

Introduction

- [1] On October 3, 2023 the Landlord filed a *Landlord Application to Request Additional Rent Increase* (Form 9) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), pursuant to subsection 50.(1) of the *Act*. The Application seeks a rent increase above the allowable amount established by the Director pursuant to subsection 49.(2) of the *Act* for 2024. The Application discloses the current rents, proposed rents and effective dates as listed:

Unit #	Rent Increase (%)	Effective Date
3	6.0% (3% Allowable + 3% Additional)	January 1, 2024
5	6.0% (3% Allowable + 3% Additional)	February 1, 2024
6	6.0% (3% Allowable + 3% Additional)	January 1, 2024
7	6.0% (3% Allowable + 3% Additional)	January 1, 2024
8	6.0% (3% Allowable + 3% Additional)	March 1, 2024
9	6.0% (3% Allowable + 3% Additional)	February 1, 2024
10	6.0% (3% Allowable + 3% Additional)	April 1, 2024
11	6.0% (3% Allowable + 3% Additional)	January 1, 2024
12	6.0% (3% Allowable + 3% Additional)	January 1, 2024

- [2] On October 17, 2023 the Landlord submitted into evidence the *Landlord Statement of Income and Expenses* (Form 10) (the “Statement”).
- [3] All documents (including *Tenant Notice of Annual Allowable Rent Increase* (Form 8), 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 30, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Representative appeared, representing the Landlord. Five of the Tenants appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [5] The Residential Property was purchased and built in 2021 by the Landlord. The Landlord submitted 43-pages of documents into evidence to support the Application and the Statement.

Landlord’s Evidence and Submissions

- [6] The Representative testified that operating costs for the Residential Property have continued to increase. The Statement does not include the principal payments for the mortgage, which increase the expenses. There are repairs being completed for the Residential Property.

Tenants’ Evidence and Submissions

- [7] The Tenants’ submitted written submissions and provided oral testimony at the hearing. The Tenants’ questioned the timing for the rent increase as it applies to some of the newer tenancy agreements. There were concerns over the lack of repairs done to the Residential Property. The Tenants argued that the additional 3.0% increase is too much and would cause financial hardship. Costs for the Tenants have also increased, and not just for the Landlord.

Adjustments to the Statement

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

1. **[Line 1 – Gross Rental Income]: \$145,800.00**

The Representative disclosed the gross rental income on the Statement, which represents the Residential Property's gross income from November 2022 to October 2023. The additional rent increase and allowable rent increase would increase the gross income to \$154,548.00.

2. **[Line 2 – Vacancy / Arrears Losses]: (\$29,671.50)**

The Representative disclosed the income losses due to vacancy and/or arrears during November 2022 to October 2023. The arrears were a result of additional maintenance and repairs which delayed occupancy. The Representative suggested that the expected losses due to vacancy and/or arrears for the upcoming year is (1.0%) of gross income.

The Officer finds (1.0%) in expected losses from vacancy and/or arrears to be reasonable for the purposes of the Application.

3. **[Line 4 / 5 – Interest Payments on First & Second Mortgage]: (\$4,656.07) & (\$1,101.37)**

The Representative requested an amendment to Lines 4 & 5 of the Statement due to an error in misunderstanding the Form 10's instructions. The Representative disclosed the *monthly expense* rather than the annual expense.

The Officer has reviewed the documentary evidence and accepts the Landlord's amendment. **Line 4 is adjusted to (\$56,940.87). Line 5 is adjusted to (\$3,377.53).**

4. **[Line 8 – Electricity]: (\$1,879.11)**

The Representative disclosed that the electricity cost on the Statement was due to vacancy. The Representative admitted that there should be no electricity costs moving forward. The Officer has adjusted this change on the Appendix "A".

5. **[Value of Investment in the Property]: \$1,658,037.35**

The Representative disclosed that the value on the Statement represents the total cost to purchase and build the Residential Property.

Analysis

- [9] The Application is made in accordance with section 75 of the Act and pursuant to subsection 50.(1). The factors that are required for consideration of the additional rent increases are stated in subsections 50.(3) and (4) of the Act, along with section 4. of the *Residential Tenancy Regulations* (the “Regulations”). The prescribed 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)*

- [10] The landlord has the 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 with sufficiently clear, convincing and cogent evidence to establish their request.

The Factors

- [11] Regarding clause 50.(3)(a), the Landlord submitted into evidence a rent ledger for the rental units showing the rents for the 12-month period of November 2022 to October 2023. The testimony from the Representative and the documents submitted into evidence establish that the Residential Property was built in 2021 and occupancy did not start until November 2022. As a result, the rents for the previous three years are not available for the Application.
- [12] Regarding clause 50.(3)(b), the Landlord submitted into evidence numerous invoices, receipts, and spreadsheets breaking down the expenses for the Residential Property. However, due to the relatively short occupancy for the Residential Property, the expenses are only over 12-months. As a result, it is not possible to conclude based on the Statement and the evidence whether or not there is a *change* in operating expenses and/or capital expenditures.

- [13] Regarding clause 50.(3)(c), the Statement's income and expenses disclose that the Landlord is yielding a 0.4% return on investment. After the adjustments to the Statement (found in Appendix "A"), and the inclusion of the annual allowable and the additional rent increase, the return on investment would increase to 2.7%.
- [14] Regarding clause 50.(3)(d), during the tenancy, the Tenants have not received a rent increase. Many of the Tenants were the first and only tenants to occupy the Residential Property. The Tenants in their collective submissions objected to the additional rent increase for different reasons. It is reasonable, given the facts presented, to conclude that the Tenants would not reasonably expect that their first rent increase would be above the annual allowable guidelines.
- [15] The Residential Property was purchased and built in late 2021 and completed in 2022. The Residential Property did not become available for occupancy until November 2022. The Residential Property does not fit into the *Regulations* additional factor.
- [16] The Officer concludes that the Landlord is not entitled to an additional rent increase. The Officer comes to this conclusion after considering all the factors together. Despite the Landlord's return on investment being less than what is expected as a *reasonable return*, the Landlord has not demonstrated a *change* in its operating expenses and/or capital expenditures. Further, when considering the relatively short occupancy for the Residential Property, it is not reasonable to expect that the Tenant's first rent increase would be above the annual allowable guidelines. Therefore, the Application is denied.
- [17] The Landlord is permitted to increase the rent by the annual allowable amount set by the Director for 2024 in the amount of 3.0%.

Conclusion

- [18] The Application is denied.
- [19] **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.**
- [20] The Appendix "A" and "B" of this decision are not disclosed in the Order viewable on the Rental Office's website.
- [21] **Order LD23-598 will be served to the parties by e-mail on December 18, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The Application is denied.
- B. The maximum allowable rent for the Residential Property is outlined in Appendix "B" of this Order.

DATED at Charlottetown, Prince Edward Island, this 18th day of December, 2023.

(sgd.) Cody Burke
Cody Burke
Residential Tenancy Officer

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

	Period "A"	Proposal	Allowed
Rental Income			
Income (Line 1)	\$145,800.00	\$154,548.00	\$150,174.00
Arrears (Line 2)	(\$29,671.50)	(\$1,545.48)	(\$1,501.74)
Net Income (Line 3)	\$116,128.50	\$153,002.52	\$148,672.26
Expenses			
1st Mortgage (Line 4)	\$56,940.87	\$56,940.87	\$56,940.87
2nd Mortgage (Line 5)	\$3,377.53	\$3,377.53	\$3,377.53
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$18,720.00	\$18,720.00	\$18,720.00
Electricity (Line 8)	\$1,879.11	\$0.00	\$0.00
Insurance (Line 9)	\$5,299.00	\$5,299.00	\$5,299.00
Property Tax (Provincial) (Line 10)	\$6,994.35	\$6,994.35	\$6,994.35
Property Tax (Municipal) (Line 11)	\$4,546.33	\$4,546.33	\$4,546.33
Management Fee (Line 12)	\$7,290.00	\$7,727.40	\$7,508.70
Maintenance Fee (Line 13)	\$4,960.00	\$4,960.00	\$4,960.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$0.00	\$0.00	\$0.00
Total Expenses	<u>\$110,007.19</u>	<u>\$108,565.48</u>	<u>\$108,346.78</u>
Annual Net Profit	\$6,121.31	\$44,437.04	\$40,325.48
Value of Investment	\$1,658,037.35	\$1,658,037.35	\$1,658,037.35
Net Profit	\$6,121.31	\$44,437.04	\$40,325.48
Return on Capital Investment	0.4%	2.7%	2.4%

APPENDIX “B”**The Maximum Allowable Rents**

Unit #	Rent Charged	Effective Date
3	\$1,184.50	January 1, 2024
5	\$1,416.25	February 1, 2024
6	\$1,416.25	January 1, 2024
7	\$1,416.25	January 1, 2024
8	\$1,416.25	March 1, 2024
9	\$1,416.25	February 1, 2024
10	\$1,416.25	April 1, 2024
11	\$1,416.25	January 1, 2024
12	\$1,416.25	January 1, 2024

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.