

Introduction

- [1] On November 17, 2023 the Landlord filed two *Landlord Applications to Request Additional Rent Increase* (Form 9) (the “Applications”) with the Residential Tenancy Office (the “Rental Office”), pursuant to subsection 50.(1) of the *Residential Tenancy Act* (the “Act”).
- [2] The Applications seek rent increases above the annual allowable guideline established by the Director of Residential Tenancy (the “Director”), pursuant to subsection 49.(2) of the *Act* for 2024 and 2025. The Applications disclose the current rents, proposed rents, and effective dates as listed:

Unit #	Rent Increase	Effective Date	Rent Increase	Effective Date
A	\$1,445.31	January 1, 2024	\$1,488.66	January 1, 2025
B	\$1,478.70	January 1, 2024	\$1,523.06	January 1, 2025

- [3] On November 17, 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 19, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord appeared, representing themselves. Two of the Tenants appeared, representing themselves.

Preliminary Matter

- [6] The evidence establishes that in July 2022, the parties agreed to a rent increase for Unit A from \$1,350.00 to \$1,363.00 and for Unit B from \$1,350.00 to \$1,395.00. At that time the *Rental of Residential Property Act* (the “*Former Act*”) was the law regarding landlord and tenant relationships. Under the *Former Act*, as with the current *Act*, the Landlord was required to serve the Tenants with a Notice of Allowable Increase or apply to the Rental Office for a Greater than Allowable Rent Increase, to be able to increase the rent. The evidence establishes that the Landlord did neither. The Officer will therefore use the rents for the units prior to the rent increases to calculate the proposed rent increases.

Issue to be Decided

- i. Is the Landlord entitled to an additional rent increase above the annual allowable rent increase for 2024 and 2025?

Summary of the Evidence

Landlord’s Evidence and Submissions

- [7] The Residential Property was purchased in 2021 and since that time the operating expenses for the Residential Property have continued to increase. The Landlord submitted numerous bills, bank statements, and tax documents to assist with disclosing the operating expenses. The Landlord stated he increased the rents of both units in 2022, however he did not serve the Tenants a Notice of Allowable Increase or apply to the Rental Office for a Greater than Allowable Rent Increase.

Tenants' Evidence and Submissions

- [8] The Tenants stated in July 2022 the Landlord increased the rent for Unit A from \$1,350.00 to \$1,363.00 and for Unit B from \$1,350.00 to \$1,395.00. The Tenants stated there is maintenance required at the Residential Property and they disagree with 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]

The Landlord disclosed the net rental income on the Statement, which represents the rental units' income from January 2023 to December 2023 as \$33,102.00.

The Officer notes the evidence establishes that in July 2022 there was an unlawful rent increase for Unit A from \$1,350.00 to \$1,363.00 and for Unit B from \$1,350.00 to \$1,395.00.

Therefore, the rents for the units prior to the unlawful rent increase will be used to calculate the proposed rent increases. The Officer adjusts the proposed rent increases for 2024 and 2025 as:

Unit	Rent Increase (%)	Effective Date	Rent Increase (%)	Effective Date
A	$1,350.00 + 6.0\% = \$1,431.00$	Jan 1, 2024	$\$1,431.00 + 3.0\% = \$1,474.00$	Jan 1, 2025
B	$1,350.00 + 6.0\% = \$1,431.00$	Jan 1, 2024	$\$1,431.00 + 3.0\% = \$1,474.00$	Jan 1, 2025
$\$1,431.00 \times 2 \times 12 \text{ months} = \$34,344.00$		$\$1,474.00 \times 2 \times 12 \text{ months} = \$35,376.00$		

2. [Line 10/11 – Property Taxes]

The Landlord disclosed the combined property taxes as \$3,591.00, however the documentary evidence shows this should be \$3,304.87. Lines 10/11 are adjusted and documented on line 11.

3. [Value of the Investment in the Property]

The Landlord disclosed on the Statement that the value of the Residential Property is \$427,035.50. This value reflects the purchase price of the Residential Property.

Analysis

- [10] 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.*
- [11] 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**
- [12] Regarding clause 50.(3)(a), the Landlord submitted into evidence documents disclosing the rent history for the Residential Property for the past two years. The rent was increased in 2022.
- [13] Regarding clause 50.(3)(b), the Landlord submitted into evidence numerous documents to establish a change in the operating expenses over the past three years to the Residential Property, such as interest payments, insurance, and taxes.
- [14] Regarding clause 50.(3)(c), the Statement's income and expenses disclose that the Landlord is yielding a -0.5% 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 -0.2% in 2024 and 0.0% in 2025.
- [15] In Order LD23-80 the Island Regulatory and Appeals Commission (the "Commission") found that a 7.0% return on capital investment to be reasonable when relying on a recent purchase price of the Residential Property. In this case, the Landlord purchased the property in 2021:
- In previous Orders, the Commission has considered reasonable return on investment rates and has found them to be, in recent years, in the range of 4% to 7%. The Commission has used 7% as an appropriate ROI where the Landlord is relying on a recent actual purchase price or on the tax assessed value.*
- [16] Regarding clause 50.(3)(d), the evidence establishes that the rent was increased in 2022 and the Tenants object to the additional rent increase.
- [17] The Residential Property was purchased in 2021. The Residential Property does not fit into the *Regulations* additional factor for consideration.

- [18] The Officer concludes that the Landlord is entitled to an additional rent increase for 2024 and 2025. 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 increase would be yielding a reasonable return on investment. Therefore, the Applications are allowed.
- [19] 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.
- [20] 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.*

- [21] 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.
- [22] The Landlord is permitted to increase the rent by an additional 3.0%, and by the annual allowable set by the Director for 2025, effective January 1, 2025.

Conclusion

- [23] The Applications are 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.**

IT IS THEREFORE ORDERED THAT

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

Unit	Rent Increase	Effective Date	Rent Increase	Effective Date
A	\$1,431.00	Jan 1, 2024	\$1,474.00 + allowable rent increase	Jan 1, 2025
B	\$1,431.00	Jan 1, 2024	\$1,474.00 + allowable rent increase	Jan 1, 2025

DATED at Charlottetown, Prince Edward Island, this 27th day of December, 2023.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

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

	<u>2023</u>	<u>2024</u>	<u>2025</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$33,102.00	\$34,344.00	\$35,376.00
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<u>Net Income before expenses</u> (Line 3)	\$33,102.00	\$34,344.00	\$35,376.00
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$19,430.00	\$19,430.00	\$19,430.00
2nd Mortgage Interest (Line 5)	\$4,996.00	\$4,996.00	\$4,996.00
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$617.00	\$617.00	\$617.00
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$1,769.00	\$1,769.00	\$1,769.00
Property Tax (Provincial) (Line 10)	\$0.00	\$0.00	\$0.00
Property Tax (Municipal) (Line 11)	\$3,307.87	\$3,304.87	\$3,304.87
Management Fee (Line 12)	\$0.00	\$0.00	\$0.00
Maintenance Fee (Line 13)	\$3,797.00	\$3,797.00	\$3,797.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$1,276.00	\$1,276.00	\$1,276.00
Total Operating Expenses (Line 16)	<u>\$35,192.87</u>	<u>\$35,189.87</u>	<u>\$35,189.87</u>
Net Profit or (Loss) (Line 17)	(\$2,090.87)	(\$845.87)	\$186.13
Value of Investment in Property	\$427,035.50	\$427,035.50	\$427,035.50
Operating Income (Line 17)	(\$2,090.87)	(\$845.87)	\$186.13
Return on Investment (ROI)	-0.5%	-0.2%	0.0%

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.