

Introduction

- [1] On June 14, 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:

Number of Units	Rent Increase %	Effective Date
35	3.0%	October 1, 2023

- [2] On August 2, 2023 the Landlord submitted into evidence the Landlord Statement of Income and Expenses (Form 10) (the "Statement").
- [3] The Application and the Notices were properly served.
- [4] On August 16, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord had two representatives present at the hearing and none of the Tenants participated at the hearing.

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

- [5] The Landlord built the Residential Property in 2022. The Application includes 35-units in an apartment building. The Landlord provided documentary evidence to support the Statement and the Application.

Landlord's Evidence and Submissions

- [6] The Landlord disclosed their income and expenses for the Residential Property. The value of the Residential Property is \$9,549,616.00. This valuation includes the purchase of the land, the building, HST and the capital expenditures. The representatives stated that the Statement only discloses one full year of income and expenses as the Residential Property was built and rented in September 2022.

Tenant's Evidence and Submissions

- [7] The Tenants did not provide any submissions and did not provide any evidence for the Application.

Adjustments to the Statement

[8] The Officer's adjustments to the income and expenses are provided below.

1. **[Line 1 – Rental Income]**

The rental income for the Residential Property is \$616,800.00. This includes additional parking fees. The proposed increase would see the rental income increase to \$643,320.00.

2. **[Line 7 – Water and/or Sewerage Charges]**

The disclosed expense for Line 7 is \$2,698.00. The representatives stated that there is an increase of 4.5% in the water and sewerage charges. The new annual amount will be \$2,820.00. The Officer accepts this increase based on the evidence.

3. **[Line 8 – Electricity]**

The disclosed expense for Line 8 is \$15,095.00. This includes the common areas and 7-units in the Residential Property. The representatives stated that the electricity costs are expected to increase by 2.0% for the upcoming year. The Officer accepts the disclosed expense but finds the expected increase not yet established.

4. **[Line 9 – Insurance]**

The disclosed expense for Line 9 is \$12,148.00. The representative stated that the new premiums will increase by 12.4%. The new annual amount for Line 9 will be \$13,660.00. The Officer accepts this increase based on the evidence.

5. **[Line 10 & 11 – Property Tax]**

The representative stated that the property tax for the Residential Property will increase by 5.5%. The Officer accepts this increase based on the evidence.

6. **[Line 12 – Management fee]**

The disclosed expense for Line 12 was \$80,724.00. The representatives requested to amend this Line item as an error in allocating expenses was made. The representative provided additional evidence with a more accurate breakdown of the expenses related to management. The new Line 12 expense is \$38,292.00. The representative stated that a 5.0% increase is projected for 2024. The Officer notes that subsection 1.(c) of the *Regulations* state that the lesser of the actual expense or five percent of gross rental income is what a landlord may claim for the purpose of the Application. The Officer adjusts Line 12 to \$30,840.00.

7. **[Line 13 – Maintenance]**

The disclosed expense for Line 13 was \$21,735.00. The representatives requested to amend this Line item as an error in allocating expenses was made. The representative provided additional evidence with a more accurate breakdown of the expenses related to maintenance. The new Line 13 expense is \$64,167.00. The representative stated that a 5.0% increase is projected for 2024. The Officer accepts the adjusted amount provided for Line 13.

[9] The adjusted calculations to the Statement can be found in Appendix "A" of this decision.

Analysis

- [10] 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).*

- [11] 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.
- [12] With regard to sub-subsection 50.(3)(a) of the *Act* the Officer finds that the Landlord submitted into evidence the rent roll of the 35-units for the past year. The Officer notes that the Residential Property was erected and started renting in September 2022.
- [13] With regard to sub-subsection 50.(3)(b) of the *Act* the Officer finds that the Landlord’s operating expenses have increased since September 2022.
- [14] With regard to sub-subsection 50.(3)(c) of the *Act* the Officer finds that after the adjustments, the Landlord is yielding a 0.9% return on investment. After considering the proposed rent increase and the adjustments to the Statement, the Landlord’s return on investment would increase to 1.1%.

- [15] With regard to sub-subsection 50.(3)(d) of the *Act* the Officer finds that the Tenants did not provide any submissions as it relates to their expectations and that the proposed rent increase is 3.0% the maximum allowable for the Application and 3.0% higher than the allowable rent increase for 2023.
- [16] With regard to section 4 of the *Regulations* the Officer finds that the Residential Property was completed and rented in September 2022. Despite the Residential Property being built and not “purchased” the Residential Property falls under the spirit of section 4 of the *Regulations* as one year has not passed. Nevertheless, the Officer finds that based on the totality of the evidence and reviewing the adjusted Statement that it is not appropriate in this case to exercise section 4 of the *Regulations*.
- [17] 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. The Landlord’s operating expenses have increased and with the proposed increase, the Landlord would see a reasonable return on investment. Therefore, the Application is allowed.

Conclusion

- [18] The Application is allowed.
- [19] **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 allowed.
- B. The maximum allowable rent for the Residential Property is outlined in Appendix “B”.

DATED at Charlottetown, Prince Edward Island, this 29th day of August, 2023.

(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.

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

	Period "A"	Proposal	Allowed
Rental Income			
Income (Line 1)	\$616,800.00	\$643,320.00	\$643,320.00
Arrears (Line 4)	(\$5,702.00)	(\$5,702.00)	(\$5,702.00)
Net Income (Line 5)	\$611,098.00	\$637,618.00	\$637,618.00
Expenses			
1st Mortgage Interest (Line 6)	\$281,430.00	\$281,430.00	\$281,430.00
2nd Mortgage Interest (Line 7)	\$0.00	\$0.00	\$0.00
Fuel (Line 8)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 9)	\$2,698.00	\$2,820.00	\$2,820.00
Electricity (Line 10)	\$15,095.00	\$15,095.00	\$15,095.00
Insurance (Line 11)	\$12,148.00	\$13,660.00	\$13,660.00
Property Tax (Provincial) (Line 12)	\$50,140.00	\$52,898.00	\$52,898.00
Property Tax (Municipal) (Line 13)	\$45,627.00	\$48,137.00	\$48,137.00
Management Fee (Line 14)	\$30,840.00	\$32,166.00	\$32,166.00
Maintenance Fee (Line 15)	\$64,167.00	\$64,167.00	\$64,167.00
Capital Expenditures (Line 16)	\$26,050.00	\$26,050.00	\$26,050.00
Other (Line 17)	\$0.00	\$0.00	\$0.00
Total Expenses	<u>\$528,195.00</u>	<u>\$536,423.00</u>	<u>\$536,423.00</u>
Annual Net Profit	\$82,903.00	\$101,195.00	\$101,195.00
Value of Investment	\$9,549,616.00	\$9,549,616.00	\$9,549,616.00
Net Profit	\$82,903.00	\$101,195.00	\$101,195.00
Return on Capital Investment	0.9%	1.1%	1.1%

APPENDIX "B"**The Maximum Allowable Rents**

Unit	Rent	Effective Date
101	\$1,565.00	October 1, 2023
102	\$1,586.00	October 1, 2023
103	\$1,328.00	October 1, 2023
104	\$1,668.00	October 1, 2023
105	\$1,524.00	October 1, 2023
106	\$1,668.00	October 1, 2023
107	\$1,565.00	October 1, 2023
108	\$1,586.00	October 1, 2023
200	\$695.00	October 1, 2023
201	\$1,565.00	October 1, 2023
202	\$1,586.00	October 1, 2023
203	\$1,328.00	October 1, 2023
204	\$1,668.00	October 1, 2023
205	\$1,524.00	October 1, 2023
206	\$1,668.00	October 1, 2023
207	\$1,565.00	October 1, 2023
208	\$1,586.00	October 1, 2023
300	\$695.00	October 1, 2023
301	\$1,565.00	October 1, 2023
302	\$1,586.00	October 1, 2023
303	\$1,328.00	October 1, 2023
304	\$1,668.00	October 1, 2023
305	\$1,524.00	October 1, 2023
306	\$1,668.00	October 1, 2023
307	\$1,565.00	October 1, 2023
308	\$1,586.00	October 1, 2023
400	\$695.00	October 1, 2023
401	\$1,565.00	October 1, 2023
402	\$1,586.00	October 1, 2023
403	\$1,328.00	October 1, 2023
404	\$1,668.00	October 1, 2023
405	\$1,524.00	October 1, 2023
406	\$1,668.00	October 1, 2023
407	\$1,565.00	October 1, 2023
408	\$1,586.00	October 1, 2023