RTP considered. Given my ultimate determination, I conclude the members of the Respondent communities are not disadvantaged by requiring the Director to consider this application on its merits.

Economic Regulation

[11] The authority given to the Director of Residential Tenancies to determine an appropriate rent increase for land-lease communities is unlike any other power of the Director in the Act. The Director is usually faced with landlord-tenant disputes and makes factual findings based on sworn oral evidence. Unlike landlord-tenant disputes, determination of rental increases is economic regulation.[1] Most Nova Scotians would be familiar with this as the work of the Utility and Review Board[2], the main economic regulator in the province, which

[1] Economic regulation, a form of government intervention designed to influence the behaviour of firms and individuals in the private sector. See https://www.thecanadianencyclopedia.ca/en/article/economic-regulation#recommended

[2] https://nsuarb.novascotia.ca/

sets prices and weighs the interests between companies and the consumer public in a range of areas. The processes established in the Act and Regulations must be understood and applied given this unique regulatory role assigned to the Director.

Review of RTO's Analysis and Decision

[12] I have concluded the RTO's analysis of the applicable regulations resulted in an incorrect finding.

[13] Related issues of notice, service and participation in a consideration of the merits of the application will be subsequently addressed.

[14] In considering Killam's application, the Residential Tenancies Officer addressed what is in effect a preliminary or jurisdictional matter.

[15] The Regulations stipulate that at least seven months before the tenants' anniversary date a landlord must serve tenants with documents relating to the application for a rent increase in excess of the allowable amount. For most of the land-lease communities affected by this application, the 'anniversary date' is October 1. Some may have a date in November, but that does not change the calculations for this review.

[16] Under the regulations, Killam had to provide its notice of the intended rent increase before March 1, 2023, for the new rent to start on or after October 1, 2023. It started the process with residents of the land-lease properties by serving them with its 'Rental Increase Notification' dated January 15, 2023.

[17] Killam filed its Application to Director – Rent Increase Greater Than Annual Allowable Rent Increase Amount (Form N under s.11B(2) of the Act and s. 25D of the Regulations) on March 14, 2023. Attached to the Form N were:

a. Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount (Form O)

b. A copy of a notice to tenants of the proposed rent increase to take effect October 1, 2023

c. A copy of a Notice of Rent Increase for manufactured Home Space (Form M)

[18] Following contact by the Residential Tenancies Officer reviewing the file, Killam provided a Certificate of Service with evidence of service on tenants. I only have copies of the application documents for one Respondent community but am advised by counsel they are the same. In the material I have, the Certificate of Service is dated May 11, 2023.

[19] The RTO noted the Certificate of Service was not filed by Killam 'by the date Prescribed by the Regulations and indicated on the Form N'. She then said:

> Subsection 25D (5) of the Regulations… is clear that when the tenants are not served in accordance with subsection 25D(4) the "application is deemed to be withdrawn with respect to the tenants who were not properly served as required by those subsections".

[20] The RTO then ruled the failure of service resulted in a deemed withdrawal of the application. When she concluded this, on what was a preliminary issue of whether the tenants had been served, she concluded the deemed withdrawal provisions applied and she had no jurisdiction to consider the application on its merits.

[21] The RTO erred by conflating the fact of service, a requirement under the regulations, with proof of service, established by filing a Certificate of service. She determined failure to perform either requirement would result in a deemed withdrawal of the application, whereas only service seven months before the anniversary date is mandatory.

[22] Regulation 25D (5) states:

> **(5) If the deadline for service set out in subsection (3) is not met or if the documents are not served as required by subsection (4)**, the application is deemed to be withdrawn **with respect to the tenants who were not properly served** as required by those subsections. (Emphasis added)

Deemed withdrawal results from failure of service in the prescribed timeframe. It is not a result of an applicant failing to file its Certificate of Service within a particular timeframe.

[23] Though under Reg. 25D (4) Killam ought to have filed its Certificates of Service attached to Form N no later than 14 days after the deadline for service set out in subsection (3), the regulations do not make a failure to do so fatal to an application.

[24] In response to Killam's failure to submit Certificates of Service the RTO contacted the applicant to get them. That was the proper response, for a defect of this sort, which can easily be rectified.

[25] In her reasoning, the RTO combined the requirement for service at least seven months before the anniversary date (a condition precedent to an application) with filing the Certificate of Service (a regulatory requirement that does not go to the Director's jurisdiction) and viewed both as mandatory obligations. In doing so she erred by making a date for filing the Certificate of Service mandatory, which it is not. In doing so, she determined the application for a rent increase was deemed to have been withdrawn. That was an incorrect conclusion.

[26] The RTO recognized that her interpretation may not have been correct. She then noted:

> … the applications would be dismissed because there are additional errors that call into question whether service was perfected for all tenants.

She gives several examples to support her conclusion.

[27] I have reviewed the Certificates of Service provided by the Applicant for the Fairview community, which I am advised are substantially the same as those submitted across all the affected properties. Though the information contained in the Certificates of Service may not be crystal clear and should have caused the RTO to ask questions, they do not support a conclusion they are defective across the board.

[28] Though the scheme contemplates rent increase in land-lease communities will be addressed collectively, the Act and Regulations do not specify the consequences if an applicant fails to perfectly satisfy every requirement. For example, would a failure by an applicant to serve a single tenant, results in a failure of the entire application in its entirety? There are many situations in which one could imagine, especially given the number of tenants impacted by these applications, a tenant or several might not be home when the applicant attempted to serve the notice personally. A registered letter may not be delivered. Electronic communications could fail. Despite best efforts, even if alternative processes are available, it is easy to see how a tenant could be missed, or that service may have been late.

[29] The Act and Regulations do not stipulate that a failure of this type is fatal to the entire application. If a failure of this type occurs, the RTO would have to assess the gravity and significance of it and take steps to ensure that when viewed in its entirety the process is fair.

[30] The RTO did not specify in what manner service was not sufficient. Though she references some Canada Post information, it does not show conclusively what occurred nor does the RTO relate that information, though an address comparison, to individual land-lease occupants. The RTO did not have sufficient information or did nor clearly describe the details of the information she relied upon to come to the conclusion she did. She erred in determining service was so inadequate as to require her to deem the application withdrawn. Even if service was not perfected properly, the regulations do not specify the remedy and do not invoke the deemed withdrawal result for service irregularities.

[31] Because the Order of the Director is based on an erroneous interpretation of Reg. 25D (4) and erroneous conclusions regarding service, the Order of the Director deeming the Application to be withdrawn must be set aside.

[32] The proper remedy is to allow the appeal and set aside the Order of the Director. The result is to return the Appellant to the situation it was in before November 28, 2022, the date of its application and require the Director to consider the applications on their merits.

[33] Given the time that has passed and the fact another year is on the horizon, Killam should advise the Director if it wishes the 2023 rent increase applications to be considered. Though I cannot stipulate a date for doing this, I urge the Appellant to provide notice of its intentions before the end of 2023.

Ensuring Procedural Fairness in the Event of an Appeal

[34] Given that this process is untested and that an appeal from an Orde of the Director would come to this Court, I offer the following comments in hopes they will contribute to enhanced fairness in the process and outcomes of rental increases above the allowable amount.

[35] An appeal from an Order of the Director is made under s. 17C of the Act. Appeals from the Director are conducted '*de novo'.* See *MacDonald v. Demont*, 2001 NSCA 61 and ***Eastern*** *Mainland Housing Authority v. Hadley*, 2019 NSSM 23, where numerous cases in this court are reviewed.

[36] The de *novo* process used by this Court has evolved and is governed by several principles, including:

a. While the method of getting before Small Claims Court is said to be by way of "appeal" the Court is not confined in its deliberations to anything that may have transpired before it became seized with the process – *Dowling v. Vanderweit*, 2001 NSSC 79, paragraph 17;

b. The hearing before the court is a hearing *de novo* and as specified in s. 17C(5) and (6) the parties must be given a "full opportunity …. to present evidence" etc. - *Dowling v. Vanderweit;*

c. The Court is obliged to hold a hearing, and to hear the whole matter anew. - *Dowling v. Vanderweit*;

d. The Court must reach its own conclusions based upon the material and evidence at that hearing. It is not bound by any conclusions reached by the Director. - *Dowling v. Vanderweit*;

e. A Residential Tenancy Officer's decision is not entitled to any deference on appeal to this Court. - *Opus 3 Investments Ltd. v. Schnare*, 2009 NSSM 12;

f. (The) decision (must be) based solely upon the evidence and arguments presented by the parties at the appeal hearing. - *Opus 3 Investments Ltd. v. Schnare*, 2009 NSSM 12.

[37] An additional principle can be added: the decision of the Director, as embodied in the reasoning of an RTO, is the starting point for a Small Claims Court appeal. Knowing what evidence was considered, what findings were made and what conclusions were reached provides an essential foundation for

this Court to exercise its authority under s.17D(1)[3]. Though all outstanding issues between a landlord and a tenant are now considered on an appeal, the starting point remains the Director's Order. See *Kerr v. 3340528 Nova Scotia Limited*, 2023 NSSC 271.

[38] Because an order of the Director under Reg. 25D (13) could be appealed to this Court, these principles must be remembered to ensure a process that meets the obligations on the Small Claims Court to conduct proceedings "in accordance with established principles of law and natural justice" as stipulated in s. 2 of the *Small Claims Court Act.* The reference to 'proceedings' includes appeals under the *Residential Tenancies Act*.

[39] In contemplation of future appeals from a Director's Order relating to a rent adjustment for land-lease properties, I offer these observations hoping the Director will have the comprehensive evidence necessary to engage in an analysis and decide files relating to land-lease properties, applying legal principles and approaches appropriate to economic regulation that are different from matters usually heard by the Director's office. That is also true for this

[3] 17D (1) Within fourteen days of holding a hearing pursuant to subsection 17C(4), the Small Claims Court shall (a) confirm, vary or rescind the order of the Director; or (b) make any order that the Director could have made.

Court. Even though it hears the matter *de novo*, a review of all the relevant issues and facts by the Director's Office makes a better appeal hearing.

[40] The Act in s. 13(2A) allows for various types of service - personal, prepaid registered mail, prepaid express post or prepaid courier and electronic service. In land-lease communities, multiple forms of service will likely be utilized as the circumstances of individual occupants will dictate what is most appropriate. The landowner will thus need to prove a variety of types of service.

Proof of Service

[41] To ensure processes are fair to both landowners and residents of land-lease properties, an applicant on filing Certificates of Service, should provide additional information to explain that information. Given that service can be done in a variety of ways under s. 13(2A)[4] of the Act and there is no

---

[4] 13 (2A) An application required to be served under subsection (2) must be served on the other parties to the application by (a) personal service; …; (d) where a party is a tenant, sending it to the tenant by prepaid registered mail, prepaid express post or prepaid courier service to

(i) the address of the residential premises if the tenant resides there, or
(ii) a forwarding civic address provided by the tenant; or (e

(e) sending it electronically if
(i) it is provided in the same or substantially the same form as if written,
(ii) it is capable of being retained by the other person so as to be usable for subsequent reference,
(iii) the other party has provided in the lease, …, an electronic address to receive documents, and
(iv) it is sent to the electronic address referred to in subclause (iii).

requirement for a single form of service to be used for a whole community, the landlord should explain how service was carried out so the RTO considering the matter has the factual basis for determining if the requirements for service have been met. Having that factual information will be essential on appeal to allow for a full review of that aspect of the matter.

Evidence to support the Application

[42] Given that the issues being considered by an RTO are so different than other hearings, the evidence upon which a decision is made should be comprehensive to allow for a fair and complete decision. The process in Reg. 25D starts with application for rent increase greater than the annual allowable rent increase amount, Reg 25D (2). Notice of the application is given to tenants. Reg. 25D (6) and (7) allow tenants to review the application and make comments. The Director provides the comments to the landlord, who may reply to them. Reg 25D (8) and (9). Reg 25D (11) allows the Director to require the Landlord to submit additional documentation to support the landlord's financial information.

[43] The nature of review of the application and the items to be addressed for a rental increase are prescribed by Reg 26 – 32.

[44] In this appeal, the Court was provided with the ‘comments’ made by many tenants. As expected, the near universal response is opposition to any rent increase, let alone one that is larger than the one permitted. In the copy of materials provided to the Court, the names of the tenants were redacted. I see no authority allowing the Director to provide the landlord with the tenant’s comments without their names or addresses. If the purpose of allowing for a landlord response is to assist in a robust consideration, the landlord must know whose comments are being addressed as that may be relevant to or assist the landlord in crafting a reply that will help to evaluate the application.

[45] The Landlord provides information through the Form O – Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount. The form requires considerable information that will be utilized in evaluating the application. It also allows the applicant to provide additional information. Most of what is provided is quantitative material – numbers relating to income, vacancies, expenses, capital costs (incurred and expected) and proposed rents. Other than responding to a request from the Director under Reg 25D (11), there is no way for the Landlord to provide any qualitative information supporting its application.

[46] If a request is made of the Landlord and additional information is provided, that is not shared with the tenants for their input.

[47] Remembering the Regulations establish a purely paper based process, with no hearing, there appears to be a disconnect between the input provided by the tenants, all qualitative, and what is required from the landlord, which is all quantitative. Because the present application did not proceed, it is not known if the Director would have asked for any explanations to assist in the review the RTO makes on behalf of the Director.

[48] It is unlikely the Director would not ask for Reg. 25D (10) comments as that is the only way the RTO can ensure they fully understand the application. That is especially so given the unique nature of this review and the need to ensure the Landlord has an adequate and fair opportunity to address anything raised by the tenants that may influence the RTO's analysis and decision.

[49] Give this Court's interest is what would be before it on an appeal, the prescribed process could be enhanced, within the framework of the Regulations, if the Landlord included a description of and support for its application as an introduction or appendix to its application. The tenants would then have a full picture and understanding of the landlord's rationale for the application. They

could then respond to information that is not purely financial/numerical (which may be incomprehensible to many, given its detail and complexity) and in turn the Landlord, if providing further comments. Getting the information at the outset makes the process fairer to all. If the additional information relates to the Director's request under Reg 25D (10), there is no means for input from the tenants on what might be crucial to a decision.

[50] I recognize these comments may go beyond what is required to address this appeal. The number of tenants affected by this application is hundreds. They require the opportunity to address in a fair process issues that will have a possible significant impact on their finances and housing security. Therefore, given the unique process that has been prescribed by the Regulations, the number of persons interested in this application, the need for an appeal to be conducted under the requirements of law and natural justice, and the natural limitations of the initial decision-making process that does not allow for an oral hearing (though an appeal would likely be conducted orally), I offer these observations in hopes they can be accommodated within the current regulatory framework and will thus avoid future problems.

Conclusion

[51] The appeal is allowed. Order if the Director is set aside. The Appellant should advise the Director as soon as possible if it wishes the current applications to proceed, or if it wishes to have a rent adjustment for the Respondent communities addressed in a review of the 2024 rents.

Darrell Pink, Small Claims Court Adjudicator

Appendix 1

Residential Tenancies Regulations
made under subsection 12(4) and Section 26 of the
Residential Tenancies Act
R.S.N.S. 1989, c. 401
O.I.C. 89-1118 (effective October 1, 1989), N.S. Reg. 190/1989
amended to O.I.C. 2022-306 (effective February 3, 2023), N.S. Reg. 319/2022

Application for rent increase greater than annual allowable rent increase amount

25D (1) In this Section, "application" means an application to the Director under subsection 11B(2) of the Act by a landlord of a land-lease community for permission to increase rents in the land-lease community by an amount that is greater than the annual allowable rent increase amount.

(2) An application must be in Form N: Application to Director–Rent Increase Greater Than Annual Allowable Rent Increase Amount, and must be filed with the Director together with

(a) a completed Form O: Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount; and

(b) payment of the application fee set out in Section 33 of these regulations.

(3) At least 7 months before the tenant's anniversary date, a landlord shall serve each tenant named in the application with both of the following documents in the manner set out in subsection (4):

(a) a copy of the application;

(b) a Notice of Rent Increase for Manufactured Home Space in Form M.

(4) A landlord shall serve the documents referred to in subsection (3) on each tenant named in the application by a method of service provided for in subsection 13(2A) of the Act, and the landlord shall return a copy of the certificate of service in the form attached to Form N to the Director no later than 14 days after the deadline for service set out in subsection (3).

(5) If the deadline for service set out in subsection (3) is not met or if the documents are not served as required by subsection (4), the application is deemed to be withdrawn with respect to the tenants who were not properly served as required by those subsections.

(6) If a tenant named in an application wishes to review the Form O: Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount provided by the landlord to the Director, the tenant may contact the Director to make arrangements to review the form.

(7) If a tenant named in an application wishes to make submissions to the Director in response to the application, the tenant shall provide their submissions, in writing, and any supporting documentation to the Director no later than 14 days after the deadline for service set out in subsection (3).

(8) Any submissions provided by a tenant to the Director in accordance with subsection (7) are forwarded by the Director to the landlord.

(9) If a landlord wishes to respond to any submissions made by a tenant, the landlord shall provide their response, in writing, and any supporting documentation to the Director no later than 14 days after receiving the tenant's submissions from the Director.

(10) The Director may require a landlord to submit additional documentation to support the landlord's financial information submitted on Form O: Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount.

(11) In determining the appropriate rent increase amount on an application, the Director shall not conduct an oral hearing but shall consider all of the following:

(a) the application and Form O: Financial Information in Support of a Rent Increase Greater Than Annual Allowable Rent Increase Amount filed by the landlord;

(b) any written submissions and supporting documentation provided by a tenant under subsection (7);

(c) any written response and supporting documentation provided by the landlord under subsection (9);

(d) any additional supporting documentation provided by the landlord under subsection (10);

(e) the guidelines set out in Sections 26 to 32 of these regulations.

(12) The Director shall, within a reasonable time frame, make a written order in accordance with Section 17A[5] of the Act determining the rent increase amount, and the order is mailed to the landlord and to all tenants who are subject to the rent increase amount.

(13) The Director may do any of the following in an order determining a rent increase amount:

(a) grant the rent increase amount requested by the landlord;

(b) refuse the rent increase amount requested by the landlord;

(c) order some other rent increase amount not exceeding the amount requested by the landlord in the application.

Guidelines for Review of Application for Rent Increase Greater than Annual Allowable Rent Increase Amount for Land-lease Communities

Director's considerations

26 (1) When making a determination on an application pursuant to subsections 11B(2) and (3) of the Act and Section 25D of these regulations for permission to increase rent in a land-lease community by an amount greater than the annual allowable rent increase amount, the Director shall consider the following:

(a) **income** — total potential income at 100% occupancy of the land-lease community and any other income generated through and in relation to land-lease community operation;

(b) **operating expenses**— include the regular expenses necessary to operate the land-lease community;

(c) **[repealed]**

(2) In determining amounts for purposes of clause (1)(b) the Director shall also consider Sections 27 to 32.

Income and operating expenses

27 The Director shall consider the income and operating expenses referred to in Section 26 for each of the following periods:

---

[5] **17A** An order made by the Director may …(i) determine the appropriate level of a rent increase;

(a) the calendar year that immediately preceded the date the annual allowable rent increase amount was published in accordance with subsection 25B(2) of these regulations; and

(b) the calendar year that immediately preceded the calendar year referred to in clause (a).

Expenses included as operating expenses

28 For the purposes of clause 26(b) and Section 27 of these regulations, operating expenses include all of the following:

(a) the following general administration and insurance expenses:

(i) management fee,

(ii) staff wages,

(iii) office supplies and equipment,

(iv) office utilities,

(v) other fees directly related to business operations,

(vi) property and liability insurance;

(b) the following utilities:

(i) water and sewer,

(ii) electricity,

(iii) oil,

(iv) natural gas;

(c) the following grounds and maintenance services expenses:

(i) road maintenance,

(ii) common area and playground maintenance,

(iii) water and sewer testing and maintenance,

(iv) electrical maintenance,

(v) landscaping,

(vi) snow removal,

(vii) garbage removal;

(d) the following miscellaneous maintenance and services expenses:

(i) general equipment and vehicle maintenance,

(ii) pest control,

(iii) security;

(e) property taxes;

(f) any operating expense that the Director determines to be reasonable compared to industry norms.

Unused portion of annual allowable rent increase amount for previous calendar year

28A The Director shall consider any unused portion of the annual allowable rent increase amount for the previous calendar year, but the Director shall not allow any unused portion of an annual allowable rent increase amount for a year that precedes the previous calendar year.

Expenses not allowed

29 The Director shall disallow any of the following expenses:

(a) any expense incurred in the preparation and presentation of an application under subsection 11B(2) of the Act and Section 25D of these regulations for permission to increase rent in a land-lease community by an amount greater than the annual allowable rent increase amount;

(b) any expenses that do not relate to the rental property;

(c) any expense or portion thereof that the Director determines is incurred as a result of a non-arms length transaction;

(d) any expense incurred in complying with any statutory enactment, unless the Director determines that the expense should be allowed in the circumstances;

(e) any debt servicing expense incurred for any other purpose than completing capital cost items in the land-lease community;

(f) any expense that is not substantiated; or

(g) any expense that the Director determines to be unreasonable compared to industry norms.

Management fee

30 **(1)** A management fee is a justified expense whether paid to another individual or to the landlord.

(2) The maximum allowable management fee that may be considered by the Director for each of the 2 calendar years that immediately precede the date the annual allowable rent increase amount is published in accordance with subsection 25B(2) is 5% of total income at 100% occupancy.

Capital costs

31 **(1)** All renovations, improvements and major repairs are considered capital costs.

(2) Consideration is given to the cost of the item and financing for a reasonable period of time divided by the expected life.

(3) The life expectancy guide attached as Schedule "A" and forming part of these regulations shall be used unless a landlord can substantiate to the satisfaction of the Director a shorter life expectancy.

(4) When projecting the interest rate to be applied to the funds required to finance a capital cost, the prime rate at the time of the review is to be used unless evidence is presented to substantiate another rate and that rate is determined by the Director to be reasonable.

Difference between actual and projected capital costs

32 If in a past year the Director allowed a rent increase that was greater than the annual allowable rent increase amount and was based in part or in whole on projected capital costs, the Director shall compare the projected capital costs and the actual capital costs and may consider any difference.