

Introduction

- [1] On October 1, 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 Application is seeking a rent increase for the Residential Property exceeding the allowable percentage established by subsection 49.(2) of the *Act* for 2024. The Application discloses the current rent, proposed rent and effective date as follows:

Unit #	Rent Increase (%)	Effective Date
3	6.0% (3% Allowable + 3% Additional)	January 1, 2024

- [2] On October 9, 2023 the Landlord submitted into evidence the *Landlord Statement of Income and Expenses* (Form 10) (the “Statement”).
- [3] All documents (including the Notice of Hearing and Evidence Package) were properly served to the parties in accordance with subsection 100.(1) of the *Act*.
- [4] On November 28, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Representative appeared, representing the Landlord. The Tenant appeared, representing themselves.

Issue to be Decided

- i. Is the Landlord entitled to an additional rent increase above the allowable rent increase?

Summary of the Evidence

- [5] The Residential Property was purchased by the Landlord in 2014. The Application is for one unit in a 4-unit building. The Landlord submitted 52-pages of documentary evidence to support the Application and the Statement.

Landlord’s Evidence and Submissions

- [6] The Representative testified that the Residential Property’s expenses have continuously increased over the past three years. The Residential Property has received improvements and repairs throughout the past three years and that the last rent increase happened in March 2022.
- [7] The Statement discloses the revenue and expenses for the rental unit and that the expenses reflect 1/4th of the total expenses with the exception of fuel, which represents the full expense incurred based on the rental unit’s consumption.

Tenant’s Evidence and Submissions

- [8] The Tenant did not provide any evidence and did not provide any submissions. The Tenant appeared at the hearing and provided no objection to the Application.

Adjustments to the Statement

[9] The Officer's adjustments to the Statement are provided below and reflected in the Appendix "A" of this Order.

1. **[Line 3 – Net Rental Income]**

The 2022 net income for the rental unit is \$13,137.50. The additional rent increase and the allowable rent increase would increase the net income for the rental unit to \$13,948.80.

2. **[Line 12 – Management fees]**

The Statement discloses Line 12's expense for management fees as \$1,500.00. The Representative testified that he acts as the property manager for the Residential property. The Representative testified in detail his role and responsibility on the day-to-day. The Officer notes subsection 1.(c) the *Residential Tenancy Regulations* (the "Regulations") which prescribes as follows:

1. **Definitions**

In these regulations,

(c) **"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.

Therefore, the Officer adjusts Line 12 to the lesser expense, that is, 5.0% of the gross rental income in the amount of \$665.88 for the 2022 year.

3. **[Value of Investment in the Property]**

The Statement discloses that the value of the Residential Property is \$117,050.58. This includes 1/4th of the total purchase price for the Residential Property. No capital expenditures were included in the valuation.

Analysis

[10] The Application is made in accordance to section 75 of the *Act* and as required by subsection 50.(1) of the *Act*. The factors for reviewing the Application's additional rent increase request are set out in subsections 50.(3), (4) of the *Act* and section 4 of the *Regulations*. The relevant law is as follows:

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] In such applications, it is the landlord's burden to prove, on a balance of probabilities, that they are entitled to an additional rent increase above the allowable rent increase. This means the landlord must provide the decision-maker sufficiently clear, convincing and cogent evidence to establish their request.
- [12] The *Act* and the *Regulations* require the Officer to review the Application and determine if the Application meets the relevant factors set out in the *Act* and the *Regulations*. This means the Officer cannot include or consider any other factors such as whether or not the additional rent increase is warranted because the current rent is below comparable market rent, a submission frequently made by landlords. Further, the Officer cannot consider the financial hardship of the tenants, a submission frequently made by tenants.
- [13] With regard to clause 50.(3)(a) of the *Act* – the Landlord provided into evidence the tenancy agreement for the rental unit and disclosed the rent for the past three years. The Officer concludes that the Landlord has satisfied this factor.
- [14] With regard to clause 50.(3)(b) of the *Act* – the Landlord provided invoices, receipts and general spreadsheets into evidence to assist in the establishment of increased operating expenses. The Officer concludes that the Landlord has established that the operating expenses and capital expenses over the past three years have increased—namely: fuel, water and/or sewer charges, property tax, and general maintenance expenses. This factor assists the Application.
- [15] With regard to clause 50.(3)(c) of the *Act* – the Officer concludes that after the adjustments to the Statement, the Landlord is yielding a 4.8% return on investment. After considering the adjustments and inclusion of the allowable and additional rent increase, the Landlord's return on investment would increase to 5.4%. Such a return on an investment would be considered reasonable, and this factor assists the Application.
- [16] With regard to clause 50.(3)(d) of the *Act* – the last rent increase happened in March 2022 at the allowable rate (1.0%). The Tenant did not object to the additional rent increase request. This factor assists the Application.
- [17] With regard to section 4 of the *Regulations* the Officer concludes that the Residential Property was purchased in 2014. Therefore, this factor does not apply to the Application.
- [18] The Officer concludes, after reviewing and considering all the factors required by the *Act* and the *Regulations* that the Landlord is entitled to an additional rent increase above the allowable rent increase. Therefore, the Application is allowed and the rent increase is set out below.

Conclusion

- [19] The Application is allowed.
- [20] **TAKE NOTE: 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.**
- [21] The Appendix "A" of this decision is not disclosed in the Order viewable on the Rental Office's website.
- [22] **Order LD23-586 will be served to the parties by e-mail on December 12, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed.
- B. The maximum allowable rent for the Residential Property is \$1,162.40 effective January 1, 2024.

DATED at Charlottetown, Prince Edward Island, this 12th day of December, 2023.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

Appendix "A"

Content removed for confidentiality reasons

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.