

## Introduction

- [1] On July 12, 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 that includes annual increases that were not applied to the rent. This increase would exceed 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  |
|------|--------------|---------------|-----------------|
| 12   | \$650.00     | \$1,050.00    | October 1, 2023 |
| 14   | \$650.00     | \$1,050.00    | October 1, 2023 |

- [2] On August 21, 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 on the parties.
- [4] On August 30, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlord, their spouse and the Tenants were present 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 inherited the Residential Property in April 2023. The Residential Property is a side-by-side duplex. The Application includes both sides of the duplex. 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 \$64,976.00. The Landlord bases this value of the transfer value of the capital gains from the inheritance. No additional evaluation was submitted into evidence. The Landlord is requesting that the Application include an analysis under subsection 50.(5) of the *Act*. The Landlord testified that the two tenants currently living in the Residential Property have lived there since 2000 without a rent increase. The Landlord testified that the tenants have never vacated the Residential Property and continue to live at the Residential Property. The Landlord is requesting that the rent increase include the annual allowable increases since 2000.

### Tenants' Evidence and Submissions

- [7] The Tenants' submissions and evidence collectively is summarized as follows. The Tenants believe that a \$400.00 rent increase is excessive. Further, the Tenants' argue that very little maintenance and improvements have happened at the Residential Property. The Tenants' argue that they have never moved out of the Residential Property and that the Landlord does not meet sub-subsection 50.(5)(b) of the *Act*.

## Adjustments to the Statement

- [8] The Officer's adjustments to the income and expenses are provided below. The Officer notes that the Landlord provided two Statements for each of the units on the Residential Property. At the hearing the Officer found it appropriate based on the oral testimony of the Landlord and the Landlord's answers to the Officer's examination to combine the Statements. The combination is reflected below.

1. **[Line 1 – Rental Income]**

The rental income for the Residential Property is \$15,600.00. The proposed increase would see the rental income increase to \$25,200.00.

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

The combined expense for Line 7 is \$2,185.00.

3. **[Line 9 – Insurance]**

The combined expense for Line 9 is \$768.00.

4. **[Line 10 & 11 – Property tax]**

The combined property tax is \$4,680.22.

5. **[Line 13 – Maintenance]**

The combined maintenance expenses for the Residential Property is \$6,914.52. This includes \$2,955.56 for one of the units and \$3,958.96 for the other unit. The maintenance includes plumbing, smoke alarm and fire safety upgrades, general maintenance and repairs and service calls.

6. **[Line 14 – Capital expenditures]**

The Landlord claims \$12,554.85 in capital expenditures. However, the Landlord testified that some of these capital expenditures have not yet been completed and are merely quotes. The Landlord stated that the only capital expenses completed was a replacement of a door and some appliances. The total cost for these expenses was \$3,834.10. The Officer notes that subsection 5.(a) of the *Residential Tenancy Regulations* (the "Regulations") capital expenditures are defined as: *includes expenditures for replacement of plumbing, electrical or heating systems or appliances, and major structural repairs*. The Officer finds that the definition of capital expenditures does not include "upcoming" or "potential" expenditures. Therefore, the Officer cannot permit the capital expenditures which have not crystalized yet in the Application.

The Officer adjusts Line 14 to include the capital expenditures which have been crystalized and divide the expenses by their life expectancy to get an annual write-off for the Application. Line 14 shall be \$349.10.

- [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] Additionally, the Officer notes that sub-subsections 50.(5)(a) and (b) of the Act state:

### **Increases not applied in previous years**

*The Director may approve a rent increase that incorporates annual increases that were not applied to the rent charged for a rental unit where the landlord provides proof satisfactory to the Director that*

- (a) the rent remained unchanged for the specified years; and*
- (b) that the last tenant whose rent remained unchanged during the specified years left the rental unit voluntarily.*

- [12] 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.
- [13] The Officer begins the analysis with this commentary as it relates to the Application and the Landlord's request under the Application. The Officer notes that the Landlord has requested an additional increase above the allowable which incorporates annual allowable rent increases which have not previously been applied. This request is available to the Landlord under sub-subsection 50.(5) of the *Act*. The Officer notes that there are two requirements that the applicant (the Landlord) must prove to be successful under this section of the *Act*. However, the Officer notes that the Application is still pursuant to subsection 50.(1) of the *Act*. This means that the Landlord still must meet the four factors required in subsection 50.(3) of the *Act*.
- [14] With regard to sub-subsection 50.(5)(a) of the *Act* the Officer finds that the evidence establishes that the rent has not increased since 2000 at the Residential Property. The Tenants have continued to live in the Residential Property for 23 years and counting with no rent increases.
- [15] With regard to sub-subsection 50.(5)(b) of the *Act* the Officer finds that the evidence establishes that the Tenants have not vacated the Residential Property and have continued to live in the Residential Property since 2000. The Officer finds that sub-subsection 50.(5)(b) requires that the *last tenant whose rent remained unchanged during the specified years left the rental unit voluntarily*. In this case the Tenants have not voluntarily left and they continue to live in the Residential Property. For this reason, the Officer finds that the Landlord has not satisfied this factor of the analysis and is not entitled to the previous annual increases being applied to the proposed rent increase at this time.
- [16] The Officer will continue the analysis for the Application, however, pursuant to subsection 50.(7) of the *Act* the Officer can only award a rent increase not more than 3.0%. As the Application requests an increase far above the 3.0% cap, the Officer will continue the analysis of the Application with the maximum amount permitted under sub-subsection 50.(7) of the *Act*.
- [17] With regard to sub-subsection 50.(3)(a) of the *Act* the Officer finds that the Landlord submitted into evidence the rent history and that there is no dispute of the rent for the duration of the Application.
- [18] With regard to sub-subsection 50.(3)(b) of the *Act* the Officer finds that the Landlord's operating expenses have increased.
- [19] With regard to sub-subsection 50.(3)(c) of the *Act* the Officer finds that after the adjustments, the Landlord is yielding a 1.1% return on investment. After considering the proposed rent increase at the maximum allowable rate, the Landlord's return on investment would increase to 1.8%. The Officer finds this to be a reasonable return.
- [20] With regard to sub-subsection 50.(3)(d) of the *Act* the Officer finds that the Tenants are expected that the proposed rent increase is to not be more than 3.0% and in this case that is the maximum the Application may permit.
- [21] With regard to section 4 of the *Regulations* the Officer finds that the Landlord inherited the Residential Property in April 2023. The Tenants have lived in the Residential Property for 23 years. This factor does not apply in this case.
- [22] 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 maximum amount the Officer can permit pursuant to subsection 50.(7) of the *Act* is 3.0% above the allowable rent increase, which for 2023 is 0.0%. Therefore, the Officer finds that the Application is allowed, in part.

**Conclusion**

[23] The Application is allowed, in part.

[24] **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, in part.

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

| Unit | Rent     | Effective Date  |
|------|----------|-----------------|
| 12   | \$669.50 | October 1, 2023 |
| 14   | \$669.50 | October 1, 2023 |

**DATED** at Charlottetown, Prince Edward Island, this 8th day of September, 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)**

|                                     | <b>Period "A"</b>         | <b>Proposal</b>           | <b>Allowed</b>            |
|-------------------------------------|---------------------------|---------------------------|---------------------------|
| <b>Rental Income</b>                |                           |                           |                           |
| Income (Line 1)                     | \$15,600.00               | \$25,200.00               | \$16,068.00               |
| Arrears (Line 4)                    | \$0.00                    | \$0.00                    |                           |
| <b>Net Income (Line 5)</b>          | <b>\$15,600.00</b>        | <b>\$25,200.00</b>        | <b>\$16,068.00</b>        |
| <b>Expenses</b>                     |                           |                           |                           |
| 1st Mortgage (Line 6)               | \$0.00                    | \$0.00                    | \$0.00                    |
| 2nd Mortgage (Line 7)               | \$0.00                    | \$0.00                    | \$0.00                    |
| Fuel (Line 8)                       | \$0.00                    | \$0.00                    | \$0.00                    |
| Water & Sewer (Line 9)              | \$2,185.00                | \$2,185.00                | \$2,185.00                |
| Electricity (Line 10)               | \$0.00                    | \$0.00                    | \$0.00                    |
| Insurance (Line 11)                 | \$768.00                  | \$768.00                  | \$768.00                  |
| Property Tax (Provincial) (Line 12) | \$4,680.22                | \$4,680.22                | \$4,680.22                |
| Property Tax (Municipal) (Line 13)  | \$0.00                    | \$0.00                    | \$0.00                    |
| Management Fee (Line 14)            | \$0.00                    | \$0.00                    | \$0.00                    |
| Maintenance Fee (Line 15)           | \$6,914.52                | \$6,914.52                | \$6,914.52                |
| Capital Expenditures (Line 16)      | \$349.10                  | \$349.10                  | \$349.10                  |
| Other (Line 17)                     | \$0.00                    | \$0.00                    | \$0.00                    |
| <b>Total Expenses</b>               | <b><u>\$14,896.84</u></b> | <b><u>\$14,896.84</u></b> | <b><u>\$14,896.84</u></b> |
| <b>Annual Net Profit</b>            | <b>\$703.16</b>           | <b>\$10,303.16</b>        | <b>\$1,171.16</b>         |
| <b>Value of Investment</b>          | <b>\$64,976.00</b>        | <b>\$64,976.00</b>        | <b>\$64,976.00</b>        |
| <b>Net Profit</b>                   | <b>\$703.16</b>           | <b>\$10,303.16</b>        | <b>\$1,171.16</b>         |
| <b>Return on Capital Investment</b> | <b>1.1%</b>               | <b>15.9%</b>              | <b>1.8%</b>               |