

Introduction

- [1] On November 1, 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 *Residential Tenancy Act* (the “Act”).
- [2] The Application seeks a rent increase above the annual allowable guidelines established by the Director of Residential Tenancy (the “Director”), pursuant to subsection 49(2) of the *Act*. The Application discloses the current rents, proposed rents and the effective dates as listed:

Unit #	Rent Increase (%)	Effective Date
2-237	6% (3% Allowable + 3% Additional)	February 1, 2024
3-237	6% (3% Allowable + 3% Additional)	February 1, 2024
4-237	6% (3% Allowable + 3% Additional)	February 1, 2024
2-61	6% (3% Allowable + 3% Additional)	February 1, 2024
3-61	6% (3% Allowable + 3% Additional)	February 1, 2024

- [3] On November 1, 2023 the Landlord 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 Increases* (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 14, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Representatives appeared, representing the Landlord. One of the Tenants appeared, representing themselves.

Issue to be Decided

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

Summary of the Evidence

- [6] The Residential Property was purchased in 2019. The Landlord submitted 30-pages of documents into evidence to support the Application and the Statement. The Representatives testified that the Statement represents the total income and expenses for the building, which includes two commercial properties. The Representatives testified that the five units for the Application make up 30% of the total square footage for the Residential Property. The Representatives submitted into evidence documents to assist in establishing the 30% square footage.
- [7] The Tenants did not provide any documents or written submissions for the Application. The Tenant who participated at the hearing did not provide any adversarial submissions as it relates to the Application.

Adjustments to the Statement

- [8] The Officer's adjustments to the Statement are provided below and are reflected in Appendix "A" of this Order. **The Officer notes that the income and expenses are reduced to reflect 30% of total expenses.**

1. **[Line 1 – Gross rental income] \$175,359.00**

The Landlord disclosed the gross rental income which included income from two commercial properties. The Officer adjusts the gross rental income to reflect only the 5-units' gross rental income. **Line 1 is adjusted to \$47,868.00.**

The additional rent increase and the annual allowable increase would increase the gross rental income to **\$50,740.08.**

2. **[Line 2 – Vacancy / Arrears] (\$2,400.00)**

The Statement discloses that for the 2023 period (\$2,400.00) was loss due to vacancy. However, the Representatives testified that the arrears were from another rental unit outside of the rental units in the Application. **The Officer adjusts Line 2 to \$0.00** to reflect the income and expenses related to the 5-units in the Application.

3. **[Line 4 – Interest Payments on Mortgage] \$56,582.29**

The Statement discloses the total expense for interest up to October 2023. The Representatives provided additional evidence to include two more payments for November 2023 and December 2023. Those payments are as follows: November 2023 is \$5,663.12 and December 2023 is \$5,645.54. **The Officer adjusts Line 4 to \$20,367.29.**

4. **[Line 6 – Fuel] \$25,565.27**

The Officer adjusts Line 6 to \$7,669.58.

5. **[Line 7 – Water and/or Sewerage] \$1,429.08**

The Officer adjusts Line 7 to \$428.72.

6. **[Line 8 – Electricity] \$7,676.71**

The Officer adjusts Line 8 to \$0.00. This is because the Representatives testified that the electricity costs are primarily associated with the two commercial areas.

7. **[Line 9 – Insurance] \$12,390.00**

The Officer adjusts Line 9 to \$3,717.00.

8. **[Line 10/11 – Property Tax] \$17,690.00**

The Officer adjusts Line 10 and reflects Line 11 to \$5,307.00.

9. **[Value of the Investment in the Property] \$1,650,000.00**

The Officer adjusts the value of the investment in the property to reflect 30% of the purchase price in 2019. The value is \$495,000.00.

Analysis

- [9] The Application is made in accordance with section 75 of the *Act* and is pursuant to subsection 50(1). When deliberating on the Application, the Officer must consider the factors outlined in subsections 50(3) and (4) of the *Act*, and 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 Application requires the Landlord to prove, on a balance of probabilities, that they are entitled to an additional rent increase above the annual allowable guidelines. This means that 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 provided the rent for the Residential Property over the past three years. The last rent increases happened in 2022 with one rental unit being 2020, and the increase was the annual allowable amount set for that given year.
- [12] Regarding clause 50(3)(b), the Landlord provided numerous documents into evidence including: invoices, receipts, and summary financial breakdowns to assist in establishing a change in the operating expenses and/or capital expenditures over the past three years.
- [13] Regarding clause 50(3)(c), the Statement’s income and expenses disclose that the Landlord is yielding a negative 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 0.3%.
- [14] Regarding clause 50(3)(d), the evidence suggests that the last rent increases happened in 2022 and 2020 for the 5-units. The increases were the annual allowable for that given year.

- [15] The Residential Property was purchased in 2019. The Residential Property does not fit into the *Regulations* additional factor for consideration.
- [16] 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 its operating costs have *changed* over the past three years. Specifically, the Officer references an increase in property tax, insurance, and general maintenance and snow removal. Further, the Landlord has established that they are not seeing a reasonable return on their investment. The factors weigh strongly in favour of the Landlord's additional rent increase. Therefore, the Application is allowed.
- [17] The Landlord is permitted to increase the rent by the annual allowable set by the Director in the amount of 3% and the Landlord is permitted to increase the rent by an additional 3% effective February 1, 2024. A total rent increase of 6% is allowed.

Conclusion

- [18] The Application is allowed.
- [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] Order LD23-608 will be served to the parties by e-mail on December 21, 2023.

IT IS THEREFORE ORDERED THAT

A. The maximum allowable rent for the Residential Property is as follows:

Unit #	Rent	Effective Date
2-237	\$729.28	February 1, 2024
3-237	\$750.48	February 1, 2024
4-237	\$919.02	February 1, 2024
2-61	\$909.48	February 1, 2024
3-61	\$920.08	February 1, 2024

DATED at Charlottetown, Prince Edward Island, this 21st 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)	\$47,868.00	\$50,740.08	\$50,740.08
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$47,868.00	\$50,740.08	\$50,740.08
Expenses			
1st Mortgage (Line 4)	\$20,367.29	\$20,367.29	\$20,367.29
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$7,669.58	\$7,669.58	\$7,669.58
Water & Sewer (Line 7)	\$428.72	\$428.72	\$428.72
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$3,717.00	\$3,717.00	\$3,717.00
Property Tax (Provincial) (Line 10)	\$5,307.00	\$5,307.00	\$5,307.00
Property Tax (Municipal) (Line 11)	\$0.00	\$0.00	\$0.00
Management Fee (Line 12)	\$2,636.00	\$2,636.00	\$2,636.00
Maintenance Fee (Line 13)	\$4,198.78	\$4,198.78	\$4,198.78
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$4,918.00	\$4,918.00	\$4,918.00
Total Expenses	<u>\$49,242.37</u>	<u>\$49,242.37</u>	<u>\$49,242.37</u>
Annual Net Profit	(\$1,374.37)	\$1,497.71	\$1,497.71
Value of Investment	\$495,000.00	\$495,000.00	\$495,000.00
Net Profit	(\$1,374.37)	\$1,497.71	\$1,497.71
Return on Capital Investment	-0.3%	0.3%	0.3%

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.