

## Introduction

- [1] On April 18, 2023 the Landlord filed a Landlord Application to Request Additional Rent Increase (Form 9) with the Residential Tenancy Office (the "Rental Office"), pursuant to subsection 50.(1) of the *Act* (the "Application"). The Landlord is seeking a rent increase for the Residential Property exceeding the allowable percentage established by subsection 49.(4) of the *Act* for 2023. The Application indicates that the current rents, proposed rents and effective dates for the proposed increases are as follows:

Unit	Current Rent	Proposed Rent	Effective Date
102	\$1,060.90	\$1,092.73	August 1, 2023
103	\$936.45	\$964.50	August 1, 2023
104	\$1,308.00	\$1,347.25	October 1, 2023
105	\$1,290.00	\$1,328.70	October 1, 2023
106	\$994.55	\$1,024.40	October 1, 2023
107	\$989.50	\$1,019.20	October 1, 2023
201	\$991.54	\$1,021.30	September 1, 2023
202	\$1,295.00	\$1,333.85	September 1, 2023
203	\$1,295.00	\$1,333.85	August 1, 2023
204	\$1,275.14	\$1,313.40	November 1, 2023
205	\$1,295.00	\$1,333.85	August 1, 2023
206	\$991.54	\$1,021.30	September 1, 2023
207	\$1,287.75	\$1,326.40	August 1, 2023
301	\$1,290.00	\$1,328.70	August 1, 2023
302	\$1,287.75	\$1,326.40	August 1, 2023
304	\$1,033.36	\$1,064.35	September 1, 2023
305	\$1,303.60	\$1,342.10	August 1, 2023
307	\$954.45	\$983.10	October 10, 2023

- [2] On June 27, 2023 the Landlord submitted into evidence the Landlord Statement of Income and Expenses (Form 10) (the "Statement").
- [3] On July 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenants in two of the rental units appeared and participated. The Landlord's representative appeared and participated briefly.

## Preliminary Matter

- [4] The Landlord's representative asked the Officer why the Tenants were not required to sign non-disclosure agreements (NDAs) and also why a hearing was required as none of the Tenants "appealed" the Application.
- [5] The Officer explained to the Landlord's representative that an NDA was not required for the Application and that the *Act* legislates confidentiality when it comes to the financials disclosed by the Landlord for the Application. Further, the Officer explained to the Landlord's representative that the Tenants are not required to "appeal" or more accurately, dispute the Application. The Officer explained that the Landlord is the applicant and it is their burden or onus to prove the requirements of the Application despite the Tenants' objection or acceptance of the Application.

- [6] The Officer notes that the Island Regulatory and Appeals Commission in Order LR23-25 stated this:

*“The Commission confirms that the responsibility of the Director in proceeding an application for a greater than allowable rent increase is to undertake a full and complete analysis of the application to ensure the financial information submitted fully supports the increase in rents requested. **The same complete analysis must be undertaken regardless of whether any Tenants file objections.** The duty of the Director in such applications is to determine whether the Landlord has provided **sufficient evidence** in its application to justify the requested increase in rents. If the Landlord has not done so, then the Director must deny the application or issue an order for a lesser or other amount of rent increase. Objections and evidence provided by Tenants must, of course, be considered by the Director in determining the application. **However, in the absence of objections or evidence opposing, the Director must still go through the analysis and make a determination that the financial information supports the finding of the Director.**”*  
[emphasis added]

- [7] The Officer notes that the Landlord’s representative was not satisfied with the Officer’s explanation. The Landlord’s representative stated that he did not wish to provide any additional testimony or answer any of the Officer’s questions at the hearing.
- [8] The Officer asked the Landlord’s representative again, despite his objections, did he wish to provide any oral testimony or submissions and/or answer the Officer’s examination questions, or rely solely on the documentary evidence submitted. The Landlord’s representative stated that he had nothing further to say and did not wish to hear the Tenant’s oral testimony and submissions. The Landlord’s representative left the hearing. The hearing proceeded in the Landlord’s representative’s absence.

### Issue to be Decided

- i. Is the Landlord permitted to increase the Residential Property’s rent as requested in the Application?

### Summary of the Evidence

- [9] The Landlord purchased the Residential Property in 2006. The Application includes 18-units. The Landlord provided documentary evidence which include financial statements for 2019, 2020, and 2021. The Landlord also provided the expenses for 2022 which were not completed in the form of a financial statement.

#### Landlord’s Evidence and Submissions

- [10] The Landlord provided financial statements for 2019-2021. The Landlord also provided a document breaking down expenses for 2022. The Landlord did not provide any supporting documents to assist in establishing or breaking down these disclosed expenses. The Landlord’s representative did not provide any oral submissions or testimony at the hearing. The Landlord’s representative did not wish to answer any questions the Officer may have had regarding the disclosed expenses.

#### Tenant’s Evidence and Submissions

- [11] The Tenants submissions are summarized as believing the rent increase to be unreasonable and that there were some complaints regarding the overall condition and maintenance of the Residential Property. The Tenants’ questioned the expenses for maintenance and repairs.

## Adjustments to the Statement

[12] The Officer's adjustment to the income and expenses are provided below.

### 1. [The Statement in Full]

The Officer finds that the documentary evidence provided by the Landlord is insufficient and does not substantiate the income and expenses disclosed in the Statement. The Officer finds that the documentary evidence provided by the Landlord –e.g., the financial statements alone are insufficient.

Generally, for such applications the landlord would provide supportive documents such as invoices, receipts or, at the very minimum, oral testimony to assist the Officer in understanding the disclosed expenses on the Statement.

In this case, the Officer only has the financial statements, without any breakdown or details regarding where the expenses have come from. The Landlord did not provide any oral testimony, submissions or wished to answer any questions the Officer may have had in relation to the Application and the Statement. For example, the Officer notes that the maintenance and repairs are disclosed as \$28,963.00 in the Statement for 2022. However, the documentary evidence has it disclosed as \$32,610.10 for 2022 without any further detail or breakdown to when and what these expenses relate to. The Officer finds that with such inconsistencies and unknowns in the Statement and the evidence, the Officer cannot rely on the Statement as a reliable source for determining the expenses for the Residential Property.

## Analysis

[13] The factors for reviewing rent increases above the allowable percentage are set out in subsections 50.(3), (4) of the *Act* and section 4 of the *Residential Tenancy Regulations* (the "*Regulations*") which state:

### **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.*

**Other factors**

(4) *The Director may also consider*

- (a) *any other factor considered relevant by the Director; and*
- (b) *any other factor prescribed in the regulations.*

**Request for additional increase**

*4. For the purposes of clause 50(4)(b) of the Act, the Director may also consider that the purchase of a residential property should not require an increase of rent within the first year in order to achieve a reasonable return on the landlord's capital investment. (EC269/23).*

- [14] The Officer is bound to consider the factors set out in the *Act* and the *Regulations*. What is not included in the list of factors to be considered is whether increases are warranted because the current rents are below comparable market rents, a submission frequently made by landlords. Further, the Officer does not consider the financial hardship of the tenants, a submission frequently made by tenants.
- [15] With regard to sub-subsection 50.(3)(a) of the *Act* the Officer finds that the Landlord did not provide the rent history for the affected rental units in the three years preceding the date of the Application.
- [16] With regard to sub-subsection 50.(3)(b) of the *Act* the Officer finds that the evidence provided by the Landlord does not assist the Officer in concluding the operating expenses for the Residential Property. The Officer is unable to make a reliable finding as it relates to this factor; however, the Officer notes that the Statement, if taken at value shows that the Landlord is not operating at a loss but that the operating expenses have increased in the past three years.
- [17] With regard to sub-subsection 50.(3)(c) of the *Act* the Officer finds that the Landlord did not provide sufficient evidence for the Officer to make a reliable finding on what the Landlord's return on investment is for the Residential Property. The Officer notes that the Statement, if taken at value shows that the Landlord is currently seeing a 23% return on investment.
- [18] With regard to sub-subsection 50.(3)(d) of the *Act* the Officer finds that the Tenants' submissions at the hearing demonstrate that they have lived in the Residential Property for many years. The Tenants' testified that a rent increase in a year where they expected a 0% rent increase is unreasonable.
- [19] With regard to section 4 of the *Regulations* the Officer finds that this section does not apply to the Application.
- [20] The Officer finds that based upon all the factors set out in the *Act* and the *Regulations* that the Landlord is not entitled to a rent increase due to insufficient evidence and that the Officer cannot make a reliable finding as it relates to numerous factors set out in the *Act*. Therefore, the Application is denied.

**Conclusion**

- [21] The Application is denied.
- [22] **The Officer notes that this decision contains sensitive information of the Landlord and that the parties are required to preserve its confidentiality pursuant to subsection 75.(3) of the *Act*.**

**IT IS THEREFORE ORDERED THAT**

A. The Application is denied.

**DATED** at Charlottetown, Prince Edward Island, this 24th day of July, 2023.

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(sgd.) Cody Burke  
Cody Burke  
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.