

Introduction

- [1] On January 15, 2024 the Landlord filed (6) six *Landlord Application to Request Additional Rent Increase* (Form 9s) (the “Applications”) dated January 12, 2024 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
A	\$1,538.00	\$1,630.28	May 1, 2024
B	\$1,538.00	\$1,630.28	May 1, 2024
C	\$1,538.00	\$1,630.28	May 1, 2024
D	\$1,538.00	\$1,630.28	May 1, 2024
E	\$1,538.00	\$1,630.28	May 1, 2024
F	\$1,538.00	\$1,630.28	May 1, 2024

- [3] On February 22, 2024 the Landlord submitted into evidence a *Landlord Statement of Income and Expenses* (Form 10) (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 March 5, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). A representative for the Landlord appeared (the “Representative”), and none of the Tenants participated 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 54-pages of documents into evidence to support and assist the Applications and the Statement. The Landlord purchased the Rental Units in 2021, the Rental Units are a 6-unit building (the “Residential Property”).

Landlord’s Evidence and Submissions

- [7] The Representative testified that the operating costs for the Rental Units have increased. The Representative testified that the Landlord is entitled to a reasonable return on investment. The Representative admitted that the Rental Units had an additional rent increase last year.
- [8] The Representative argued that the additional rent increase was permitted by the Rental Office under the former Act (the *Rental of Residential Property Act*). The Representative argued that the change in the law from the previous rent increases, and the proposed rent increases, should not negatively impact the Application.

Tenants’ Evidence and Submissions

- [9] The Tenants did not participate at the hearing, and did not provide 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 Income]**

The current annual income for the Residential Property is \$90,696.00. The Representative provided context that this calculation does not include income from Unit "D" from May 2023 to May 2024 as Unit "D" was an Airbnb. The Representative testified that Unit "D" will no longer be rented as an Airbnb, and will be returned to a long term rental. The Representative also testified that the income includes the additional rent increase from last year. A copy of the rent ledger was submitted into evidence.

The additional rent increase would increase the gross rent income to \$117,380.16.

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

The Landlord disclosed that the interest paid on the first mortgage is \$54,035.31. The first mortgage is a floating rate over 25 years. The first mortgage was used to finance the majority of the purchase of the Residential Property.

3. **[Line 5 – Interest Payments on Second Mortgage]**

The Landlord disclosed that the interest paid on the second mortgage is \$17,965.81. The second mortgage is a floating rate over 25 years. The second mortgage was used to finance the remaining balance of the purchase of the Residential Property.

4. **[Line 7 – Water and/or Sewerage Charges]**

The Landlord disclosed \$4,121.46 in the Statement for this expense. The Representative provided context that this is a flat rate provided by the Municipality.

5. **[Line 8 – Electricity]**

The Landlord disclosed \$3,582.18 in the Statement for this expense.

6. **[Line 9 – Insurance]**

The Landlord disclosed \$2,605.67 in the Statement for this expense. The Representative testified that this is 1/3 of the total expense for insurance over three buildings owned by the Landlord. The Representative testified that the insurance premiums have increased for 2024, and the cost associated with the Residential Property will increase to \$2,984.00.

7. **[Line 10 & 11 – Property Tax]**

The Landlord disclosed \$6,977.00 for provincial property tax, and \$5,162.98 for municipal property tax in the Statement.

8. **[Line 12 – Management fees]**

The Landlord disclosed \$6,348.72 in the Statement for management fees. The Representative testified that the property management is contracted to another company.

The Officer notes that clause 1(c) of the *Residential Tenancy Regulations* (the “*Regulations*”) defines “**management fee**” as *the actual cost of the management fee or 5 per cent of the gross rental income for the previous year, whichever is the lesser*. The Officer finds that the disclosed amount is above 5 per cent of the gross rental income. The expense is adjusted to reflect 5 per cent of gross rental income.

9. **[Line 13 – Maintenance]**

The Landlord disclosed \$11,750.75 in the Statement for maintenance. The Representative testified that this expense includes: snow removal, lawn care, general repairs and rodent remediation.

10. **[Line 15 – Other expenses]**

The Landlord disclosed \$1,278.00 in the Statement for other expenses. The Representative testified that this expense is the Island Waste Management Fee.

11. **[Value of Investment in the Residential Property]**

The Landlord disclosed the value of the investment in the Residential Property to be \$1,040,000.00. The Representative testified that this represents the purchase price in 2021. The Landlord submitted an appraisal report into evidence dated June 9, 2023. Landmark Valuation values the Residential Property at \$1,360,000.00. The Officer deducts the outstanding mortgage in the amount of \$1,039,043.89, and therefore, the value of the investment for the purposes of the Applications is \$320,956.11.

Analysis

[11] The Applications were made pursuant to clause 50(1) and 75 of the *Act*. When deliberating on the Applications, the Officer must consider the factors prescribed in clauses 50(3) and (4) of the *Act*, and clause 4 of 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 it 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 its claim.

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

- [13] The Landlord provided the rents for the previous three years for the Rental Units. The rents were last increased May 1, 2023.

Clause 50(3)(b)

- [14] The Landlord submitted documents into evidence to assist in establishing the operating expenses over the past three years as disclosed on the Statement. In the disclosed three years, the operating expenses for the Residential Property have changed, increasing, specifically in the interest payments on the first and second mortgage, water and sewerage, electricity, property tax, and maintenance expenses.

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 not seeing a 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 1.3%.

- [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 Residential Property was May 1, 2023. The rent increase was permitted by the Rental Office, through application, under the former Act. With an approval of the Applications, the Tenants would see two rent increases above the annual guidelines in two years.

- [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 2021. This means that the Officer does not have to consider this factor in the analysis, as it does not apply.

Weighing of the Factors

- [20] The Officer concludes that the Landlord is entitled to a 3% additional rent increase, including the annual allowable for 2024 for a total increase of 6%. In coming to this conclusion, the Officer has balanced the factors and weighed the evidence submitted by the Landlord.
- [21] The Officer finds that the Landlord provided three years of expenses and operating costs for the Residential Property. The evidence establishes that the operating expenses have *changed* over the past three years, and have increased. Further, the Officer notes that the Landlord is currently operating at a financial loss, and not seeing a return on its investment. With the additional rent increase, the Landlord's return on investment would be well below what is considered "reasonable". However, the Officer notes that the Landlord was approved by the Rental Office in 2023 for an additional rent increase. Despite the Tenants providing testimony and/or submissions on the matter, the Officer finds that the Tenants would not expect back-to-back rent increases above the annual guidelines.
- [22] When balancing and weighing the factors with this specific set of facts, and evidence, the Officer finds that the factors weigh enough in favour of the Landlord to approve a 3% additional rent increase. The Officer finds that the increased operating expenses, financial demands and that the Residential Property is currently operating at a loss, outweighs the Tenants' expectation that their rent increase will remain within the annual guidelines. Therefore, the Applications are allowed.

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.**
- [25] **Order LD24-101** 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
A	\$1,630.28	May 1, 2024
B	\$1,630.28	May 1, 2024
C	\$1,630.28	May 1, 2024
D	\$1,630.28	May 1, 2024
E	\$1,630.28	May 1, 2024
F	\$1,630.28	May 1, 2024

DATED at Charlottetown, Prince Edward Island, this 25th day of March, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

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

	Current	Requested (6%)	2024 Increase (6%)
Rental Income			
Income (Line 1)	\$90,696.00	\$117,380.16	\$117,380.16
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$90,696.00	\$117,380.16	\$117,380.16
Expenses			
1st Mortgage (Line 4)	\$54,035.31	\$54,035.31	\$54,035.31
2nd Mortgage (Line 5)	\$17,965.81	\$17,965.81	\$17,965.81
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$4,121.46	\$4,121.46	\$4,121.46
Electricity (Line 8)	\$3,582.18	\$3,582.18	\$3,582.18
Insurance (Line 9)	\$2,605.57	\$2,605.57	\$2,605.57
Property Tax (Provincial) (Line 10)	\$6,977.00	\$6,977.00	\$6,977.00
Property Tax (Municipal) (Line 11)	\$5,162.98	\$5,162.98	\$5,162.98
Management Fee (Line 12)	\$4,534.80	\$5,869.00	\$5,869.00
Maintenance Fee (Line 13)	\$11,750.00	\$11,750.00	\$11,750.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$1,278.00	\$1,278.00	\$1,278.00
Total Expenses	<u>\$112,013.11</u>	<u>\$113,347.31</u>	<u>\$113,347.31</u>
Annual Net Profit	(\$21,317.11)	\$4,032.85	\$4,032.85
Value of Investment	\$320,956.11	\$320,956.11	\$320,956.11
Net Profit	(\$21,317.11)	\$4,032.85	\$4,032.85
Return on Capital Investment	-6.6%	1.3%	1.3%

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.