

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On March 11, 2024 the Landlord filed a *Landlord Application to Request Additional Rent Increase (Form 9)* (the “Application”) with the Residential Tenancy Office (the “Rental Office”).
- [3] 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
582	\$1,300.00	\$1,378.00	June 1, 2024

- [4] On March 1, 2024 the Landlord hand-delivered to the Tenant the Application and the *Tenant Notice of Annual Allowable Rent Increase (Form 8)*.
- [5] On April 5, 2024 the Rental Office e-mailed and mailed a teleconference notice of hearing (the “Notice of Hearing”) to the parties.
- [6] On May 6, 2024 the Rental Office e-mailed a copy of the evidence package (the “EP”) to the parties. The EP contains 31 pages of documents submitted by the Landlord, along with a copy of the Notice of Hearing and the Application.
- [7] On May 6, 2024 the Tenant informed the Rental Office she was not disputing the Application, and did not wish to participate in the teleconference hearing.
- [8] On May 16, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord participated with a representative. The Tenant did not participate at the hearing.

Issue to be Decided

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

Summary of the Evidence

- [9] The Landlord submitted 28-pages of documents into evidence to support the Application and the Statement. The documents include: a copy of the *Form 8*, receipts and invoices.
- [10] After the hearing the Landlord submitted 5-pages of additional documents, at the request of the Officer. The additional documents included: mortgage disclosure statements, water and sewerage invoices, a 2022 Island Petroleum consumption report and 2024 property tax documents.
- [11] The Landlord purchased the Rental Unit on February 16, 2024. The Rental Unit is situated in half of a side-by-side duplex (the “Residential Property”). The Statement reflects the income and expenses for the Residential Property. The Officer adjusts the Statement in the Appendix “A” to reflect the income and expenses portioned to the Rental Unit.

Landlord’s Evidence and Submissions

- [12] The Landlord stated that to the best of his knowledge the rent did not increase in the last 12 months. The Landlord stated that an additional rent increase for the Rental Unit is reasonable because a lot of capital expenses, renovations and upgrades have been done to the Rental Unit. The Landlord stated that the work on the Rental Unit is ongoing.

Tenant's Evidence and Submissions

- [13] The Tenant did not submit any documents into evidence. The Tenant did not participate at the hearing.
- [14] At the request of the Officer, the Tenant confirmed in a written response that she moved into the Rental Unit in March 2020 and that the rent of \$1,300.00 per month did not change during her tenancy.

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 \$15,600.00. The requested additional rent increase would increase the gross rent income to \$16,536.00. The allowable 3% increase would be \$16,068.00.
- II. **[Line 2 – Vacancy / Arrears]**
The Statement disclosed (\$1,800.00) in rental arrears. The Landlord stated that the rental arrears were from the other unit in the Residential Property. The Officer finds that the rental arrears were not from the Rental Unit and cannot be used in the Statement. The Officer adjusts Line 2 to \$0.00.
- III. **[Line 3 – Net Income]**
The net income for the Rental Unit is the same as the gross income in Line 1.

The Statement: Expenses

- IV. **[Line 4 – Interest Payments on First Mortgage]**
The Statement disclosed \$17,917.00 for annual interest payments for the Residential Property. The Landlord submitted additional documents into evidence to establish the mortgage rate on a fixed rate of 5.540%.

The Officer adjusts the annual interest payments to represent the Rental Unit in the total amount of \$8,958.50.
- V. **[Line 5 – Interest Payments on Second Mortgage]**
No interest payments for a second mortgage were disclosed.
- VI. **[Line 6 - Fuel Expenses]**
The Statement disclosed \$5,250.00 for fuel expenses for the Rental Unit. The Landlord submitted additional evidence to show the 2022 consumption report for the Rental Unit.

The Officer adjusts the fuel expense to reflect the accurate expense disclosed in the evidence. Line 6 is adjusted to \$5,302.66.
- VII. **[Line 7 – Water and/or Sewerage Charges]**
The Statement discloses \$500.00 for water and sewerage charges for the Residential Property. The Landlord submitted additional documents to show the expense. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$250.00.

- VIII. **[Line 8 – Electricity]**
No electricity expenses were disclosed.
- IX. **[Line 9 – Insurance]**
The Statement disclosed \$1,250.00 for insurance. The Landlord stated this was the actual expense for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$625.00.
- X. **[Line 10/11 – Property Tax]**
The Statement discloses \$3,500.00 for property tax expenses. The Landlord stated that this was an estimate as the 2024 property tax documents were not released at the time of the hearing.

After the hearing, the Officer requested additional documents, including the 2024 property tax documents. The Landlord submitted the 2024 property tax documents which disclosed \$3,122.69 for property tax and Island Waste Management fees. The Officer adjusts the property tax expense to represent the Rental Unit in the amount of \$1,561.35.

- XI. **[Line 12 – Management fees]**
The Statement discloses \$1,800.00 for management fees. The Landlord stated that he does the property management himself.

Clause 1(c) of the *Residential Tenancy Regulations* (the “Regulations”) limit management fees for the purposes of the Application to the “actual cost of the management fee or 5 per cent of the gross rental income for the previous year, whichever is the lesser.”

In this case, 5% of the gross rental income would be the lesser. Therefore, the Officer adjusts Line 12 to reflect 5% of the gross rental income.

- XII. **[Line 13 – Maintenance]**
The Statement discloses \$2,500.00 for maintenance expenses for the Rental Unit. This includes general repairs, lawn care and snow removal.
- XIII. **[Line 14 – Capital Expenditures]**
The Statement discloses the annual write-off as \$5,500.00. The capital expenditures in the Statement reflect Line 14 as follows:

Item	Cost	Life Expectancy	Annual Write-off
Foundation Grade	\$15,000.00	20 years	\$750.00
Windows & Doors	\$32,500.00	20 years	\$1,625.00
Siding & Insulation	\$25,000.00	20 years	\$1,250.00
Electrical & HVAC	\$37,500.00	20 years	\$1,875.00

- XIV. **[Line 15 – Other Expenses]**
No other expenses were disclosed.
- XV. **[Value of the Investment in the Rental Unit]**
The Statement disclosed \$520,000.00 for the value of the property. The Landlord submitted that this reflects the purchase price plus the capital expenditures. The Landlord submitted that the outstanding mortgage is \$330,000.00.

The value of the property is halved to represent the Rental Unit less half the outstanding mortgage (\$260,000.00 minus \$165,000.00). Therefore, the value of the investment in the Rental Unit is \$95,000.00.

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 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 claim.

The Factors

Clause 50(3)(a)

[18] The Landlord did not submit documentary evidence to show the rent history for the Rental Unit. However, the Tenant in a written response submitted that she moved into the Rental Unit in March 2020. The Tenant submitted that the rent never increased during her tenancy.

Clause 50(3)(b)

- [19] The Landlord submitted that he purchased the Residential Property in February 2024, and disclosed some current expenses for the Residential Property. The current expenses include the annual interest payment for the mortgage, insurance, property tax, management fees, water & sewerage and the maintenance and capital expenditures costs. The Landlord did submit some expenses from the former landlord during the 2023 calendar year.

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 not making a return on investment. With the inclusion of the annual allowable rent increase (3%) and the requested additional increase (3%), the Landlord would still not see a return on his investment.
- [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 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 Officer finds that the Tenant confirmed by written response that since she moved into the Rental Unit in March 2020, the rent has remained at \$1,300.00.

Clause 4 of the Regulations

- [25] The Landlord purchased the Rental Unit in February 2024. The Officer may take this factor into consideration when making a determination on the additional rent increase. The Landlord submitted that since he purchased the Rental Unit, he has spent over \$100,000.00 in renovations, capital repairs and upgrades to the Rental Unit, which will benefit the Tenant and reduce the Tenant's costs. The Landlord submitted that the additional rent increase is reasonable and this factor should not negatively affect the Application.

Weighing the Factors for the Application

- [26] The Officer finds that in this case, the totality of the factors weigh in favour for approval of an additional rent increase for the Rental Unit. In coming to this conclusion, the Officer notes in particular:
- a) During the Tenant's tenancy, the rent was never increased. Since March 2020 the rent remained \$1,300.00. The former landlord could have increased the rent by the allowable set each year which were: 1.30% (2020), 1.0% (2021), 1.0% (2022), and 0.0% (2023).
 - b) The Landlord has submitted documentary evidence establishing some of the former landlord's expenses, and some of the Landlord's current or annual expenses for 2024. Specifically, the Landlord submitted invoices, quotes and receipts showing large expenses in capital improvements, renovations, maintenance and upgrades in the Rental Unit since the Landlord took over ownership.
 - c) The Landlord is currently operating at a financial loss and, as a result, is not seeing a return on investment; however,
 - d) The Landlord only purchased the Residential Property in February 2024.
- [27] After weighing all the factors and considering the documentary evidence submitted, an additional rent increase is warranted because:
- There has been no rent increase since at least March 2020;
 - The Landlord is currently operating at a significant financial loss;
 - The Landlord is not making a return on investment; and
 - The Landlord has put a large financial commitment into capital improvements and upgrades for the Rental Unit.

Conclusion

- [28] The Application is allowed.
- [29] The Landlord shall increase the rent by the annual allowable (3%) with an additional rent increase (3%) for a total rent increase of 6%.
- [30] The 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

- I The maximum allowable rent for the Rental Unit is \$1,378.00 effective June 1, 2024.

DATED at Charlottetown, Prince Edward Island, this 31st 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%)
Rental Income			
Income (Line 1)	\$15,600.00	\$16,536.00	\$16,068.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$15,600.00	\$16,536.00	\$16,068.00
Expenses			
1st Mortgage Interest (Line 4)	\$8,958.50	\$8,958.50	\$8,958.50
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$5,302.66	\$5,302.66	\$5,302.66
Water & Sewer (Line 7)	\$250.00	\$250.00	\$250.00
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$625.00	\$625.00	\$625.00
Property Tax (Provincial) (Line 10)	\$1,561.35	\$1,561.35	\$1,561.35
Property Tax (Municipal) (Line 11)	Included above	Included above	Included above
Management Fee (Line 12)	\$780.00	\$826.80	\$803.40
Maintenance Fee (Line 13)	\$2,500.00	\$2,500.00	\$2,500.00
Capital Expenditures (Line 14)	\$5,500.00	\$5,500.00	\$5,500.00
Other (Line 15)	\$0.00	\$0.00	\$0.00
Total Expenses	<u>\$25,477.51</u>	<u>\$25,524.31</u>	<u>\$25,500.91</u>
Annual Net Profit	(\$9,877.51)	(\$8,988.31)	(\$9,432.91)
Value of Investment	\$95,000.00	\$95,000.00	\$95,000.00
Net Profit	(\$9,877.51)	(\$8,988.31)	(\$9,432.91)
Return on Capital Investment	-10.4%	-9.5%	-9.9%

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.