

Introduction

- [1] On January 5, 2024 the Landlord filed (6) six *Landlord Application to Request Additional Rent Increase* (Form 9s) (the “Applications”) dated December 29, 2023 with the Residential Tenancy Office (the “Rental Office”), pursuant to clause 50(1) of the *Residential Tenancy Act* (the “Act”).
- [2] The Applications seek rent increases above the annual allowable guidelines established by the Director of Residential Tenancy (the “Director”), pursuant to clause 49(2) of the *Act*. The Applications provide the current rents, proposed rents and the effective dates as listed below.

Unit #	Current Rent	Proposed Rent	Effective Date
1	\$530.00	\$715.00	April 1, 2024
2	\$530.00	\$715.00	April 1, 2024
3	\$530.00	\$715.00	April 1, 2024
4	\$530.00	\$715.00	April 1, 2024
5	\$530.00	\$715.00	April 1, 2024
6	\$530.00	\$715.00	April 1, 2024

- [3] On February 13, 2024 the Landlord submitted into evidence (2) two *Landlord Statement of Income and Expenses* (Form 10s). One of the statements disclosed the past three years of income and expenses for the former owner of the property. The other statement provided a combination of the actual and projected income and expenses. The Officer allowed the first statement to be provided into the evidence for a contextual benefit; however, the second statement with the actual and projected income and expenses is the primary Form 10 used in the calculations (the “Statement”).
- [4] All documents (including the Applications, the *Tenant Notice of Annual Allowable Rent Increases* (Form 8s), the *Notice of Hearing*, and the *Evidence Package*) were properly served in accordance with clause 100(1) of the *Act*.
- [5] On February 29, 2024 at 1:00 p.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord appeared at the hearing, and the Tenants did not participate at the hearing.

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 56-pages of documents into evidence to support and assist the Applications and the Statement.

Landlord’s Evidence and Submissions

- [7] The Landlord testified that he purchased the 6-unit building (the “Residential Property”) in December 2023. The Landlord testified that the rents are very low, and that the last rent increase was in October 2022. The Landlord testified that an additional rent increases are required to help cover the operating expenses for the Rental Units.
- [8] The Landlord testified that he is concerned that if maintenance expenses, property tax, and other expenses such as snow removal continue to increase, he will not be able to provide the appropriate upkeep required for the Rental Units. The Landlord testified that this is a long term investment, and that he may not get the full rent increases, however, some increases are needed to maintain proper maintenance and a reasonable return on his investment.

Tenants' Evidence and Submissions

- [9] The Tenants did not participate at the hearing, and did not provide any written submissions and/or documents into evidence.

Adjustments to the Statement

- [10] The Officer's adjustments to the Statement are provided below, and are reflected in Appendix "A" of this decision.

1. **[Line 1 – Gross Rental Income]**

The current annual gross income for the Residential Property is \$38,160.00. With the proposed additional rent increase, the gross income would increase to \$51,480.00. Further, with the maximum additional rent increase, and the allowable rent increase (6% total) for 2024, the gross income for 2024 would be \$40,464.00.

2. **[Line 2 – Vacancy / Arrears Losses]**

The Landlord testified that Unit 2 has been vacant since he purchased the Residential Property. Renovations and maintenance have been on-going, and Unit 2 has been re-rented starting April 1, 2024.

The Landlord disclosed that the current vacancy loss is (\$1,590.00), representing December 2023, January 2024 and February 2024 rent. The projected loss due to vacancy will be (\$530.00) for March 2024.

3. **[Line 3 – Net Rental Income]**

The current annual net income for the Residential Property is \$36,570.00. With the proposed additional rent increase, the net income would increase to \$50,950.00. Further, with the maximum additional rent increase, and the allowable rent increase (6% total) for 2024, the net income for 2024 would be \$39,934.00.

4. **[Line 4 – Interest Payments on First Mortgage]**

The Landlord disclosed that his interest payments on the only mortgage is a fixed rate of 7.29% over 25 years with a 5-year renewal. The annual interest expense is \$16,239.51. The Landlord testified that he made a pro-rated payment in December 2023 due to the purchase date.

5. **[Line 6 – Fuel Expenses]**

The Landlord disclosed \$2,997.01 in the Statement, however, admitted that this number was based on past expenses provided by the previous owner and Irving. The Landlord submitted into evidence a consumption report from Irving Energy showing the liters used and the approximate value from January 1 to December 31, 2023. The Landlord admitted that he has not incurred any expenses yet for fuel since taking ownership of the Residential Property.

The Officer notes that clause 5(b) of the *Residential Tenancy Regulations* (the "Regulations") defines "operating costs" as "excludes depreciation costs, but includes the basic expenditures necessary for the operation of the building such as fuel, water, electricity, insurance, taxes, maintenance, management fees, staff wages or the value of a rental unit made available in lieu of wages, and financing costs of interest on mortgages registered against the property."

The Officer interprets clause 5(b) to provide the Landlord with a list of expected expenses for the purposes of the Application. Providing the Officer, the ability to assess any *changes* in the operating expenses from year-to-year, and to assess the return on investment the Landlord may be receiving from the Residential Property. The Officer concludes that the Landlord has provided a detailed report for the 2023 year to determine the consumption and value of the expense as it relates to fuel. Further, the Officer finds no evidence to suggest that there will be any significant changes in the consumption of fuel used for the upcoming year. The Officer allows the \$2,997.01 expense for Line 6.

6. **[Line 8 – Electricity Expenses]**

The Landlord disclosed \$7,290.33 for electricity costs. However, the Landlord admitted that this was a projected expense based on the last three years provided by the previous owner. The Landlord provided Maritime Electric Customer Statements, and invoices. The Landlord further testified that he has received two Maritime Electric invoices for the months of January-February 2024 in the amount of \$604.52 and February-March 2024 in the amount of \$773.84.

For the same reasons as stated above for Line 6, the Officer permits the expense as there is sufficient evidence to establish the expected expenses for electricity in 2024. The Officer adjusts Line 8 to include the additional invoices for a total amount of \$8,668.69

7. **[Line 9 – Insurance Expenses]**

The Landlord disclosed \$2,413.00 in the Statement for insurance expenses. The Landlord provided the Commercial Policy Declaration from his insurance provider, assisting to establish the annual premium expense.

8. **[Line 10 – Property Tax Expenses]**

The Landlord disclosed \$2,409.00 in the Statement for the cost of property tax. The Landlord admitted that this was the 2023 property tax expense for the former owner. The Officer notes that at the time of the hearing, the 2024 property taxes were not available to the Landlord for evidence. The Officer finds that Line 10 is \$2,409.00.

9. **[Line 13 – Maintenance Expenses]**

The Landlord disclosed \$2,500.00 in the Statement for maintenance and general repairs. The Landlord admitted that this was a projected expense based on a combination of factors. The Landlord testified that he relied on the past maintenance expenses of the former landlord. Further, the Landlord provided that his \$2,500.00 projection was a middle-ground between two market-based rules. The Landlord submitted into evidence that common practice is to estimate 1% of the purchase price for maintenance costs (\$3,500.00), and also the practice of the \$1.00 per square foot rule (\$1,728.00). The Landlord argued that \$2,500.00 projection is a reasonable middle ground between these two rules. The Landlord provided website links as sources to his evidence.

The Officer finds that clause 1(b) of the *Regulations* defines “maintenance” as “includes repairs to plumbing, electrical or heating systems, appliances, and minor structural repairs, but does not include capital expenditures or expenditures related to replacement of capital assets.”

The Officer concludes that without any maintenance actually being complete, and in the absence of any documentary evidence (such as receipts, invoices, and/or quotes) for repairs required, the Officer cannot determine an appropriate amount to expense for maintenance. Line 13 is adjusted to \$0.00.

10. [Line 14 – Capital Expenditures]

The Landlord disclosed \$660.00 in the Statement for capital expenditures. The Landlord testified that it cost \$6,600.00 to do renovations to Unit 2's floors, ceiling and bathroom tub. The Landlord used a (10) ten-year life expectancy. The Landlord testified that the work is almost all complete, however, there was unexpected water issues, which the expenses are yet known. The Officer allows the \$660.00 for the work currently complete in the Rental Unit.

11. [Line 15 – Other Expenses]

The Landlord disclosed \$5,760.33 in the Statement for other expenses, which include snow removal, lawn care, cleaning, septic cleaning and mortgage principal expenses.

The Landlord provided invoices and receipts to assist in establishing the expenses. The Officer deducts the principal mortgage expenses as the Landlord is not permitted to include such expenses in the Statement, for the purposes of the Application. The Officer adjusts Line 15 to \$2,542.00.

12. [Value of Investment in the Residential Property]

The Landlord disclosed the value of the investment in the Residential Property to be \$311,600.00. This is the purchase price from December 2023 plus the capital expenditures completed in Unit 2. The Officer deducts the outstanding mortgage in the amount of \$220,000.00, and therefore, the value of the investment for the purposes of the Applications is \$91,600.00.

Analysis

[11] The Applications were made pursuant to clauses 50(1) and 75 of the *Act*. When deliberating on the Applications, the Officer must consider the factors outlined in clauses 50(3) and (4) of the *Act*, and clause 4 of the *Residential Tenancy Regulations* (the "*Regulations*"). The relevant law is as follows:

50. Request for additional increase

(1) *A landlord may request the Director's approval of a rent increase in an amount that is greater than the amount calculated under subsection 49(2) by making an application to the Director under section 75.*

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 guidelines.*

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.*

4. Request for additional increase

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.

- [12] The Applications require the Landlord to prove, on a balance of probabilities, that he is 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 his claim.

The Factors**Clause 50(3)(a)**

- [13] The Landlord provided the rents since he took ownership of the Residential Property. The rents have not increased since October 2022.

Clause 50(3)(b)

- [14] The Landlord submitted documents into evidence to assist in disclosing the operating expenses during the Landlord's ownership, along with the operating expenses over the past three years from the former owner.

Clause 50(3)(c)

- [15] After making the appropriate adjustments to the Statement's income and expenses, found in Appendix "A", the Landlord is currently yielding a 2.2% return on investment. With the inclusion of the annual allowable and the additional rent increase allowed for 2024, the Landlord's return on investment would increase to 4.4%. Further, the Officer notes that with a 32% additional rent increase, which the Landlord is seeking over a period of time, it would increase the Landlord's return on investment to 16.4%. This is based on the value of the Landlord's investment, the purchase price in 2023, minus the mortgage in the amount of \$91,600.00.

- [16] The Officer notes that the Island Regulatory and Appeals Commission (the "Commission") in Order LR23-80 made this comment as it relates to what is considered a reasonable return on investment:

44. *In previous orders of the Commission respecting additional rent increases under the former Rental of Residential Property Act, we used a guideline for a reasonable return on investment of between 4% and 7%, depending on the circumstances.*

Clause 50(3)(d)

- [17] In 2024 the annual guideline is 3%. The Tenants did not participate and/or did not provide submissions as it relates to their expectations. However, the evidence establishes that the last rent increase for the Rental Units was October 1, 2022. There was no evidence before the Officer to conclude that the Tenants have received an additional rent increase prior to or on October 1, 2022.

- [18] While clause 50(3)(d) must be considered, in the circumstances, the Officer must weigh this factor with the others when determining whether or not a rent increase is appropriate.

Clause 4 of the *Regulations*

- [19] The Residential Property was purchased by the Landlord in December 2023. This means that the Officer may consider that with the purchase of the Residential Property being within 12-months, it may not require a rent increase in order to achieve a reasonable return on investment.

Weighing of the Factors

- [20] After weighing and balancing all of the factors set out in the *Act* and the *Regulations*, the Officer concludes that a 6% increase in rent is warranted. This is made up of a 3% additional rent increase, plus the 3% annual amount allowed for 2024.
- [21] The Officer finds that some of the factors weigh in favour and some weigh against the Applications. The Officer notes that the Landlord purchased the Residential Property in December 2023, and this fact triggers a consideration of the factor prescribed in the *Regulations*, which weighs against the Applications. Further, the Landlord was unable to provide sufficient evidence that his operating expenses have *changed*. This is because the Landlord has only owned the Residential Property for a brief time. However, the evidence does suggest that the former landlord's expenses for the Residential Property have increased over the previous three years.
- [22] The rents are below market value, and have not been increased since October 2022. Further, the Landlord's return on investment is below what would be considered "reasonable". These factors weigh in favour of the Applications.
- [23] The Officer finds that a 6% rent increase is fair, based on the set of facts and evidence put forward. The Officer notes that the Landlord is receiving a modest rent increase, but the maximum amount allowed for this year. Further, the Landlord may have the next 12-months to gather an accurate and up to date account of his operating expenses, and if necessary, the Landlord may reapply at a later date for a consideration of another additional rent increase. Therefore, the Application is allowed, in part.

Conclusion

- [24] The Application is allowed, in part.
- [25] **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*.**
- [26] **Order LD24-094** will be served to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

- A. The maximum allowable rents for the Residential Property is as follows:

Unit #	Current Rent	Effective Date
1	\$562.00	April 1, 2024
2	\$562.00	April 1, 2024
3	\$562.00	April 1, 2024
4	\$562.00	April 1, 2024
5	\$562.00	April 1, 2024
6	\$562.00	April 1, 2024

DATED at Charlottetown, Prince Edward Island, this 22nd day of March, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

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

	Current	Requested (35%)	2024 Increase (6%)
Rental Income			
Income (Line 1)	\$38,160.00	\$51,480.00	\$40,464.00
Arrears (Line 2)	(\$1,590.00)	(\$530.00)	(\$530.00)
Net Income (Line 3)	\$36,570.00	\$50,950.00	\$39,934.00
Expenses			
1st Mortgage (Line 4)	\$16,239.51	\$16,239.51	\$16,239.51
2nd Mortgage (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$2,997.01	\$2,997.01	\$2,997.01
Water & Sewer (Line 7)	\$0.00	\$0.00	\$0.00
Electricity (Line 8)	\$7,290.33	\$8,668.69	\$8,668.69
Insurance (Line 9)	\$2,413.00	\$2,413.00	\$2,413.00
Property Tax (Provincial) (Line 10)	\$2,409.00	\$2,409.00	\$2,409.00
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)	\$0.00	\$0.00	\$0.00
Capital Expenditures (Line 14)	\$660.00	\$660.00	\$660.00
Other (Line 15)	\$2,542.00	\$2,542.00	\$2,542.00
Total Expenses	<u>\$34,550.85</u>	<u>\$35,929.21</u>	<u>\$35,929.21</u>
Annual Net Profit	\$2,019.15	\$15,020.79	\$4,004.79
Value of Investment	\$91,600.00	\$91,600.00	\$91,600.00
Net Profit	\$2,019.15	\$15,020.79	\$4,004.79
Return on Capital Investment	2.2%	16.4%	4.4%

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.