

## Introduction

- [1] On December 15, 2023, the Landlord submitted 2 *Landlord Applications to Request Additional Rent Increase* (Form 9s) (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 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 Applications disclose the current rents, proposed rents and the effective dates as listed:

<u>Unit</u>	<u>Current Rent</u>	<u>Proposed Rent</u>	<u>Effective Date</u>
1	\$1,200.00	\$1,272.00	April 1, 2024
2	\$1,023.00	\$1,084.00	April 1, 2024

- [3] On January 24, 2024, 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 February 15, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A Landlord Representative and the Tenant in Unit 1 participated.

## Issue to be Decided

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

## Summary of the Evidence

- [6] The Landlord submitted 66 pages of documents into evidence to support the Applications and the Statement. On February 29, 2024, the Landlord submitted a letter from a RE/MAX realtor (“K.F.”) which stated K.F. viewed the units at the Residential Property and based on the current market conditions the value of each unit would be \$160,000.00 per unit, totaling \$320,000.00 for the entire property.

### Landlord’s Evidence and Submissions

- [7] The Landlord testified that expenses for the Residential Property have been increasing and rents have not increased to keep up with the rise in expenses. The Landlord stated the current rents are low and need to be increased. He stated the roof of the property was replaced in 2023.

### Tenant’s Evidence and Submissions

- [8] The Tenant questioned some of the expenses submitted by the Landlord. The Tenant stated some of the submitted invoices are for other properties or do not have any details on them. She stated she is opposed to the rent increase as the Landlord increased the Tenant’s rent last year by \$112.00 per month.

## Adjustments to the Statement

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

1. **[Line 1 – Rental income]**

The Landlord disclosed the rental income for the Residential Property on the Statement as \$26,041.00. The additional rent increase would increase the rental income to \$28,272.00.

2. **[Line 13 – Maintenance Fee]**

The Landlord listed Line 13 as \$7,825.34. The Officer has reviewed all the invoices and receipts which relate only to the Residential Property. The Officer notes that \$2,050.10 for door replacements and \$3,001.50 for insulation should be included in capital expenditures. These items are moved to Line 14. The total maintenance fee is adjusted to \$2,363.24.

3. **[Line 14 – Capital Expenses]**

The Landlord listed Line 14 as \$1,295.00. The Officer has added the items moved from Line 13 to Line 14 and gives each item a 20-year life expectancy. Line 14 is adjusted to \$1,547.58.

4. **[Value of investment in the property]**

The Landlord submitted a letter from a realtor which stated the market value of the Residential Property is \$320,000.00 as of February 29, 2024. The Officer notes that the tax assessed value of the entire property is low in comparison at \$234,200.00 and the property was purchased in 1977 for \$37,000.00 which does not reflect the current value of the property. Based on the best evidence available, the Officer finds the value of the property to be \$320,000.00.

## Analysis

[10] The Applications are made in accordance with section 75 of the *Act* and are pursuant to subsection 50(1). When deliberating on the Applications, the Officer must consider the factors outlined in subsections 50(3) and (4) of the *Act* and section 4 of the *Residential Tenancy Act 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 Applications require 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 and convincing evidence to establish their request.

**Factors**

- [12] Regarding clause 50(3)(a), the Landlord provided the rents for the Residential Property over the past three years.
- [13] Regarding clause 50(3)(b), the Landlord provided numerous documents into evidence including: invoices, receipts, and summary financial statements to assist in establishing a change in operating expenses over the past three years.
- [14] Regarding clause 50(3)(c), the Statement's income and expenses disclose that the Landlord currently yields a 1.7% 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 yield a 2.4% return.
- [15] Regarding clause 50(3)(d), the evidence establishes that the last rent increases were in April 2023. The Tenant objected to the additional rent increase as rents for the Residential Property were increased by 10% last year.
- [16] The Residential Property was not purchased in the past 12 months. The Residential Property does not fit into the *Regulations* additional factor for consideration.
- [17] 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 (disclosed in the Statement). Specifically, the Officer references an increase in fuel and insurance expenses. Further, with an additional increase, the Landlord would see a 2.4% return on investment, below what is considered a reasonable return for rental property.

[18] The Island Regulatory and Appeals Commission noted in Order LR23-80:

*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.*

[19] The factors weigh in favour of the Landlord's additional rent increase. Therefore, the Applications are allowed.

[20] The Landlord is permitted to increase the rents by the annual allowable set by the Director in the amount of 3% for 2024 and the Landlord is permitted to increase the rent by an additional 3% on the effective date set below. A total rent increase of 6% is allowed.

### Conclusion

[21] The Applications are allowed.

[22] **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 Applications are allowed.
- B. The maximum allowable rent for the Residential Property is as follows:

<u>Unit</u>	<u>Rent</u>	<u>Effective Date</u>
1	\$1,272.00	April 1, 2024
2	\$1,084.00	April 1, 2024

**DATED** at Charlottetown, Prince Edward Island, this 13th day of March, 2024.

(sgd.) Mitchell King

Mitchell King  
Residential Tenancy Officer

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

	<u>2023</u>	<u>Proposal</u>	<u>Allowed</u>
<b><u>Income</u></b>			
Rental Income at 100% (Line 1)	\$26,041.00	\$28,272.00	\$28,272.00
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<b><u>Net Income before expenses (Line 3)</u></b>	<b><u>\$26,041.00</u></b>	<b><u>\$28,272.00</u></b>	<b><u>\$28,272.00</u></b>
<b><u>Expenses</u></b>			
1st Mortgage Interest (Line 4)	\$0.00	\$0.00	\$0.00
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$6,832.24	\$6,832.24	\$6,832.24
Water & Sewer (Line 7)	\$649.55	\$649.55	\$649.55
Electricity (Line 8)	\$459.33	\$459.33	\$459.33
Insurance (Line 9)	\$3,157.00	\$3,157.00	\$3,157.00
Property Tax (Provincial) (Line 10)	\$2,168.00	\$2,168.00	\$2,168.00
Property Tax (Municipal) (Line 11)	\$1,878.56	\$1,878.56	\$1,878.56
Management Fee (Line 12)	\$1,302.05	\$1,302.05	\$1,302.05
Maintenance Fee (Line 13)	\$2,363.24	\$2,363.24	\$2,363.24
Capital Expenditures (Line 14)	\$1,547.58	\$1,547.58	\$1,547.58
Other (Line 15)	\$380.00	\$380.00	\$380.00
<b><u>Total Operating Expenses (Line 16)</u></b>	<b><u>\$20,737.55</u></b>	<b><u>\$20,737.55</u></b>	<b><u>\$20,737.55</u></b>
<b>Net Profit or (Loss) (Line 17)</b>	<b>\$5,303.45</b>	<b>\$7,534.45</b>	<b>\$7,534.45</b>
<b>Value of Investment in Property</b>	<b>\$320,000.00</b>	<b>\$320,000.00</b>	<b>\$320,000.00</b>
<b>Operating Income (Line 17)</b>	<b>\$5,303.45</b>	<b>\$7,534.45</b>	<b>\$7,534.45</b>
<b>Return on Investment (ROI)</b>	<b>1.7%</b>	<b>2.4%</b>	<b>2.4%</b>

## 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.