

Introduction

- [1] On May 30, 2023, the Landlord filed three Landlord Applications 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 "Applications"). The Landlord is seeking a rent increase for the three Residential Properties exceeding the allowable percentage established by subsection 49.(2) of the *Act* for 2023. The Applications indicate the current rents, proposed rents, and effective dates for the proposed increases are as follows:

Unit	Current Rent	Proposed Rent	Effective Date
401	\$935.26	\$963.32	September 1, 2023
403	\$878.70	\$905.06	September 1, 2023
404	\$893.85	\$920.67	September 1, 2023

- [2] On September 22, 2023, the Landlord submitted into evidence three Landlord Statements of Income and Expenses (Form 10) (the "Statements").
- [3] On September 28, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Two Landlord Representatives participated in the hearing and no Tenants participated. During the hearing the Representative requested that the effective date of the rent increases be amended to January 1, 2024.

Issue to be Decided

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

Summary of the Evidence

- [4] The Residential Properties consist of three separate units in a 41-unit apartment building (the "Building"). The Landlord stated each unit was purchased in 2018 for \$142,978.72 per unit. There have been no capital expenditures invested into the units since they had been purchased.
- [5] The Year 1 expenses are the actual expenses from January 2020 to December 2020. The Year 2 expenses are the actual expenses from January 2021 to December 2021. The Year 3 expenses are the actual expenses from January 2022 to December 2022.
- [6] The Officer notes that the Landlord calculated each line of the Statement by dividing all expenses by 47 and then multiplying by 1.2. The Representative stated that there are 30 two-bed apartments in the Building and they would be equivalent to 1.2 of the overall heating expenses of the 11 one-bedroom apartments. The Landlord's calculations are: $30 \times 1.2 = 36$ and $11 \times 1 = 11$, therefore $36 + 11 = 47$.
- [7] However, the Officer notes that the Representative could not explain how any of the other expenses in the Statement should be calculated in this way or why each line was again multiplied by 1.2. Therefore, the Officer finds the appropriate way to calculate expenses for each unit is to divide each of the overall Building expenses by 41, as there are 41 units in the Building.

Adjustments to the Statement

- [8] 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. The Officer notes the rental income for each unit is different but each line of expenses is the same.

1. [Line 3 – Rental Income]

The total rental income for Unit 401 is \$11,186.08. Line 3 of the proposed rental income is set as \$11,559.84.

The total rental income for Unit 403 is \$10,509.60. Line 3 of the proposed rental income is set as \$10,860.72.

The total rental income for Unit 404 is \$10,690.80. Line 3 of the proposed rental income is set as \$11,048.04.

2. [Line 4 – Interest on First Mortgage]

The Landlord stated Line 4 as \$2,702.3. The Officer adjusts this to \$860.49 as in 2023 the Landlord's interest payments are going to be \$35,280.00 per year for Building.

3. [Line 5 – Interest on Second Mortgage]

The Landlord stated Line 5 as \$1,898.52. The Officer adjusts this to \$5,261.46 as in 2023 the Landlord's interest payments are going to be \$215,720.00 per year for the Building.

4. [Line 6 – Fuel]

The Landlord stated Line 6 as \$1,618.08. The Officer adjusts this to \$1,545.43.

5. [Line 7 – Water/Sewer]

The Landlord stated Line 7 as \$425.55. The Officer adjusts this to \$406.52.

6. [Line 8 - Electricity]

The Landlord stated Line 8 as \$280.89. The Officer adjusts this to \$268.33.

7. [Line 9 – Insurance]

The Landlord stated Line 9 as \$304.76. The Officer adjusts this to \$291.13.

8. [Line 10 and 11 – Provincial/Municipal Property Tax]

The Landlord stated Line 10/11 as \$1,421.92 for 2022. The Officer adjusts this to \$1,576.25 as in 2023 the taxes are going to be \$64,626.48 per year for the Building.

9. [Line 12 – Management Fees]

The Landlord stated Line 12 as \$86.81. The Officer adjusts this to \$82.93.

10. [Line 13 – Maintenance]

The Landlord stated Line 13 as \$1,194.15. The Officer adjusts this to \$1,140.73.

11. [Line 14 – Other]

The Landlord stated Line 14 as \$242.22. The Officer adjusts this to \$231.39.

12. [Value of Investment in the Property]

The Landlord stated the value of investment in each of the Residential Properties as \$142,978.72. However, the Officer finds this should be equivalent to the purchase price of the Building of \$5,600,000.00 / 41 units = \$136,585.37. No capital expenses have been invested back into the units.

Analysis

- [9] The Officer is bound to consider the factors set out in the *Act* and the *Residential Tenancy Regulations* (the “*Regulations*”). 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.

- [10] 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 three years for the Residential Properties. The last rent increase took place in May of 2022, for each of the units.

- [11] 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. There have been no capital expenditures invested back into the Residential Property.

- [12] 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:
- Unit 401: 0.9% and the proposed increase would yield an ROI of -0.1%.
Unit 403: 0.4% and the proposed increase would yield an ROI of -0.6%.
Unit 404: 0.5% and the proposed increase would yield an ROI of -0.4%.
- [13] With regard to sub-subsection 50.(3)(d) of the *Act*, the Officer finds that the Tenants did not put forward any submissions regarding their expectation that the rent increases will remain within the annual guideline.
- [14] With regard to section 4 of the *Regulations* the Officer finds that this section does not apply to the Application.
- [15] 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 for each unit. Therefore, the Applications are allowed.

Conclusion

- [16] The Applications are 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

- A. The maximum allowable monthly rent for the Residential Properties is as follows:

Unit	Rent	Effective Date
401	\$963.32	January 1, 2024
403	\$905.06	January 1, 2024
404	\$920.67	January 1, 2024

DATED at Charlottetown, Prince Edward Island, this 4th day of October, 2023.

(sgd.) Mitchell King
Mitchell King
Residential Tenancy Officer

APPENDIX "A" - Unit 401
Revised Statement of Income & Expenses (Form 10)

	<u>2022/2023</u>	<u>Proposal</u>	<u>Allowed</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$11,186.08	\$11,559.84	\$11,559.84
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<u>Net Income before expenses</u> (Line 3)	\$11,186.08	\$11,559.84	\$11,559.84
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$2,702.30	\$860.49	\$860.49
2nd Mortgage Interest (Line 5)	\$1,898.52	\$5,261.46	\$5,261.46
Fuel (Line 6)	\$1,543.43	\$1,543.43	\$1,543.43
Water & Sewer (Line 7)	\$406.52	\$406.52	\$406.52
Electricity (Line 8)	\$268.33	\$268.33	\$268.33
Insurance (Line 9)	\$291.13	\$291.13	\$291.13
Taxes (Line 10/11)	\$1,421.92	\$1,576.25	\$1,576.25
Management Fee (Line 12)	\$82.93	\$82.93	\$82.93
Maintenance Fee (Line 13)	\$1,140.73	\$1,140.73	\$1,140.73
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$231.39	\$231.39	\$231.39
<u>Total Operating Expenses</u> (Line 16)	<u>\$9,987.20</u>	<u>\$11,662.66</u>	<u>\$11,662.66</u>
Net Profit or (Loss) (Line 17)	\$1,198.88	(\$102.82)	(\$102.82)
Value of Investment in Property	\$136,585.37	\$136,585.37	\$136,585.37
Operating Income (Line 17)	\$1,198.88	(\$102.82)	(\$102.82)
Return on Investment (ROI)	0.9%	-0.1%	-0.1%

APPENDIX "A" - Unit 403
Revised Statement of Income & Expenses (Form 10)

	<u>2022/2023</u>	<u>Proposal</u>	<u>Allowed</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$10,509.60	\$10,860.72	\$10,860.72
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<u>Net Income before expenses</u> (Line 3)	<u>\$10,509.60</u>	<u>\$10,860.72</u>	<u>\$10,860.72</u>
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$2,702.30	\$860.49	\$860.49
2nd Mortgage Interest (Line 5)	\$1,898.52	\$5,261.46	\$5,261.46
Fuel (Line 6)	\$1,543.43	\$1,543.43	\$1,543.43
Water & Sewer (Line 7)	\$406.52	\$406.52	\$406.52
Electricity (Line 8)	\$268.33	\$268.33	\$268.33
Insurance (Line 9)	\$291.13	\$291.13	\$291.13
Taxes (Line 10/11)	\$1,421.92	\$1,576.25	\$1,576.25
Management Fee (Line 12)	\$82.93	\$82.93	\$82.93
Maintenance Fee (Line 13)	\$1,140.73	\$1,140.73	\$1,140.73
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$231.39	\$231.39	\$231.39
Total Operating Expenses (Line 16)	<u>\$9,987.20</u>	<u>\$11,662.66</u>	<u>\$11,662.66</u>
Net Profit or (Loss) (Line 17)	<u>\$522.40</u>	<u>(\$801.94)</u>	<u>(\$801.94)</u>
Value of Investment in Property	\$136,585.37	\$136,585.37	\$136,585.37
Operating Income (Line 17)	<u>\$522.40</u>	<u>(\$801.94)</u>	<u>(\$801.94)</u>
Return on Investment (ROI)	<u>0.4%</u>	<u>-0.6%</u>	<u>-0.6%</u>

APPENDIX "A" - Unit 404
Revised Statement of Income & Expenses (Form 10)

	<u>2022/2023</u>	<u>Proposal</u>	<u>Allowed</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$10,690.80	\$11,048.04	\$11,048.04
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<u>Net Income before expenses</u> (Line 3)	<u>\$10,690.80</u>	<u>\$11,048.04</u>	<u>\$11,048.04</u>
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$2,702.30	\$860.49	\$860.49
2nd Mortgage Interest (Line 5)	\$1,898.52	\$5,261.46	\$5,261.46
Fuel (Line 6)	\$1,543.43	\$1,543.43	\$1,543.43
Water & Sewer (Line 7)	\$406.52	\$406.52	\$406.52
Electricity (Line 8)	\$268.33	\$268.33	\$268.33
Insurance (Line 9)	\$291.13	\$291.13	\$291.13
Taxes (Line 10/11)	\$1,421.92	\$1,576.25	\$1,576.25
Management Fee (Line 12)	\$82.93	\$82.93	\$82.93
Maintenance Fee (Line 13)	\$1,140.73	\$1,140.73	\$1,140.73
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$231.39	\$231.39	\$231.39
Total Operating Expenses (Line 16)	<u>\$9,987.20</u>	<u>\$11,662.66</u>	<u>\$11,662.66</u>
Net Profit or (Loss) (Line 17)	\$703.60	(\$614.62)	(\$614.62)
Value of Investment in Property	\$136,585.37	\$136,585.37	\$136,585.37
Operating Income (Line 17)	\$703.60	(\$614.62)	(\$614.62)
Return on Investment (ROI)	0.5%	-0.4%	-0.4%

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.