

Introduction

- [1] On November 1, 2023 the Landlords 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	\$1,000.00	\$1,240.00	February 1, 2024
2	\$1,000.00	\$1,240.00	February 1, 2024
3	\$1,000.00	\$1,240.00	February 1, 2024

- [3] On November 1, 2023 the Landlords 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 Landlords appeared and one of the Tenants appeared.

Issue to be Decided

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

Summary of the Evidence

- [6] The Residential Property was inherited in 2003. The Landlord submitted 37-pages of documents into evidence to support the Application and the Statement.

Landlord’s Evidence and Submissions

- [7] The Landlords testified that operating expenses have continued to increase over the past three years. The rents for the Residential Property have not increased since 2016.

Tenant’s Evidence and Submissions

- [8] The Tenants did not submit any documents or evidence and did not provide 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 1 – Rental Income] \$36,000.00

The Landlords disclosed the income for the Residential Property on the Statement. The additional rent increase would increase the income to \$44,640.00.

2. **[Line 2 – Vacancy / Arrears] (\$2,000.00)**

The Landlords disclosed the arrears for 2023 in the amount of \$2,000.00 in the Statement. The arrears were from a vacancy in September and October 2023. The Landlords testified that one unit will be vacant for one month with the expectation of (\$1,000.00) in arrears.

3. **[Line 6 – Fuel] \$4,947.20**

The Landlords disclosed the fuel expense on the Statement in the amount of \$4,947.20. The Landlord provided additional documents to claim additional expenses paid after the completion of the Statement. The additional expenses totaled \$725.72. The adjusted total for Line 6 is \$5,672.92.

4. **[Line 8 – Electricity] \$4,416.50**

The Landlords disclosed the electricity expense on the Statement in the amount of \$4,416.50. The Landlords provided additional documents to claim additional expenses paid after the completion of the Statement. The additional expenses totaled \$737.83. The adjusted total for line 8 is \$5,154.33.

5. **[Line 15 – Other] \$3,345.09**

The Landlords disclosed the other expenses in the Statement for the Residential Property which includes general maintenance and materials. The Landlords included a \$2,242.50 expense for repainting which was on the Statement but not included in Line 15. The Officer adjusts Line 15 to \$5,587.59.

6. **[Value of the investment in the property] \$250,000.00**

The value of the investment in the property is \$250,000.00.

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 Landlords 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 Landlords 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 Landlords provided rent ledgers for the rents since 2021 for the Application.
- [13] Regarding clause 50(3)(b), the Landlords provided numerous documents to assist in the Statement and the Application. The documents include invoices, receipts, spreadsheets breaking down specific expenses and tax documents.
- [14] Regarding clause 50(3)(c), the Statement's income and expenses disclose that the Landlords are yielding a 0.7% return on investment. After the adjustments to the Statement (found in Appendix "A"), and the inclusion of the annual allowable for 2024 and the additional rent increase, the return on investment would increase to 4.5%.
- [15] Regarding clause 50(3)(d), the evidence suggests that the Landlords have not raised the rents since 2016. No additional submissions were provided in relation to this factor.
- [16] The Residential Property was inherited in 2003 and therefore the factor in the *Regulations* is not applicable.
- [17] The Officer finds that the Landlords are entitled to an additional rent increase. The Officer comes to this conclusion after considering all the factors together. The Landlords have established that their operating expenses have changed (increasing) over the past three years. Further, the Landlords have established that the return on investment is 0.7% currently and would increase to 4.5% with a 24% rent increase. The Officer finds such a rate of return to be reasonable in these circumstances. The factors weigh strongly in favour of the Landlords receiving an additional rent increase. Therefore, the Application is allowed.
- [18] The Officer finds that the Landlords are able to increase the rent by an additional 3% above the annual allowable each year until the proposed rent is achieved. This means, effective February 1, 2024 the Landlords are 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 Landlords 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 Landlords are permitted to increase the rent by the annual allowable set by the Director for 2024 in the amount of 3% and the Landlords are entitled to increase the rent by an additional 3% for a total of 6% effective February 1, 2024.

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

- Unit 1 - \$240.00;
- Unit 2 - \$240.00; and
- Unit 3 - \$240.00.

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

- [22] The Landlords are permitted to increase the rent every **February 1** by the annual allowable amount set by the Director and the Landlords are 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	\$240.00	\$1,060.00	February 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
2	\$240.00	\$1,060.00	February 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
3	\$240.00	\$1,060.00	February 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 LD24-001 will be served to the parties by e-mail on January 2, 2024.**

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	\$240.00	\$1,060.00	February 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
2	\$240.00	\$1,060.00	February 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines
3	\$240.00	\$1,060.00	February 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines

DATED at Charlottetown, Prince Edward Island, this 2nd day of January, 2024.

(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)	\$36,000.00	\$44,640.00	\$44,640.00
Arrears (Line 2)	(\$2,000.00)	(\$1,000.00)	(\$1,000.00)
Net Income (Line 3)	\$34,000.00	\$43,640.00	\$43,640.00
Expenses			
1st Mortgage (Line 4)	\$0.00	\$0.00	\$0.00
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$5,672.92	\$5,672.92	\$5,672.92
Water & Sewer (Line 7)	\$0.00	\$0.00	\$0.00
Electricity (Line 8)	\$5,154.33	\$5,154.33	\$5,154.33
Insurance (Line 9)	\$4,091.00	\$4,091.00	\$4,091.00
Property Tax (Provincial) (Line 10)	\$5,436.00	\$5,436.00	\$5,436.00
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)	\$6,325.00	\$6,325.00	\$6,325.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$5,587.59	\$5,587.59	\$5,587.59
Total Expenses	<u>\$32,266.84</u>	<u>\$32,266.84</u>	<u>\$32,266.84</u>
Annual Net Profit	\$1,733.16	\$11,373.16	\$11,373.16
Value of Investment	\$250,000.00	\$250,000.00	\$250,000.00
Net Profit	\$1,733.16	\$11,373.16	\$11,373.16
Return on Capital Investment	0.7%	4.5%	4.5%

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.