

Introduction

- [1] On September 16, 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 increases and the effective dates as listed:

Unit #	Current Rent	Proposed Rent	Effective Date
1	\$744.00	\$914.00	January 1, 2024
2	\$680.00	\$765.00	January 1, 2024
3	\$562.00	\$647.00	January 1, 2024
4	\$825.00	\$910.00	January 1, 2024
5	\$562.00	\$647.00	January 1, 2024

- [3] On September 18, 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 November 30, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. 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 2021. The Landlord submitted 108-pages of documents into evidence to support the Application and the Statement.

Landlord’s Evidence and Submissions

- [7] The Landlord testified that operating expenses have continued to increase since the Residential Property was purchased. The Statement reflects two years of income and expenses since the purchase. The Landlord testified that the rents have not increased since he purchased the Residential Property in 2021.

Tenant’s Evidence and Submissions

- [8] The Tenants did not submit any documents or evidence and did not submit any submissions for the Application. The Tenant who appeared at the hearing did not provide any submissions which would be considered adversarial to the additional rent increase.

Adjustments to the Statement

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

1. **[Line 3 – Net income] \$40,476.00**

The Landlord disclosed the net income for the Residential Property between May 2022 and April 2023 on the Statement. The additional rent increase and the annual allowable increase would increase the net income to \$46,596.00.

2. **[Line 4 – Interest on the first mortgage] \$7,692.21**

The Landlord testified that the mortgage has recently been renewed and that for the 2024 year the monthly interest payment will be \$1,136.97. The annual interest paid will increase to \$13,643.64.

3. **[Value of the investment in the property] \$360,698.00**

The value of the investment in the property represents the purchase price for the Residential Property in 2021.

Analysis

[10] 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)*

- [11] 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

- [12] Regarding clause 50(3)(a), the Landlord provided through testimony that the rents for the Residential Property have not increased since he purchased it in 2021.
- [13] Regarding clause 50(3)(b), the Landlord provided numerous invoices and receipts to assist in establishing the increased expenses for the Residential Property. The Statement reflects changes in the operating expenses, specifically, the interest payments, electricity, property tax and the capital expenditures completed in 2022/23.
- [14] 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 remain at 3.4%.
- [15] Regarding clause 50(3)(d), the evidence suggests that the Landlord has not raised the rent since 2021. Further, the Tenants did not provide any submissions as it would relate to this factor.
- [16] The Residential Property was purchased in 2021 and therefore the factor in the *Regulations* is not applicable.
- [17] The Officer finds 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 expenses and/or capital expenditures have *changed* (increased) over the past two years, with significant increases to the interest payments and the electricity costs. Further, the Landlord has established that the return on investment is 3.4%, which is below what would be considered a *reasonable return* on a rental property. Also, the Tenants have not had a rent increase in over two years. The factors weigh strongly in favour of the Landlord receiving an additional rent increase. Therefore, the Application is allowed.
- [18] The Officer finds that the Landlord is able to increase the rent by an additional 3% above the annual allowable each year until the proposed rent is achieved. This means, effective January 1, 2024 the Landlord is permitted to increase the rent by 6% (3% allowable + 3% additional) pursuant to subsection 50(7) of the Act. Therefore, the Officer will permit the Landlord to phase in the remaining additional increase allowed in the Application pursuant to subsection 50(6) of the Act.
- [19] Subsections 50.(6) and (7) state:

Director's powers

- (6) *Subject to subsection (7), in considering an application under this section, the Director may*
- (a) *grant the application, in full or in part;*
 - (b) *refuse the application;*
 - (c) *order that the increase granted be phased in over a period of time; or*
 - (d) *order that the effective date of the increase granted is conditional upon the landlord's compliance with an order of the Director respecting the residential property*

Limitation on increase

(7) *Where the Director grants an application under subsection (6) or orders that the increase granted be phased in over a period of time, the amount of the increase in rent in a calendar year shall not exceed 3 per cent in addition to the maximum percentage increase permitted under section 49.*

[20] The Landlord is permitted to increase the rent by the annual allowable set by the Director for 2024 in the amount of 3% and the Landlord is entitled to increase the rent by an additional 3% for a total of 6% effective January 1, 2024.

[21] When annual increases under this Order for each unit total:

- Unit 1 - \$170.00;
- Unit 2 - \$85.00;
- Unit 3 - \$85.00;
- Unit 4 - \$85.00; and
- Unit 5 - \$85.00.

The Landlord may not implement more additional rent increases without a further Order of the Director.

[22] The Landlord is permitted to increase the rent every **January 1** by the annual allowable amount set by the Director and the Landlord is permitted to increase the rent by an additional 3% until the Residential Property reaches its permitted rent increase. For greater clarity:

Unit	Approved Additional Rent Increase Permitted (to be phased in)	New Rent (6%)	Effective Date	Future Increases
1	\$170.00	\$788.64	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
2	\$85.00	\$720.80	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
3	\$85.00	\$595.72	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
4	\$85.00	\$874.50	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
5	\$85.00	\$595.72	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines

Conclusion

- [23] The Application is allowed.
- [24] **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.**
- [25] **Order LD23-612 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	Approved Additional Rent Increase Permitted (to be phased in)	New Rent (6%)	Effective Date	Future Increases
1	\$170.00	\$788.64	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
2	\$85.00	\$720.80	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
3	\$85.00	\$595.72	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
4	\$85.00	\$874.50	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
5	\$85.00	\$595.72	January 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines

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)	\$40,476.00	\$46,596.00	\$46,596.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$40,476.00	\$46,596.00	\$46,596.00
Expenses			
1st Mortgage (Line 4)	\$7,692.21	\$13,643.64	\$13,643.64
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$3,140.90	\$3,140.90	\$3,140.90
Electricity (Line 8)	\$8,653.32	\$8,653.32	\$8,653.32
Insurance (Line 9)	\$981.00	\$981.00	\$981.00
Property Tax (Provincial) (Line 10)	\$3,409.70	\$3,409.70	\$3,409.70
Property Tax (Municipal) (Line 11)	\$0.00	\$0.00	\$0.00
Management Fee (Line 12)	\$0.00	\$0.00	\$0.00
Maintenance Fee (Line 13)	\$1,905.00	\$1,905.00	\$1,905.00
Capital Expenditures (Line 14)	\$2,503.92	\$2,503.92	\$2,503.92
Other (Line 15)	\$0.00	\$0.00	\$0.00
Total Expenses	<u>\$28,286.05</u>	<u>\$34,237.48</u>	<u>\$34,237.48</u>
Annual Net Profit	\$12,189.95	\$12,358.52	\$12,358.52
Value of Investment	\$360,698.00	\$360,698.00	\$360,698.00
Net Profit	\$12,189.95	\$12,358.52	\$12,358.52
Return on Capital Investment	3.4%	3.4%	3.4%

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.