

Introduction

- [1] On September 28, 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 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:

Current Rent	Proposed Rent	Effective Date
\$2,095.00	\$2,221.00 6.0% (3% Allowable + 3% Additional)	January 1, 2024

- [2] On September 28, 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 December 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. A representative of the Tenant appeared.

Issue to be Decided

- i. Are the Landlords entitled to an additional rent increase above the allowable rent increase?

Summary of the Evidence

Landlord’s Evidence and Submissions

- [5] The Landlord testified that operating expenses have continued to rise each year. The Residential Property was purchased in 2021 for \$391,468.00.

Tenant’s Evidence and Submissions

- [6] The Tenant did not submit any evidence or participate in the hearing.

Adjustments to the Statement

- [7] The Officer’s adjustments to the Statement are provided below and reflected in the Appendix “A” of this Order.

1. [Line 3 – Rental Income]

The total rental income for 2023 will be \$25,140.00. Line 3 of the proposed rental income is set as \$26,640.00, which includes the 3.0% allowable rent increase for 2024.

2. [Lines 4 and 5 – Interest Payments on the First and Second Mortgages]

The Landlords stated the combined interest payments on the first and second mortgages as \$12,066.46. Both mortgages were used to purchase the property. The interest payment on the first mortgage was \$9,697.91 and on the second mortgage was \$2,368.55. Lines 4 and 5 are adjusted.

3. [Lines 10 and 11 – Provincial and Municipal Property Taxes]

The Landlords stated the combined Provincial and Municipal taxes are \$5,632.95 for 2022. The combined taxes will be \$5,111.02 going forward based on the documentary evidence. Lines 10 and 11 are combined and adjusted.

4. [Line 12 – Management Fee]

The Landlords stated the management fee as \$0.00, however they manage the property themselves. Subsection 1.(c) of the *Residential Tenancy Regulations* (the “*Regulations*”) states:

“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.

5% of the gross rental income for 2023 is \$1,257.00. Line 12 is adjusted.

5. [Line 14 – Other]

The Landlords stated the other fees were for snow removal. The Officer accepts this submission.

6. [Value of Investment in the Property]

The Landlords stated the Residential Property was purchased in 2021 for \$391,468.00, which makes the value of investment as \$391,468.00, for the Application. No capital expenditures have been invested back into the property.

Analysis

- [8] The Application is made in accordance with 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) and (4) of the *Act*, along with section 4 of the *Residential Tenancy Regulations* (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).*

- [9] 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.
- [10] The *Act* and the *Regulations* require the Officer to review the Application and determine if the Application meets the required factors set out in the *Act* and the *Regulations*.
- [11] With regard to clause 50.(3)(a) of the *Act*, the Officer finds that the Landlords have provided the rent history for the past three years for the Residential Property.
- [12] With regard to clause 50.(3)(b) of the *Act*, the Landlord provided invoices, receipts, and financial documents to assist in the establishment of increased operating expenses over the past three years. The Officer concludes there has been an increase in operating expenses such as the mortgage interest, fuel, electricity, and snow removal.
- [13] 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 -0.1% 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 1.4%.
- [14] With regard to clause 50.(3)(d) of the *Act*, there has been no rent increase during the tenancy. The Tenant provided no submissions regarding the rent increase.
- [15] With regard to section 4 of the *Regulations* the Officer concludes that the Residential Property was not purchased in the last 12-months. Therefore, this factor does not apply to the Application.
- [16] 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

- [17] The Application is allowed.
- [18] **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.**

IT IS THEREFORE ORDERED THAT

- A. The maximum allowable rent for the Residential Property is \$2,221.00 effective January 1, 2024.

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

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

APPENDIX "A"
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)	\$25,140.00	\$26,640.00	\$26,640.00
Vacancy Arrears/Losses (Line 2)	(\$4,190.00)	\$0.00	\$0.00
<u>Net Income before expenses (Line 3)</u>	<u>\$20,950.00</u>	<u>\$26,640.00</u>	<u>\$26,640.00</u>
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$9,697.91	\$9,697.91	\$9,697.91
2nd Mortgage Interest (Line 5)	\$2,368.55	\$2,368.55	\$2,368.55
Fuel (Line 6)	\$1,013.92	\$1,013.92	\$1,013.92
Water & Sewer (Line 7)	\$89.92	\$89.92	\$89.92
Electricity (Line 8)	\$99.78	\$99.78	\$99.78
Insurance (Line 9)	\$1,009.00	\$1,009.00	\$1,009.00
Property Tax (Provincial) (Line 10)	\$5,111.02	\$5,111.02	\$5,111.02
Property Tax (Municipal) (Line 11)	\$0.00	\$0.00	\$0.00
Management Fee (Line 12)	\$1,257.00	\$1,257.00	\$1,257.00
Maintenance Fee (Line 13)	\$458.06	\$458.06	\$458.06
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$250.00	\$250.00	\$250.00
<u>Total Operating Expenses (Line 16)</u>	<u>\$21,355.16</u>	<u>\$21,355.16</u>	<u>\$21,355.16</u>
<u>Net Profit or (Loss) (Line 17)</u>	<u>(\$405.16)</u>	<u>\$5,284.84</u>	<u>\$5,284.84</u>
<u>Value of Investment in Property</u>	<u>\$391,468.00</u>	<u>\$391,468.00</u>	<u>\$391,468.00</u>
<u>Operating Income (Line 17)</u>	<u>(\$405.16)</u>	<u>\$5,284.84</u>	<u>\$5,284.84</u>
<u>Return on Investment (ROI)</u>	<u>-0.1%</u>	<u>1.4%</u>	<u>1.4%</u>

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.