

Introduction

- [1] On November 17, 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*, RSPEI 1988, R-13.1 (the “Act”).
- [2] The Application seeks a rent increase above the allowable annual percentage established by the Director of Residential Tenancy (the “Director”), pursuant to subsection 49(2) of the *Act*. The Rental Unit’s current rent is \$863.00, the proposed rent is \$915.00 and the effective date is March 1, 2024.
- [3] On November 17, 2023 the Landlord also submitted into evidence a *Landlord Statement of Income and Expenses* (Form 10) (the “Statement”).
- [4] On or about November 17, 2023 the Landlord served the Tenant with a copy of the Application and a *Tenant Notice of Annual Allowable Rent Increases* (Form 8).
- [5] On November 27, 2023 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for January 5, 2024. The hearing was later rescheduled to January 9, 2024.
- [6] On December 15, 2023 the Rental Office emailed the parties an evidence package.
- [7] On January 9, 2024 the parties participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”).

Issue to be Decided

- i. Should the Landlord receive an additional rent increase above the allowable annual percentage?

Summary of the Evidence

- [8] The Landlord and the Tenant entered into a written one-year fixed term tenancy agreement from early January 2022 to December 31, 2022. Rent in the amount of \$814.00 was due on the first day of the month and a security deposit of \$814.00 was paid.
- [9] The Landlord and the Tenant later entered into a written one-year fixed term tenancy agreement for the period of January 1, 2023 to December 31, 2023. The Landlord prepared an additional written one-year fixed term tenancy agreement but the Tenant did not want to sign an additional fixed term agreement. It appears to the Officer that the term of the tenancy agreement is now month-to-month, pursuant to subsection 52(1) of the *Act*.
- [10] The Landlord and the Tenant were parties to an earlier Rental Office decision regarding a rent increase above the allowable annual percentage pursuant to the *Rental of Residential Property Act*, RSPEI 1988, R-13.1. In Order LD23-058 the rent was increased from \$814.00 to \$863.00 effective March 1, 2023.

Landlord’s Evidence and Submissions

- [11] The Landlord’s evidence is summarized as follows. The Rental Unit is located in the lower level of a split entry single family dwelling. The lower level has 1100 square feet, with the Rental Unit containing 840 square feet and a room occupied by the Landlord’s son containing 260 feet. The Landlord lives in the upper level of the dwelling, which also contains 1100 square feet.
- [12] During the hearing the Landlord reviewed the contents of the Statement. The Tenant moved into the Rental Unit on January 7, 2022 and the Landlord pro-rated the rent for the month.

- [13] The Landlord has increased his mortgage principal payments and he anticipates that the \$1,100.00 remaining of his mortgage will be paid in March of 2024.
- [14] In the Fall of 2023 the Landlord had a new roof installed at a cost of \$9,565.45. The annual capital expenditure deduction for the dwelling is \$637.70 over 15 years. The Landlord does not recall capital expenditures for Year 2 or Year 3 of the Statement. The Officer notes that in Order LD23-058, the previous rent increase decision, \$0.00 was listed for capital expenditures in the appendix of the decision.
- [15] The Year 2 and 3 maintenance costs in the Statement are solely for snow removal. The Year 1 maintenance costs are broken down on page 15 of the Evidence Package. The Landlord was charged \$5,290.00 for tree removal and stump grinding work due to damage from Hurricane Fiona. The Landlord stated that these amounts can be considered over an eight-year period. The annual amount for the dwelling would be \$661.25. The Landlord expects to incur the exterior siding washing expense every seven years, in the annual amount of \$85.71. The Landlord attributes 25% of the snow removal cost to the Rental Unit. The Island Waste Management Corporation ("IWMC") fee for the dwelling was \$213.00.
- [16] The Landlord provided property tax information up to 2023 because the 2024 property tax amounts are not known at this time.
- [17] One third of the internet and cable cost can be attributed to the Rental Unit.

Tenant's Evidence and Submissions

- [18] The Tenant's evidence is summarized as follows. The allowable annual percentage in 2023 was 0.0% but the Tenant received a 6.0% increase due to an earlier rent increase application made by the Landlord. The Tenant submitted into evidence a copy of Order LD23-058.
- [19] The Tenant provided evidence regarding his Maritime Electric costs and the higher amounts charged in the winter months.
- [20] The Tenant submitted into evidence a publication regarding 2024 property taxes.

Adjustments to the Statement

- [21] The Officer's adjustments to the Statement are provided below and are reflected in Appendix "A" of this decision (the "Revised Statement").
1. [Line 1 – Rental income]
The proposed (6.0% increase) annual rental income at 100% occupancy would be \$10,980.00 and the annual income with the 2024 allowable annual 3.0% increase would be \$10,668.00.
 2. [Line 2 – Vacancy/arrears losses]
The vacancy/arrears losses are adjusted to 1.0% of the annual rental income to reflect historical losses.
 3. [Line 4 – Mortgage interest]
The Landlord's mortgage will be paid in full by March of 2024. Therefore, the mortgage interest amount is reduced to zero.
 4. [Lines 6-11, and 14]
The Rental Unit is 38.2% of the square footage of the dwelling and the Officer adjusts these total dwelling amounts by this percentage.

The only capital expenditure established was the roofing cost, with 38.2% of the annual dwelling deduction of \$637.70 being attributed to the Rental Unit, in the amount of \$243.60.

5. [Line 12 – Management fees]
Management fees are capped at 5.0% of the gross rental income pursuant to subsection 1(c) of the *Regulations*.
6. [Line 13 – Maintenance]
The annual tree removal and stump grinding deduction attributable to the Rental Unit is \$252.60 (38.2%). The annual snow removal cost is \$115.00 (25.0%). The exterior washing cost deduction is \$32.74. The Officer attributes 38.2% of the IWMC charge plus the other maintenance expenses on Page 15 of the Evidence to the Rental Unit, in the amount of \$471.40. The total annual maintenance deduction for the Rental Unit is \$871.74.

The Year 2 dwelling maintenance cost totaled \$460.00, being solely for snow removal, with \$115.00 (25%) attributed to the Rental Unit. The Officer notes that the Revised Statement maintenance cost of \$871.74 is about 7.5 times the Year 2 amount due to anomalous Year 1 maintenance costs considered over a number of years.
7. [Line 15 – Other]
One third of the internet and cable cost is attributed to the Rental Unit, in the amount of \$786.65.
8. [Value of investment in the property]
The taxed assessed value of the dwelling is \$175,500.00 and the amount attributed to the Rental Unit is \$67,041.00 (38.2%). There is no mortgage deduction as the loan will be paid off by March 2024.

The Officer notes that the only evidence submitted by the Landlord regarding the value of the investment in the Rental Unit was the tax assessed value.

Analysis

- [22] The factors for determining whether a rent increase is permitted above the allowable annual percentage are contained in subsections 50(3) and (4) of the *Act* and section 4 of the *Residential Tenancy Regulations*, EC269/23 (the “*Regulations*”), which state as follows:

(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.*

(4) *The Director may also consider*

- (a) *any other factor considered relevant by the Director; and*
- (b) *any other factor prescribed in the regulations.*

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.*

[23] The Landlord has the burden of proof to establish his claim for a rent increase above the 2024 allowable annual percentage.

Review of Factors

[24] After making the adjustments in the Revised Statement, the Landlord would be making a 6.7% return on investment at the current rent. The Landlord would make a 7.1% return on investment with the allowable 3.0% rent increase and a 7.5% return with a 6.0% rent increase.

[25] These return amounts differ from the Statement submitted by the Landlord (-5.59% for Year 1) because the entire dwelling expenses were included instead of apportioned amounts.

[26] Also, in the Revised Statement many of the Landlord's maintenance costs have been considered over a number of years because Hurricane Fiona caused anomalous expenses that will not occur annually.

[27] The Landlord's costs regarding fuel, water/sewer and insurance have increased. The Landlord also incurred significantly higher maintenance costs in Year 1 of the Statement, as noted above. However, these increased operating expenses and capital expenditures are reflected in the Revised Statement expenses and the Landlord's calculated return on investment.

[28] In Order LR23-80 the Island Regulatory and Appeals Commission stated the following at paragraph 46 regarding return on investment:

*"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.** A lower rate of 4% has been used when the Landlord is using a blend of the tax assessed value and an appraisal done for the Landlord's benefit. In the present case, the Landlord has submitted an appraised value which was done for the Estate of the party that conveyed the property to the Landlord, and which was accepted for income tax capital gain purposes by Canada Revenue Agency. The Commission finds that this type of valuation is substantially equivalent to a recent purchase price and therefore finds that a ROI of up to 7% is reasonable."*

[Emphasis added]

[29] Based upon the evidence presented, the Landlord would be making a reasonable return on investment (7.1%) with solely the allowable annual percentage increase of 3.0%.

[30] Generally speaking, a tenant whose rent increased above the allowable annual percentage would not expect another Rental Office hearing the following year regarding an additional rent increase. The Landlord received a 6.0% rent increase in 2023, being 6.0% above the 2023 allowable annual 0.0%. Therefore, both the rent history of the Rental Unit and the Tenant's expectation that an increase will remain at or below the allowable annual percentage both weigh against the additional rent increase sought.

[31] The factor in the *Regulations* is not relevant in this case.

- [32] The Officer has considered the factors, as described above, and finds that the evidence presented does not support an additional rent increase above the allowable annual percentage for 2024. The Landlord is permitted to increase the rent by solely 3.0%

Conclusion

- [33] The Application is denied.
- [34] The rent for the Rental Unit will increase by solely the allowable annual percentage for 2024 of 3.0%, with the monthly rent being \$889.00 as of the effective date below.
- [35] **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

1. The maximum allowable monthly rent for the Rental Unit is \$889.00 as of March 1, 2024.

DATED at Charlottetown, Prince Edward Island, this 12th day of January, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

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

Rent	Current	Proposed (6%)	Allowed (3%)
Income (Line 1)	\$10,356.00	\$10,980.00	\$10,668.00
Arrears (Line 2)	(\$103.56)	(\$109.80)	(\$106.68)
Net Income (Line 3)	\$10,252.44	\$10,870.20	\$10,561.32
Expenses			
1st Mortgage (Line 4)	\$0.00	\$0.00	\$0.00
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$1,622.44	\$1,622.44	\$1,622.44
Water & Sewer (Line 7)	\$241.78	\$241.78	\$241.78
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$572.09	\$572.09	\$572.09
Property Tax (Provincial) (Line 10)	\$555.45	\$555.45	\$555.45
Property Tax (Municipal) (Line 11)	\$374.70	\$374.70	\$374.70
Management Fee (Line 12)	\$517.80	\$549.00	\$533.40
Maintenance Fee (Line 13)	\$871.74	\$871.74	\$871.74
Capital Expenditures (Line 14)	\$243.60	\$243.60	\$243.60
Other (Line 15)	\$786.65	\$786.65	\$786.65
Total Expenses	\$5,786.25	\$5,817.45	\$5,801.85
Annual Net Profit	\$4,466.19	\$5,052.75	\$4,759.47
 Value of Investment	 \$67,041.00	 \$67,041.00	 \$67,041.00
Net Profit	\$4,466.19	\$5,052.75	\$4,759.47
Return on Capital Investment	6.7%	7.5%	7.1%

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.