

Introduction

- [1] On May 5, 2023, the Landlord filed Landlord Application to Request Additional Rent Increase (Form 9) with the Office of the Director of Residential Tenancy (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.(2) of the *Act* for 2023. The Application indicates the current rents, proposed rents, and effective dates for the proposed increases are as follows:

Unit	Current Rent	Proposed Rent	Effective Date
101	\$1,229.00	\$1,265.00	August 1, 2023
102	\$1,229.00	\$1,265.00	August 1, 2023
103	\$1,229.00	\$1,265.00	August 1, 2023
104	\$1,229.00	\$1,265.00	August 1, 2023
105	\$1,229.00	\$1,265.00	August 1, 2023
106	\$1,229.00	\$1,265.00	August 1, 2023
107	\$1,229.00	\$1,265.00	August 1, 2023
108	\$1,229.00	\$1,265.00	August 1, 2023
201	\$1,229.00	\$1,265.00	August 1, 2023
202	\$1,229.00	\$1,265.00	August 1, 2023
203	\$1,229.00	\$1,265.00	August 1, 2023
204	\$1,229.00	\$1,265.00	August 1, 2023
205	\$1,229.00	\$1,265.00	August 1, 2023
206	\$1,229.00	\$1,265.00	August 1, 2023
207	\$1,229.00	\$1,265.00	August 1, 2023
208	\$1,229.00	\$1,265.00	August 1, 2023
301	\$1,229.00	\$1,265.00	August 1, 2023
302	\$1,229.00	\$1,265.00	August 1, 2023
303	\$1,229.00	\$1,265.00	August 1, 2023
304	\$1,229.00	\$1,265.00	August 1, 2023
305	\$1,217.00	\$1,253.00	August 1, 2023
306	\$1,217.00	\$1,253.00	August 1, 2023
307	\$1,217.00	\$1,253.00	August 1, 2023
308	\$1,229.00	\$1,265.00	August 1, 2023

- [2] On July 6, 2023, the Landlord submitted into evidence the Landlord Statement of Income and Expenses (Form 10) (the “Statement”).
- [3] On July 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). One Tenant participated in the hearing and they took no position regarding the rent increase. Two Landlord Representatives participated in the hearing. I

Issue to be Decided

- i. Is the Landlord permitted to increase the rent of the Residential Property exceeding the allowable percentage as requested in the Application?

Summary of the Evidence

- [4] The Residential Property consists of 24 units in a 24-unit building (the "Building"). The Residential Property was built in 2020 for \$4,185,841.09. There has been \$101,527.40 of capital expenditures invested into the Residential Property since it had been built.
- [5] Rent for the Residential Property includes the following services: hot water, water, cooking stove, refrigerator, parking, janitorial, snow removal, lawn care, and washer / dryer. The Year 1 expenses are the actual expenses from June 2021 to May 2022. The Year 2 expenses are the actual expenses from June 2022 to May 2023. Because the Residential Property was recently built, the Landlord does not have three years of income / expenses to disclose.

Adjustments to the Statement

- [6] The Officer's adjustments to the income and expenses are provided below. The adjustments will be reflected in the Revised Statement of Income and Expenses (Form 10) and is attached as APPENDIX "A" of this decision.

1. [Line 1 – Rental Income]

The total rental income on the Statement for Year 2 is \$353,520.00. Line 1 of the proposed rental income is set as \$363,888.00.

2. [Line 12 – Management Fees]

The Landlord stated the management fees for the Residential Property was \$20,327.40. Subsection 1.(c) of the *Residential Tenancy Regulations* (the "*Regulations*") state:

"management fee" means the actual cost of the management fee or 5 per cent of the gross rental income for the previous year, whichever is the lesser.

5% of the gross rental income for Year 2 is \$17,676.00, which is less than \$20,327.40. Line 12 is adjusted to \$17,676.00.

3. [Capital Expenditures]

The Landlord listed "*Appliances and Repairs at 73 Mercedes Drive*" as a Capital Expense. During the hearing the Representatives clarified that this should be "*Appliances and Replacements at 73 Mercedes Drive.*" The Officer accepts this correction.

4. [Value of Investment in the Property]

The Landlord stated the value of investment in the Residential Property as \$4,185,841.09. The Representatives stated they did not add in the capital expenses into the value of the property on the Statement. The Officer adjusts the value to \$4,287,368.46 (\$4,185,841.09 + \$101,527.37).

Analysis

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

50.(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.

50.(4) The Director may also consider

(a) any other factor considered relevant by the Director; and

(b) any other factor prescribed in the regulations.

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.

- [8] 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.
- [9] With regard to sub-subsection 50.(3)(a) of the *Act*, the Officer finds that the Landlord has provided the rent history for the past two years for the Residential Property and there has not been any rent increase to the units within the Residential Property since the property was built in 2020.
- [10] With regard to sub-subsection 50.(3)(b) of the *Act*, the Officer finds that based on the adjusted Statement and the documentary evidence, the Landlord's operating expenses have increased and there have been \$101,527.37 in capital expenditures invested back into the Residential Property.
- [11] With regard to sub-subsection 50.(3)(c) of the *Act*, the Officer finds that the Landlord is currently operating at a Return on Investment ("ROI") of 2.7% and the proposed increase would yield an ROI of 2.9%. The Officer finds that an ROI of 2.9% to be a reasonable return on the Landlord's capital investment.
- [12] With regard to sub-subsection 50.(3)(d) of the *Act*, the Officer finds that none of the Tenants put forward any submissions regarding their expectation that the rent increase will remain within the annual guideline.
- [13] With regard to section 4 of the *Regulations* the Officer finds that this section does not apply to the Application.
- [14] The Officer finds that based upon all the factors set out in the *Act* and the *Regulations* that the Landlord is entitled to a rent increase. Therefore, the Application is allowed.
- [15] The Officer notes an Order awarding a rent increase merely sets the "maximum" new rent that a Landlord is permitted to charge for the Residential Property. The Landlord may set the rent increase at a lower amount and, provided the new allowable maximum is not exceeded, may also phase in the rent increase in multiple increases over time.

Conclusion

[16] The Application is allowed.

[17] **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

The maximum allowable monthly rent for the Residential Property is as follows:

Unit	Rent	Effective Date
101	\$1,265.00	September 1, 2023
102	\$1,265.00	September 1, 2023
103	\$1,265.00	September 1, 2023
104	\$1,265.00	September 1, 2023
105	\$1,265.00	September 1, 2023
106	\$1,265.00	September 1, 2023
107	\$1,265.00	September 1, 2023
108	\$1,265.00	September 1, 2023
201	\$1,265.00	September 1, 2023
202	\$1,265.00	September 1, 2023
203	\$1,265.00	September 1, 2023
204	\$1,265.00	September 1, 2023
205	\$1,265.00	September 1, 2023
206	\$1,265.00	September 1, 2023
207	\$1,265.00	September 1, 2023
208	\$1,265.00	September 1, 2023
301	\$1,265.00	September 1, 2023
302	\$1,265.00	September 1, 2023
303	\$1,265.00	September 1, 2023
304	\$1,265.00	September 1, 2023
305	\$1,253.00	September 1, 2023
306	\$1,253.00	September 1, 2023
307	\$1,253.00	September 1, 2023
308	\$1,265.00	September 1, 2023

DATED at Charlottetown, Prince Edward Island, this 28th day of July, 2023.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

APPENDIX "A"
Revised Statement of Income & Expenses (Form 10)

	<u>Year 2</u>	<u>Proposal</u>	<u>Allowed</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$353,520.00	\$363,888.00	\$363,888.00
Vacancy Arrears/Losses (Line 2)	(\$4,786.00)	(\$4,786.00)	(\$4,786.00)
<u>Net Income before expenses</u> (Line 3)	<u>\$348,734.00</u>	<u>\$359,102.00</u>	<u>\$359,102.00</u>
<u>Expenses</u>			
1st Mortgage (Line 4)	\$105,080.00	\$105,080.00	\$105,080.00
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$7,631.87	\$7,631.87	\$7,631.87
Electricity (Line 8)	\$5,693.70	\$5,693.70	\$5,693.70
Insurance (Line 9)	\$12,042.50	\$12,042.50	\$12,042.50
Property Tax (Provincial) (Line 10)	\$19,043.50	\$19,043.50	\$19,043.50
Property Tax (Municipal) (Line 11)	\$12,568.71	\$12,568.71	\$12,568.71
Management Fee (Line 12)	\$17,676.00	\$17,676.00	\$17,676.00
Maintenance Fee (Line 13)	\$42,377.71	\$42,377.71	\$42,377.71
Capital Expenditures (Line 14)	\$14,319.09	\$14,319.09	\$14,319.09
Other (Line 15)			
Total Operating Expenses (Line 16)	<u>\$236,433.08</u>	<u>\$236,433.08</u>	<u>\$236,433.08</u>
Net Profit or (Loss) (Line 17)	<u>\$112,300.92</u>	<u>\$122,668.92</u>	<u>\$122,668.92</u>
Value of Investment in the Property	\$4,185,841.09	\$4,185,841.09	\$4,185,841.09
Operating Income (Line 17)	<u>\$112,300.92</u>	<u>\$122,668.92</u>	<u>\$122,668.92</u>
Return on Investment (ROI)	2.7%	2.9%	2.9%

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.