

## Introduction

- [1] On January 15, 2024, 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 clause 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 clause 49(2) of the *Act*. The Application discloses the current rent, proposed rent, and the effective date as listed below.

Current Rent	Proposed Rent	Effective Date
\$2,320.00	\$2,460.00	May 1, 2024

- [3] On January 15, 2024, the Landlord submitted into evidence a *Landlord Statement of Income and Expenses* (Form 10) (the “Statement”).
- [4] All documents (including the Application, the *Tenant Notice of Annual Allowable Rent Increase* (Form 8), 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, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord participated representing herself, however no Tenants participated.

## Issue to be Decided

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

## Summary of the Evidence

### Landlord’s Evidence and Submissions

- [6] The Landlord submitted several pages of documents into evidence to support and assist the Application and the Statement. The Landlord testified that expenses for the Rental Unit, which is a stand-alone house, have been increasing and rent has not increased to keep up with the rise in expenses. The Landlord stated the current rent is below market value.

### Tenants’ Evidence and Submissions

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

## Adjustments to the Statement

- [8] 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 rental income for the Rental Unit is \$27,840.00. The additional rent increase would increase the rental income to \$29,510.00.

2. **[Line 12 – Management Fees]**

Management fees are capped at 5.0% of the gross rental income pursuant to subsection 1(c) of the *Residential Tenancy Act Regulations* (the “*Regulations*”). The Officer adjusts Line 12 to \$1,392.00 as the Landlord manages the property herself.

3. **[Line 14 – Capital Expenditures]**

The Landlord listed Line 14 as \$0.00 however the documentary evidence shows this line should include the capital expenses listed on page 2 of the Statement (\$7,718.33) which the Officer calculates with a life expectancy of 10 years: flooring, sump pump, weeping tile, and dishwasher. This should also include the replacement of the foundation (\$9,200.00) which the Officer calculates with a life expectancy of 20 years. Line 14 is adjusted to \$1,231.83.

4. **[Line 15 – Other]**

The Landlord added an additional line in the Statement titled “Internet.” The Officer moves the internet expenses to Line 15 and Line 15 is adjusted to \$930.78.

5. **[Value of the investment of the property]**

The value of the investment in the property is \$251,118.33 which is the 2018 purchase price plus the capital expenses. As of December 29, 2023, the outstanding principal amount of the mortgage was \$118,994.31. The Officer deducts the outstanding mortgage and therefore the value of the investment for the purposes of the Application is \$132,124.02.

## Analysis

[9] The Application is made pursuant to clauses 50(1) and 75 of the *Act*. When deliberating on the Application, the Officer must consider the factors outlined 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 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)*

- [10] The Application requires 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 claim.

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

- [11] The Landlord provided the rents for the past three years. The last rent increase was on May 1, 2022.

**Clause 50(3)(b)**

- [12] The Landlord submitted documents into evidence to assist in disclosing a change in the operating expenses and capital expenditures over the past three years. In the disclosed three years, the operating expenses for the Residential Property have changed, increasing, specifically in the interest payments on the first mortgage, water and sewerage, internet, and property tax.

**Clause 50(3)(c)**

- [13] After making the appropriate adjustments to the Statement's income and expenses, found in Appendix "A", the Landlord is currently yielding a 5.8% 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 7.0%.

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

- 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)**

- [15] In 2024 the annual guideline is 3%. The Tenants did not participate or provide submissions as it relates to their expectations. However, the evidence establishes that the last rent increase for the Rental Unit was May 1, 2022. There was no evidence before the Officer to conclude that the Tenants had received an additional rent increase after May 1, 2022.

- [16] 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**

[17] The Rental Unit was purchased by the Landlord in 2018. The Rental Unit was not purchased in the past 12 months and does not fit into the *Regulations* additional factor for consideration.

**Weighing of the Factors**

[18] 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.

[19] The Officer finds that the Landlord provided three years of expenses and operating costs for the Rental Unit. The evidence establishes that the operating expenses have *changed* over the past three years and some have increased. Further, the Officer notes that the Landlord is not seeing a reasonable return on its investment. With the additional rent increase, the Landlord's return on investment would be considered reasonable.

[20] 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 and financial demands outweighs the Tenants' expectation that their rent increase will remain within the annual guidelines. Therefore, the Application is allowed.

**Conclusion**

[21] The Application is 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.**

[23] This Order will be sent by email on April 2, 2024.

**IT IS THEREFORE ORDERED THAT**

A. The maximum allowable rent for the Rental Unit is as follows:

Rent	Effective Date
\$2,460.00	May 1, 2024

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

(sgd.) Mitchell King  
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Mitchell King  
Residential Tenancy Officer

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

	<u>Current</u>	<u>Requested (6%)</u>	<u>2024 Increase (6%)</u>
<b><u>Income</u></b>			
Rental Income at 100% (Line 1)	\$27,840.00	\$29,510.00	\$29,510.00
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<b><u>Net Income before expenses (Line 3)</u></b>	<b>\$27,840.00</b>	<b>\$29,510.00</b>	<b>\$29,510.00</b>
<b><u>Expenses</u></b>			
1st Mortgage Interest (Line 4)	\$7,048.70	\$7,048.70	\$7,048.70
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$2,293.22	\$2,293.22	\$2,293.22
Water & Sewer (Line 7)	\$715.08	\$715.08	\$715.08
Electricity (Line 8)	\$2,501.60	\$2,501.60	\$2,501.60
Insurance (Line 9)	\$943.00	\$943.00	\$943.00
Property Tax (Provincial) (Line 10)	\$1,774.00	\$1,774.00	\$1,774.00
Property Tax (Municipal) (Line 11)	\$1,011.30	\$1,011.30	\$1,011.30
Management Fee (Line 12)	\$1,392.00	\$1,392.00	\$1,392.00
Maintenance Fee (Line 13)	\$378.21	\$378.21	\$378.21
Capital Expenditures (Line 14)	\$1,231.83	\$1,231.83	\$1,231.83
Other (Line 15)	\$930.78	\$930.78	\$930.78
<b><u>Total Operating Expenses (Line 16)</u></b>	<b>\$20,219.72</b>	<b>\$20,219.72</b>	<b>\$20,219.72</b>
<b>Net Profit or (Loss) (Line 17)</b>	<b>\$7,620.28</b>	<b>\$9,290.28</b>	<b>\$9,290.28</b>
<b>Value of Investment in Property</b>	<b>\$132,124.02</b>	<b>\$132,124.02</b>	<b>\$132,124.02</b>
<b>Operating Income (Line 17)</b>	<b>\$7,620.28</b>	<b>\$9,290.28</b>	<b>\$9,290.28</b>
<b>Return on Investment (ROI)</b>	<b>5.8%</b>	<b>7.0%</b>	<b>7.0%</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.