

Introduction

- [1] On October 27, 2023 the Representative 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*.
- [2] The Application seeks a rent increase above the allowable amount established by the Director of Residential Tenancy pursuant to subsection 49.(2) of the *Act* for 2024. The Application discloses the current rent, proposed rent and effective date as listed:

Unit #	Rent Increase (%)	Effective Date
107	4.5% (3% Allowable + 1.5% Additional)	February 1, 2024

- [3] On October 27, 2023 the Representative submitted into evidence the *Landlord Statement of Income and Expenses* (Form 10) (the “Statement”).
- [4] All documents (including the *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*.
- [5] On December 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Representative appeared, along with another representative, representing the Landlord. The Tenant informed the Rental Office of their intentions not to participate at the hearing.

Issue to be Decided

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

Summary of the Evidence

- [6] The Residential Property was purchased in 2007. The Landlord submitted 22-pages of documents into evidence to support the Application and the Statement.

Landlord’s Evidence and Submissions

- [7] The Representative testified that the operating costs have increased over the past three years. Further, that the Landlord is entitled to a reasonable return on its investment. The expenses disclosed on the Statement represent the costs associated with rental unit. The Representative testified that the *common area costs* referred to in Line 15 of the Statement (Other) include general repairs and supplies, maintenance, elevator, telephone, cable, property management, insurance and other admin costs, heat, electricity water and sewerage, snow removal, landscaping, and general cleaning. The Representative testified that the rental unit makes up 1.74% of the total square footage and that portion is attributed to the overall expenses.
- [8] The Representative testified that the appraisal submitted into evidence is from 2019 with a \$385,000.00 valuation. The Representative testified that based on market trends and the median prices of single detached homes in Prince Edward Island, the market valuation today for the rental unit would be conservatively \$500,000.00.

Tenant’s Evidence and Submissions

- [9] The Tenant did not submit any evidence and did not provide any submissions. The Tenant also did not wish to participate at the hearing.

Adjustments to the Statement

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

1. **[Line 3 – Net Income] \$24,792.00**

The Representative disclosed the net rental income on the Statement, which represents the rental unit's income from January 2023 to December 2023. The additional rent increase and annual allowable increase would increase the net income to \$25,908.00.

2. **[Value of Investment in the Property]: \$385,000.00**

The Representative disclosed that the value of the Residential Property has increased since the appraisal was completed in 2019. The Representative provided additional documents into evidence to assist in the Landlord's argument that a conservative market value of the Residential Property would be \$500,000.00.

When making a finding, the Officer must rely on the most convincing, clear and cogent evidence. Here, the Officer finds that the appraisal of the Residential Property completed on March 9, 2019 by an accredited appraisal to be the most convincing and reliable evidence. The Officer notes that it is likely true that the market value of the Residential Property has increased since 2019; however, to come to any such finding would be speculative in nature. If the Landlord wished to provide a more updated and market accurate appraisal they could have completed one and submitted it into evidence. Despite this, the Officer will rely on the 2019 appraisal put into evidence. The value of the investment in the property for the purpose of the Application is \$385,000.00.

Analysis

[11] The Application is made in accordance with section 75 of the *Act* and pursuant to subsection 50.(1). The factors are required for consideration of the additional rent increase is 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)*

- [12] 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

- [13] Regarding clause 50.(3)(a), the Landlord submitted into evidence a rent ledger for the Residential Property showing the rent for the past three years.
- [14] Regarding clause 50.(3)(b), the Landlord submitted into evidence a copy of the Residential Property's property tax, budget and financial statement. The Statement and the documents submitted into evidence demonstrate a change in operating expenses and/or capital expenditures over the past three years.
- [15] Regarding clause 50.(3)(c), the Statement's income and expenses disclose that the Landlord is yielding a 3.4% 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 3.7%.
- [16] Regarding clause 50.(3)(d), the evidence suggests that the last rent increase for the Residential Property happened August 1, 2022, which was the annual allowable at the time. The Tenant did not object to the additional rent increase. The evidence suggests the Tenant only saw two rent increases during her tenancy, both increases being within the annual allowable guidelines.
- [17] The Residential Property was purchased in 2007. The Residential Property does not fit into the *Regulations* additional factor.
- [18] The Officer concludes that the Landlord is entitled to an additional rent increase. The Officer comes to this conclusion after considering all the factors together. The Landlord has established that their operating costs have *changed* over the past three years. Further, the Landlord's return on investment with the additional and allowable rent increases would be slightly below what would be expected as a *reasonable return*. Therefore, the Application is allowed.
- [19] The Landlord is permitted to increase the rent by the annual allowable set by the Director for 2024 in the amount of 3.0% and to increase the rent by an additional 1.5% for a total rent increase of 4.5% effective February 1, 2024.

Conclusion

- [20] The Application is allowed.
- [21] **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.**
- [22] The Appendix "A" of this decision is not disclosed in the Order viewable on the Rental Office's website.
- [23] **Order LD23-599 will be served to the parties by e-mail on December 18, 2023.**

IT IS THEREFORE ORDERED THAT

- A. The maximum allowable rent for the Residential Property is \$2,159.00 effective February 1, 2024.

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)	\$24,792.00	\$25,908.00	\$25,908.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$24,792.00	\$25,908.00	\$25,908.00
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)	\$0.00	\$0.00	\$0.00
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$0.00	\$0.00	\$0.00
Property Tax (Provincial) (Line 10)	\$3,137.00	\$3,137.00	\$3,137.00
Property Tax (Municipal) (Line 11)	\$1,959.00	\$1,959.00	\$1,959.00
Management Fee (Line 12)	\$0.00	\$0.00	\$0.00
Maintenance Fee (Line 13)	\$0.00	\$0.00	\$0.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$6,557.00	\$6,557.00	\$6,557.00
Total Expenses	<u>\$11,653.00</u>	<u>\$11,653.00</u>	<u>\$11,653.00</u>
Annual Net Profit	\$13,139.00	\$14,255.00	\$14,255.00
Value of Investment	\$385,000.00	\$385,000.00	\$385,000.00
Net Profit	\$13,139.00	\$14,255.00	\$14,255.00
Return on Capital Investment	3.4%	3.7%	3.7%

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.