

Introduction

- [1] On January 31, 2024 the Landlord filed a *Landlord Application to Request Additional Rent Increase (Form 9)* (the “Application”) with the Residential Tenancy Office (the “Renal Office”).
- [2] The Application was filed to request an additional rent increase above the annual allowable guidelines established by the Director of Residential Tenancy (the “Director”). The Application provides the current rent, proposed rent and the effective date as listed below.

Unit #	Current Rent	Proposed Rent	Effective Date
23	\$1,200.00	\$1,272.00	May 1, 2024

- [3] On January 31, 2024 the Landlord served the Application.
- [4] On February 15, 2024 the Rental Office mailed and electronically provided the parties the *Notice of Hearing*.
- [5] On April 8, 2024 the *Evidence Package* was electronically provided to the parties. The *Evidence Package* totals 68-pages of documents. The Landlord submitted additional evidence in the amount of one Excel spreadsheet with three tabs.
- [6] On April 8, 2024 the Landlord submitted into evidence a *Landlord Statement of Income and Expenses (Form 10)* (the “Statement”).
- [7] 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 to clause 100(1) of the *Residential Tenancy Act* (the “Act”).
- [8] On April 9, 2024 at 11:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord had a representative participate (the “Representative”), and the Tenant participated.

Issue to be Decided

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

Summary of the Evidence

- [9] The Landlord submitted 66-pages of documents into evidence to support and assist the Application and the Statement. The documents include the rent history, an income and expense breakdown, a submission on return on investment, an appraisal, mortgage details, and invoices and receipts. The Landlord purchased the Rental Unit on November 12, 2021. The Rental Unit is situated in one half of a side-by-side duplex (the “Residential Property”). The Application and the Statement reflect only the Rental Unit and ½ the income and expenses.

Landlord’s Evidence and Submissions

- [10] The Representative stated that the current income does not cover the expenses for the Rental Unit. The Representative stated that the financials for the Rental Unit do not provide a reasonable return on the Landlord’s investment. The Representative provided testimony for the income and the expenses found in the Statement. This testimony is detailed in the Statement of Adjustments.

Tenant's Evidence and Submissions

- [11] The Tenant did not submit any documents or written submissions into evidence. The Tenant stated that she understands the rent increase request. The Tenant stated that she received approximately a \$200.00 rent increase in 2022. The Tenant questioned if that former increase would be considered in the Application.

Adjustments to the Statement

- [12] The Officer's adjustments to the Statement, and the Representative's testimony and evidence regarding the Statement are provided below, and is reflected in the Appendix "A" of this decision.

The Statement: Income

- I. **[Line 1 – Gross Income]**
The current annual income for the Rental Unit is \$14,400.00. A copy of the rent history since 2016 was submitted into evidence. The requested additional rent increase would increase the gross rent income to \$15,264.00.
- II. **[Line 2 – Vacancy / Arrears]**
No vacancy or arrears were disclosed in the Statement.
- III. **[Line 3 – Net Income]**
The net income is the same as the gross income in Line 1. No changes required.

The Statement: Expenses

- IV. **[Line 4 – Interest Payments on First Mortgage]**
The Landlord disclosed \$1,638.37 in interest payments for the Rental Unit. The Landlord submitted mortgage documents into evidence to assist establishing the total expense deducted by ½ to represent the Rental Unit.
- V. **[Line 5 – Interest Payments on Second Mortgage]**
No interest payments for a second mortgage were disclosed in the Statement.
- VI. **[Line 6 - Fuel Expenses]**
No fuel expenses were disclosed in the Statement.
- VII. **[Line 7 – Water and/or Sewerage Charges]**
The Landlord disclosed \$471.06 in the Statement for water and/or sewerage expenses. The Landlord submitted Water & Sewerage Utility bills into evidence and deducted ½ to represent the Rental Unit.
- VIII. **[Line 8 – Electricity]**
No electricity expenses were disclosed in the Statement for 2023. However, the Statement does disclose a \$50.44 charge in 2022. The Representative stated that was likely an administrative fee charged.
- IX. **[Line 9 – Insurance]**
The Landlord disclosed \$1,077.00 in the Statement for insurance. The Landlord submitted insurance documents into evidence.

- X. **[Line 10 – Provincial Property Tax]**
The Landlord disclosed \$3,352.53 in the Statement for Property Tax. The Landlord submitted property tax documents into evidence. The Representative stated that Line 10 includes the total property tax expenses (provincial, municipal and Island Waste Management).
- XI. **[Line 11 – Municipal Property Tax]**
This expense is included in Line 10.
- XII. **[Line 12 – Management fees]**
The Landlord disclosed \$780.00 in the Statement for management fees. The Representative stated that the expense is higher, but understands the *Act* only permits 5% of gross rent income to be expensed for management fees.

The Officer notes that 5% of the gross rent income would be \$720.00. The Officer adjusts the management fee to reflect 5% of gross rent income.
- XIII. **[Line 13 – Maintenance]**
The Landlord disclosed \$2,220.14 in the Statement for maintenance. The Landlord submitted invoices and receipts into evidence. The Representative stated that the maintenance expenses include: a chimney being removed, sub pump maintenance, appliance repairs and general repairs.
- XIV. **[Line 14 – Capital Expenditures]**
The Landlord disclosed \$1,540.50 in the Statement for capital expenditures. The Landlord submitted invoiced and receipts into evidence. The Representative stated that the capital expenditures include: An electrical heater, an oil tank and boiler and repair to cracked foundation.
- XV. **[Line 15 – Other Expenses]**
The Landlord disclosed \$1,557.00 in the Statement for other expenses. The Landlord submitted invoices and receipts into evidence. The Representative stated that these expenses include snow removal, lawn care and general accounting expenses.
- XVI. **[Value of the Investment in the Rental Unit]**
The Representative stated that the Landlord purchased the Residential Property for \$433,000.00 in November 2021. The Representative stated that numerous renovations and capital expenditures were completed on the Residential Property, including the Rental Unit. The Representative stated that the outstanding mortgage on the Residential Property is \$100,817.93. The Landlord submitted into evidence an appraisal for the Residential Property valuing it at \$570,000.00. The appraisal is dated July 17, 2022.

The Officer finds that the best evidence submitted to value the Residential Property is the appraisal dated July 17, 2022. The Officer finds that the appraisal includes in its analysis the additional renovations and capital expenditures completed since the Landlord purchased the Residential Property in November 2021. The Officer halves the value of the Residential Property to reflect the value of the Rental Unit, and deducts half of the outstanding mortgage (\$50,408.97). The value of the investment is \$234,591.03.

Analysis

[13] The Application is made in accordance with clause 75 of the *Act*, and seeks an additional rent increase pursuant to clause 50(1) of the *Act*. When deliberating the Application, the Officer must consider the factors prescribed in clause 50(3) and (4) of the *Act* and clause 4 of the *Residential Tenancy Regulations* (the “*Regulations*”). The relevant law states:

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.

[14] The Landlord initiated the Application under the *Act*. The Landlord bears the onus of proving its claim on a balance of probabilities. The courts have interpreted this standard to mean that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claim(s).

The Factors

Clause 50(3)(a)

[15] The Landlord provided the rent history since 2016 for the Rental Unit. The rent for the Rental Unit was last increased May 1, 2022, and that increase was an approval for a greater than allowable rent increase, permitted by the Rental Office under the *Rental of Residential Property Act* (the “Former Act”).

Clause 50(3)(b)

- [16] The Landlord submitted documents into evidence to assist in establishing the operating expenses over the past three years as disclosed in the Statement. The operating expenses disclosed in the Statement show that there has been a change in the operating expenses each year.

Clause 50(3)(c)

- [17] After making the adjustments to the Statement's income and expenses, found in Appendix "A", the Landlord is currently yielding a 0.8% return on investment. With the inclusion of the annual allowable (3.0%) for 2024, and the additional rent increase requested (3.0%), the Landlord's return on investment would increase to 1.1%.
- [18] The Officer notes that the Island Regulatory and Appeals Commission (the "Commission") in Order LR23-80, paragraph 44 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)

- [19] The Tenant stated that she received a \$200.00 rent increase in May 2022. The Tenant did not provide adverse testimony against the Application and the Landlord's request for an additional rent increase. However, the Tenant did question whether or not the fact she did receive such a large rent increase in 2022 would be a consideration for the Application. The Tenant stated that she understood why the Landlord needed an additional rent increase, and was not disputing it.
- [20] The Officer notes that the rent increase on May 1, 2022 was permitted by the Rental Office, through application, under the Former Act. The Landlord was granted a \$200.00 rent increase based on the Former Act factors. The Officer finds that the Tenant received a \$200.00 rent increase, or a 20% rent increase in May 2022. The rent did not increase in 2023. The Landlord is now applying seeking the maximum additional rent increase under the Act (3.0%).
- [21] 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

- [22] The Residential Property was purchased by the Landlord in November 2021. This means that the Officer does not have to consider this factor in the analysis, as it does not apply.

Weighing the Factors

- [23] The Officer finds that the Landlord provided the rent history for the Rental Unit since 2016. The Officer notes that the rent did not increase from 2016 to April 2022. In May 2022, the rent increased by 20%, allowed by the Rental Office. The rent did not increase in 2023. The Officer finds that the Landlord provided three years of expenses and operating costs for the Rental Unit. The Officer is satisfied on the evidence that the Landlord's operating expenses have changed over the past three years, increasing from year-to-year. Further, the Officer finds that the Landlord is currently not making a reasonable return on its investment. With the additional rent increase in mind, the Landlord would still be below the range of what is considered "reasonable".

[24] When weighing and balancing the factors in this case, the Officer finds that despite the Tenant receiving a 20% rent increase in May 2022, the factors weigh in favour of the Landlord receiving an additional rent increase. The Officer concludes that the Landlord is entitled to an additional rent increase above the annual guidelines (3%), and is entitled to the annual allowable set for 2024 (3%), for a total rent increase of 6%. The Application is allowed.

Conclusion

[25] The Application is allowed. This Order will be served to the parties by e-mail.

[26] **TAKE NOTE: The Application, the documentary evidence and this decision contains sensitive financial information of the Landlord, and that the parties are required to preserve its confidentiality in accordance to clause 75(3) of the Act.**

IT IS THEREFORE ORDERED THAT

A. The maximum allowable rent for the Rental Unit is \$1,272.00 effective May 1, 2024.

DATED at Charlottetown, Prince Edward Island, this 19th day of April, 2024.

(sgd.) Cody Burke
Cody Burke
Residential Tenancy Officer

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

	Current	Requested (%)	2024 Increase (6%)
Rental Income			
Income (Line 1)	\$14,400.00	\$15,264.00	\$15,264.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$14,400.00	\$15,264.00	\$15,264.00
Expenses			
1st Mortgage (Line 4)	\$1,638.37	\$1,638.37	\$1,638.37
2nd Mortgage (Line 5)	NA	NA	NA
Fuel (Line 6)	NA	NA	NA
Water & Sewer (Line 7)	\$471.06	\$471.06	\$471.06
Electricity (Line 8)	NA	NA	NA
Insurance (Line 9)	\$1,077.00	\$1,077.00	\$1,077.00
Property Tax (Provincial) (Line 10)	\$3,352.53	\$3,352.53	\$3,352.53
Property Tax (Municipal) (Line 11)	NA	NA	NA
Management Fee (Line 12)	\$720.00	\$763.20	\$763.20
Maintenance Fee (Line 13)	\$2,220.14	\$2,220.14	\$2,220.14
Capital Expenditures (Line 14)	\$1,540.50	\$1,540.50	\$1,540.50
Other (Line 15)	\$1,557.00	\$1,557.00	\$1,557.00
Total Expenses	<u>\$12,576.60</u>	<u>\$12,619.80</u>	<u>\$12,619.80</u>
Annual Net Profit	\$1,823.40	\$2,644.20	\$2,644.20
Value of Investment	\$234,591.03	\$234,591.03	\$234,591.03
Net Profit	\$1,823.40	\$2,644.20	\$2,644.20
Return on Capital Investment	0.8%	1.1%	1.1%

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.