

## Introduction

- [1] On February 7, 2024 the Landlord filed a *Landlord Application to Request Additional Rent Increase (Form 9)* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). On February 26, 2024 the Landlord amended the Application.
- [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 follows:
- | Unit | Current Rent | Proposed Rent (6%) | Effective Date |
|------|--------------|--------------------|----------------|
| 67   | \$2,650.00   | \$2,809.00         | June 1, 2024   |
- [3] On February 26, 2024 the Landlord provided the Tenant a copy of the (amended) Application.
- [4] On February 26, 2024 the Landlord submitted into evidence a *Landlord Statement of Income and Expenses (Form 10)* (the “Statement”).
- [5] On March 4, 2024 the Rental Office mailed and electronically provided the parties the *Notice of Hearing*.
- [6] On April 18, 2024 the *Evidence Package* was electronically provided to the parties. The *Evidence Package* contains 50-pages of documents. After the hearing the Landlord and the Tenant submitted a point of clarification regarding the evidence.
- [7] All documents (including the (amended) 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 25, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord 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 50-pages of documents into evidence to support and assist the Application and the Statement. The documents include: Mortgage Statements, property tax expenses, Maritime Electric bills, insurance statements, invoices and receipts for maintenance and repairs, and invoices for water & sewerage.
- [10] The Landlord purchased the Rental Unit in 2018. 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, being 50% of the income and expenses.

## Landlord’s Evidence and Submissions

- [11] The Landlord stated that the rent for the Rental Unit has not increased in the last three years but the operating expenses have increased. The Landlord stated that an additional rent increase is required to assist in covering future expenses.

- [12] The Landlord provided testimony for the income and the expenses disclosed in the Statement. The Landlord submitted a point of clarification after the hearing, that the property tax disclosed in the Statement and is halved.

### **Tenant's Evidence and Submissions**

- [13] The Tenant did not submit any documents or written submissions into evidence. However, the Tenant provided oral submissions at the hearing in response to the Application. The Tenant stated that she is not disputing the additional rent increase, as she understands the Landlord's costs have increased. The Tenant stated that she would have preferred that the Landlord increase the rent each year by the allowable, rather than increase it all at once.
- [14] After the hearing, the Tenant submitted a point of clarification, questioning if the lawn care expense disclosed on the Statement was for the Residential Property or the Rental Unit.

### **Adjustments to the Statement**

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

#### **The Statement: Income**

- I. **[Line 1 – Gross Income]**  
The current annual income for the Rental Unit is \$31,800.00. The undisputed testimony is that the rent has not increased since May 2021. The requested additional rent increase would increase the gross rent income to \$33,708.00.
- II. **[Line 2 – Vacancy / Arrears]**  
No recent 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 \$8,986.00 in interest payments for the Rental Unit for 2023. The Landlord submitted his mortgage documents into evidence and stated this represents the expense allocated to the Rental Unit. The rate was fixed at 3.29000%.  
  
The Landlord stated that he renewed his mortgage as of December 29, 2023. The interest rate is fixed at 4.84000%. The annual interest payments for the Rental Unit for 2024 will increase to \$9,940.00. This represents 50% of the total expense.
- 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 \$784.00 in the Statement for water and/or sewerage expenses. The Landlord submitted Water & Sewerage Utility bills into evidence.

- VIII. **[Line 8 – Electricity]**  
The Landlord disclosed \$3,695.00 in the Statement for electricity expenses. The Landlord submitted into evidence numerous Maritime Electric bills.
  
- IX. **[Line 9 – Insurance]**  
The Landlord disclosed \$1,596.00 in the Statement for insurance. The Landlord submitted insurance documents into evidence.
  
- X. **[Line 10 – Provincial Property Tax]**  
The Landlord disclosed \$3,406.00 in the Statement for property tax. The Landlord submitted his mortgage statement documents into evidence, which disclose the expenses allocated to property tax. The Landlord stated that Line 10 includes the total amount for property tax allocated to the Rental Unit (provincial, municipal and Island Waste Management).
  
- XI. **[Line 11 – Municipal Property Tax]**  
This expense is included in Line 10.
  
- XII. **[Line 12 – Management fees]**  
No management fee was disclosed in the Statement.
  
- XIII. **[Line 13 – Maintenance]**  
The Landlord disclosed \$2,340.00 in the Statement for maintenance. The Landlord stated that this expense reflects general maintenance expenses, plumbing and repairs to the heating system in the Rental Unit. The Landlord submitted invoices and receipts into evidence.
  
- XIV. **[Line 14 – Capital Expenditures]**  
The Landlord did not disclose a dollar amount in the Statement. However, the Landlord stated that the Rental Unit had two capital expenditures: a solar system installation and appliances. The Landlord stated that it cost \$19,000.00 for the solar system install, and \$5,000.00 for the appliances. The Landlord did not provide documents into evidence related to the capital expenditures. The Tenant did not dispute the disclosed capital expenditures. Despite the lack of documentary evidence, the Officer accepts the Landlord’s oral submissions, and adjusts Line 14 to \$1,0933.33.

The Officer includes the capital expenditures in the Statement and reflect Line 14 as follows:

Item	Cost	Life Expectancy	Annual Write-off
Solar System	\$19,000.00	25-years	\$760.00
Appliances	\$5,000.00	15-years	\$333.33

- XV. **[Line 15 – Other Expenses]**  
The Landlord disclosed \$1,200.00 for other expenses which include lawn care and winter shoveling. The Landlord did not submit any documents into evidence in relation to these expenses. The Tenant did not dispute these expenses, however, questioned if the lawn care expense was for the Residential Property or the Rental Unit.

After the hearing, the Officer requested the Landlord provide additional information for the lawn care and winter shoveling expenses. The Landlord confirmed the \$1,200.00 expense was attributed to the Rental Unit only. The Landlord admitted to not having receipts, but could provide bank statements if required. The Landlord stated that \$450.00-\$500.00 is allocated for lawn services, while the remaining balance is for on-demand snow shoveling. The Officer accepts the Landlord’s submissions and point of clarification.

**XVI. [Value of the Investment in the Rental Unit]**

The Landlord stated that the purchase price and capital expenditures put into the Rental Unit since 2018 is \$315,000.00. The Landlord stated that the outstanding mortgage for the Rental Unit is (\$224,683.00). The Officer deducts the outstanding mortgage and finds that the value of the investment is \$90,317.00

**Analysis**

[16] 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 determining 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.*

[17] The Landlord initiated the Application under the Act. The Landlord bears the onus of proving his claim on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear, convincing and cogent evidence to support the claims.

## The Factors

### Clause 50(3)(a)

- [18] The Landlord provided that the rent for the Rental Unit has not changed since May 2021.

### Clause 50(3)(b)

- [19] The Landlord provided testimony, and submitted documents into evidence to assist in establishing the operating expenses over the past three years, as disclosed in the Statement. The Statement shows that there has been an increase in the operating expenses for the Rental Unit over the past three years.

### Clause 50(3)(c)

- [20] After making the adjustments to the Statement's income and expenses, as shown in Appendix "A", the Landlord is currently earning a 9.6% return on investment. With the inclusion of the annual allowable (3.0%) for 2024, and the requested additional rent increase (3.0%), the Landlord's return on investment would increase to 10.7%.
- [21] 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 for residential rental properties:

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.*

- [22] In a recent decision, the Commission in Order LR24-27 reiterated their findings as it relates to what a reasonable return on investment for a residential rental property is, they said:

46. *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...*

### Clause 50(3)(d)

- [23] The Act requires a consideration of the expectation of the tenant(s) that rent increases will remain within the annual guidelines. In 2023, the annual guideline increase was 0%, pursuant to clause 49(4) of the Act. In 2024, the annual guideline increase is 3.0%, set by the Director.
- [24] In this case, the parties acknowledge that the rent has not been increased since May 2021. However, the Officer notes that the only allowable rent increase missed was 1.0% in 2022. While clause 50(3)(d) must be considered, in the circumstances, the Officer finds, in the context of this matter, that it does not outweigh the other factors to be considered when determining an appropriate rent increase.

### Clause 4 of the Regulations

- [25] The Rental Unit was purchased by the Landlord in 2018. Therefore, this factor does not apply.

## Weighing the Factor for the Application

- [26] The Officer finds that the factors do not weigh in favour of an approved additional rent increase for the Rental Unit. In coming to this conclusion, the Officer has determined that there are factors and evidence that weigh against the requested increase. In particular:
- a) The only rent increase missed in the last three years was the 1.0% allowable in 2022. Further, the rent does include numerous utilities and services;
  - b) The Landlord submitted documentary evidence to assist in showing that the operating expenses for the Rental Unit have increased over the past three years. However, the evidence also suggests that the increase in expenses have not been significant year-to-year. The Officer does note that the Landlord's interest payments have increased for 2024, and that there is a strong likelihood that the Landlord's property tax will also increase in 2024;
  - c) The current rent rate in comparison to the operating expenses yields a return on investment of 9.6%, much higher than the 4% to 7% guideline which the Commission has determined as reasonable.
  - d) Approving an additional increase, while considering the operating expenses increasing in some areas while staying relatively consistent in others would increase the return to 10.7%, which is even higher than the Commission's guideline.
- [27] The Officer finds, after considering and weighing all the factors and evidence, that in this case, the factors weigh against the Landlord's position. The Officer concludes that the Landlord is not entitled to an additional rent increase. However, the Landlord may increase the rent by the annual allowable set for 2024 (3.0%). The Application is denied.

## Conclusion

- [28] The Application is denied.
- [29] The rent shall increase by the annual allowable set for 2024 (3.0%) as provided below.
- [30] This Order will be served to the parties by e-mail.
- [31] **TAKE NOTE: The Application, the documentary evidence and this Order 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 \$2,730.00 effective June 1, 2024.

**DATED** at Charlottetown, Prince Edward Island, this 1st day of May, 2024.

(sgd.) Cody Burke  
\_\_\_\_\_  
Cody Burke  
Residential Tenancy Officer

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

	Current	Requested (6%)	2024 Increase (3%)
<b>Rental Income</b>			
Income (Line 1)	\$31,800.00	\$33,708.00	\$32,760.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
<b>Net Income (Line 3)</b>	<b>\$31,800.00</b>	<b>\$33,708.00</b>	<b>\$32,760.00</b>
<b>Expenses</b>			
1st Mortgage (Line 4)	\$8,986.00	\$9,940.00	\$9,940.00
2nd Mortgage (Line 5)	NA	NA	NA
Fuel (Line 6)	NA	NA	NA
Water & Sewer (Line 7)	\$784.00	\$784.00	\$784.00
Electricity (Line 8)	\$3,695.00	\$3,695.00	\$3,695.00
Insurance (Line 9)	\$1,596.00	\$1,596.00	\$1,596.00
Property Tax (Provincial) (Line 10)	\$3,406.00	\$3,406.00	\$3,406.00
Property Tax (Municipal) (Line 11)	NA	NA	NA
Management Fee (Line 12)	NA	NA	NA
Maintenance Fee (Line 13)	\$2,340.00	\$2,340.00	\$2,340.00
Capital Expenditures (Line 14)	\$1,093.33	\$1,093.33	\$1,093.33
Other (Line 15)	\$1,200.00	\$1,200.00	\$1,200.00
<b>Total Expenses</b>	<b><u>\$23,100.33</u></b>	<b><u>\$24,054.33</u></b>	<b><u>\$24,054.33</u></b>
<b>Annual Net Profit</b>	<b>\$8,699.67</b>	<b>\$9,653.67</b>	<b>\$8,705.67</b>
<b>Value of Investment</b>	<b>\$90,317.00</b>	<b>\$90,317.00</b>	<b>\$90,317.00</b>
<b>Net Profit</b>	<b>\$8,699.67</b>	<b>\$9,653.67</b>	<b>\$8,705.67</b>
<b>Return on Capital Investment</b>	<b>9.6%</b>	<b>10.7%</b>	<b>9.6%</b>

**NOTICE**

**Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals 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.