

Introduction

- [1] On July 12, 2023 the Landlords 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 Landlords are 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
90	\$575.00	\$1,050.00	October 1, 2023
94	\$575.00	\$1,050.00	October 1, 2023

- [2] On September 14, 2023 the Landlords 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 September 21, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Landlords and the Tenants were present at the hearing.

Issue to be Decided

- i. Are the Landlords permitted to increase the Residential Property's rent as requested in the Application?

Summary of the Evidence

- [5] The Landlords inherited the Residential Property in April 2023. The Landlord provided documentary evidence to support the Statement and the Application.

Landlords' Evidence and Submissions

- [6] The Landlords' disclosed their income and expenses for the Residential Property. The value of the Residential Property is \$67,567.75. The Landlords' valuation of the Residential Property is based on the transfer value of the capital gains from the inheritance and the capital expenditures completed on the Residential Property. No additional evaluation was submitted into evidence. The Landlords are requesting that the Application include an analysis under subsection 50.(5) of the *Act*. The Landlords testified that the tenants currently live in the Residential Property and have continued to live at the Residential Property. The Landlords are requesting that the rent increase include the annual allowable increases never charged to the Residential Property.
- [7] The Landlords testified that the current rents are not close to market levels in 2023, and that the rents have not been increased in over twenty years. The Landlords testified that operating expenses have continued to increase and that they are putting significant amounts of their own money into the Residential Property. The Landlords testified that the maintenance and capital expenditures are required to make the Residential Property safe. The Landlords testified that they cannot continue to operating at a loss and maintain the Residential Property.

Tenants' Evidence and Submissions

- [8] The Tenants' did not dispute the proposed rent increase as they understood a rent increase was needed, however, mentioned the financial hardship as a result of such a large rent increase.

Adjustments to the Statement

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

1. **[Line 1 – Rental income]**

The rental income for the Residential Property for 2023 is \$13,800.00. The proposed increase would see the rental income increase to \$25,200.00.

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

The Landlords claim \$27,720.12 in the Statement for capital expenditures. The capital expenditures include the installation of a boiler, steel door, dryer, and a roof quote. The Landlords argued that the "quoted" capital expenditures should not be excluded from the Statement.

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 notes that the definition does not include such words as "expected," "upcoming" nor "potential" expenditures. The Officer notes that the definition only includes the word *expenditures*. For further assistance, the Officer looks to the Oxford Dictionary, which defines *expenditures* as: *the act of spending or using money; an amount of money spent*. Therefore, the Officer cannot permit any capital expenditure which the Landlords have not already purchased or paid for in the Application.

The Officer adjusts Line 14 to include the capital expenditures which have crystalized (the boiler, the steel door and the dryer), and then divided the total expense by the capital expenditures' life expectancy to arrive at an annual write-off for the Statement's calculations. Line 14 is adjusted to \$954.09. The calculations are as follows:

(Boiler: $\$9,200.00 / 15 = \613.33 , Doors: $\$3,334.62 / 15 = \222.31 , Dryer: $\$1,184.50 / 10 = \118.45)
 $\$613.33 + \$222.31 + \$118.45 = \954.09 .

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

Analysis

[11] The Officer wishes to begin the analysis with this brief commentary as it relates to the Application, and the Landlords' request under the Application. The Officer notes that the Landlords have requested an additional rent increase above the allowable that would incorporate past annual allowable rent increases which have not previously been charged to the Residential Property. Such a request is available to a landlord under subsection 50.(5) of the *Act*. The Officer notes that there are two requirements that an applicant (the Landlords) must establish in order to be successful in their request. However, notwithstanding the two requirements set out in subsection 50.(5) of the *Act*, the Application is still pursuant to subsection 50.(1) of the *Act* (as there is no unique application for subsection 50.(5) requests). This means that a landlord *still* must establish the four factors required in subsection 50.(3) of the *Act*.

- [12] 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 *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).*

- [13] Specifically, for the Application, 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.*

- [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] The Officer will begin with the subsection 50.(5) analysis. With regard to sub-subsections 50.(5)(a) of the *Act* the Officer finds that the testimony and evidence establishes that the rent has never been increased at the Residential Property. The Officer is satisfied that the Landlords have established this factor of the analysis.

- [16] With regard to sub-subsection 50.(5)(b) of the *Act* the Officer finds that the testimony and the evidence establishes that the Tenants have not vacated the Residential Property, and have continued to live in the Residential Property. The Officer finds that sub-subsection 50.(5)(b) of the *Act* requires that the *last tenant whose rent remained unchanged during the specified years left the rental unit voluntarily*.
- [17] The Officer interprets this sub-subsection to mean that the former tenant's rent did not increase for the years requested *and* that the former tenant vacated of their own volition. Meaning, the rental unit is now vacant and a landlord wishes to have the past allowable rent increases not charged during the former tenant's tenancy, now included in the next tenant's rent. In this case, the evidence clearly establishes that the Residential Property is not vacant, the Tenants have not voluntarily left, because the Tenants continue to live in the Residential Property. For this reason, the Officer finds that the Landlords have not satisfied this factor of the analysis and are not entitled to the previous annual rent increased being incorporated into the proposed rent increase requested in the Application.
- [18] Notwithstanding the Landlords' failure to establish their request pursuant to subsection 50.(5) of the *Act*, the Officer will adjudicate the Application as required by subsection 50.(3) of the *Act*. The Officer notes that pursuant to subsection 50.(7) of the *Act* the Officer can only award a rent increase not exceeding 3.0%. Subsection 50.(7) of the *Act* states:

Limitation on increase

Where the Director grants an application under subsection (6) or orders that the increase granted be phased in over a period of time, the amount of the increase in rent in a calendar year shall not exceed 3 per cent in addition to the maximum percentage increase permitted under section 49.

- [19] 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. The Officer finds this factor assists the Application.
- [20] With regard to sub-subsection 50.(3)(b) of the *Act* the Officer finds that the evidence established that the Landlords' operating expenses have increased in the Statement. The Officer finds this factor assists the Application.
- [21] With regard to sub-subsection 50.(3)(c) of the *Act* the Officer finds that after the adjustments, the Landlords are yielding a 2.8% return on investment. After considering the proposed rent increase at the maximum allowable rate, the Landlords' return on investment would increase to 3.4%. The Officer finds that this factor does assist the Application.
- [22] With regard to section 4 of the *Regulations* the Officer finds that the Landlords inherited the Residential Property in April 2023. The Officer finds that this factor does not apply in this case.
- [23] The Officer finds that based upon all the factors set out in the *Act* and the *Regulations* that the Landlords are entitled to a rent increase. The maximum amount the Officer can permit pursuant to subsection 50.(7) of the *Act* is a 3.0% rent increase in addition to the allowable rent increase. Therefore, the Officer finds that the Application is allowed, in part.

Conclusion

- [24] The Application is allowed, in part.
- [25] The Officer notes that the Landlords may wish to delay the approved additional rent increase. The Landlords may choose to wait until January 1, 2024 and included the approved additional rent increase with the allowable rent increase set for 2024.
- [26] **The Officer further notes that this decision contains sensitive information of the Landlords 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
90	\$592.25	October 1, 2023
94	\$592.25	October 1, 2023

DATED at Charlottetown, Prince Edward Island, this 25th day of September, 2023.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

NOTICERight 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	3.0% Cap
Rental Income			
Income (Line 1)	\$13,800.00	\$25,200.00	\$14,214.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$13,800.00	\$25,200.00	\$14,214.00
Expenses			
1st Mortgage (Line 4)	\$0.00	\$0.00	\$0.00
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$1,092.50	\$1,092.50	\$1,092.50
Electricity (Line 8)	\$192.13	\$192.13	\$192.13
Insurance (Line 9)	\$796.00	\$796.00	\$796.00
Property Tax (Provincial) (Line 10)	\$4,844.47	\$4,844.47	\$4,844.47
Property Tax (Municipal) (Line 11)	\$0.00	\$0.00	\$0.00
Management Fee (Line 12)	\$0.00	\$0.00	\$0.00
Maintenance Fee (Line 13)	\$4,012.38	\$4,012.48	\$4,012.38
Capital Expenditures (Line 14)	\$954.09	\$954.09	\$954.09
Other (Line 15)	\$0.00	\$0.00	\$0.00
Total Expenses	<u>\$11,891.57</u>	<u>\$11,891.67</u>	<u>\$11,891.57</u>
Annual Net Profit	\$1,908.43	\$13,308.33	\$2,322.43
Value of Investment	\$67,567.75	\$67,567.75	\$67,567.75
Net Profit	\$1,908.43	\$13,308.33	\$2,322.43
Return on Capital Investment	2.8%	19.7%	3.4%