

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 17, 2024, the Landlord filed an amended *Form 9 Landlord Application to Request Additional Rent Increase* (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 (Vacant)	Current Rent	Proposed Rent (70%)	Date of Last Rent Increase	Proposed Effective Date
73	\$1,030.00	\$1,750.00	January 20, 2022	June 1, 2024

- [4] The Rental Unit is vacant. Therefore, no tenant received the documents relevant to the Application.
- [5] On May 23, 2024 the Rental Office emailed a teleconference notice of hearing to the Landlord.
- [6] On June 17, 2024 the Rental Office emailed a copy of the evidence package (the “EP”) to the Landlord. The EP contains 72 pages of documents submitted by the Landlord.
- [7] Included in the EP was a *Form 10 Landlord Statement of Income and Expenses* (the “Statement”).
- [8] On June 18, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord participated at the hearing.

ISSUE

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

SUMMARY OF EVIDENCE

- [9] The Landlord purchased the Rental Unit in 2009, and resided in the Rental Unit until 2016. The Statement discloses the income and expenses for the past three years.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [10] The Landlord submitted documents into evidence including: written submissions, property tax documents, rent ledgers, mortgage statements, management expenses, operating expenses, electricity bills, water and sewerage invoices, snow removal invoices, property insurance invoices, photographs and comparable market rents.
- [11] The Landlord is seeking a 67% additional rent increase, plus the 3% allowable rent increase set for 2024.
- [12] The Landlord stated that the Rental Unit has been vacant for over one year. The Landlord stated that he is currently attempting to sell the Rental Unit. The Landlord stated that operating expenses have increased dramatically, which has caused him to defer general maintenance and delay capital improvements. The rent for the Rental Unit is below market rates, and the last rent increase happened in January 2022.

ADJUSTMENTS TO THE STATEMENT

[13] The Officer's adjustments to the Statement are provided below and are reflected in Appendix "A".

The Statement: Income**I. [Line 1 – Gross Income]**

The current annual income for the Rental Unit is \$12,360.00.

The maximum additional rent increase for 2024 with the allowable rent increase would increase the annual income to \$13,101.60 (3% + 3%).

The proposed additional rent increase with the allowable rent increase would increase the annual income to \$21,000.00 (67% + 3%).

II. [Line 2 – Vacancy / Arrears]

The Statement disclosed (\$12,360.00) in rental arrears for the past year.

III. [Line 3 – Net Income]

The net income for the current year is \$0.00. The net income at full occupancy is the same as the gross income disclosed above.

The Statement: Expenses**IV. [Line 4 – Interest Payments on First Mortgage]**

The Statement disclosed \$6,000.00 for the annual interest payments for the Rental Unit. The Landlord stated that the interest is 9.85% on an open mortgage, totaling \$500.00 per month.

V. [Line 5 – Interest Payments on Second Mortgage]

No interest payments on a second mortgage were disclosed.

VI. [Line 6 - Fuel Expenses]

No fuel expenses were disclosed in the Statement. The Landlord stated that he estimated that he will incur \$1,200.00 in fuel expenses by the end of the year. The Statement did disclose \$948.00 in fuel expenses in the previous year. The Officer finds \$1,200.00 to be a reasonable amount based on past year's expenses, and the increase in oil prices from 2023.

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

The Statement disclosed \$650.00 for water and sewerage expenses.

VIII. [Line 8 – Electricity]

The Statement disclosed \$600.00 in electricity costs. This included furnace operation and service fees.

IX. [Line 9 – Insurance]

The Statement disclosed \$1,200.00 for insurance costs.

X. [Line 10 – Provincial Property Tax]

The Statement disclosed the collective amount for the property tax. The evidence shows that the provincial share of the property tax is \$1,384.00.

XI. [Line 11 – Municipal Property Tax]

The municipal share of the property tax is \$701.96. The Island Waste Management fee is \$213.00.

- XII. **[Line 12 – Management fees]**
The Statement disclosed \$1,500.00 for management fees. The Landlord stated that he does the property management himself. The expense is based on his home office deductions filed for the Canadian Revenue Agency.
- 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, Line 12 is adjusted to reflect 5% of the gross rental income in the amount of \$618.00.
- XIII. **[Line 13 – Maintenance]**
The Statement disclosed \$4,448.00 for maintenance expenses. The Landlord stated that this expense includes lawn care, snow removal, and general repairs.
- XIV. **[Line 14 – Capital Expenditures]**
The Statement did not disclose any capital expenditures. The Landlord stated that a roof replacement is required, but that work has not been done yet.
- XV. **[Line 15 – Other Expenses]**
No other expenses were disclosed in the Statement.
- XVI. **[Value of the Investment in the Rental Unit]**
The Statement disclosed \$135,000.00 for the value of the property. The Landlord stated that this reflects the purchase price. The Landlord stated that no appraisal has been completed on the Rental Unit. The Landlord stated that the outstanding mortgage is \$59,676.06. The value of the investment in the Rental Unit is \$75,323.94 (\$135,000.00 minus \$59,676.06).

ANALYSIS

- [14] 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 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.

THE FACTORS

Clause 50(3)(a)

- [15] The Landlord submitted the rent history for the Rental Unit. The Rental Unit has been vacant and has not collected rent since March 2023.

Clause 50(3)(b)

- [16] The Landlord stated that over the past three years, operating expenses have increased for the Rental Unit. The Landlord stated that insurance on the mortgage has recently been renewed and has significantly increased.

Clause 50(3)(c)

- [17] 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. The Rental Unit has been vacant for over a year, however, at full occupancy, the Landlord would still not have a return on investment. With the inclusion of the annual allowable rent increase (3%) and the permitted maximum additional increase (3%), the Landlord would still not have a return on investment.
- [18] With the inclusion of the allowable rent increase (3%) and the requested additional increase, the Landlord would have a 5.3% return on investment.
- [19] 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."*

- [20] 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, at paragraph 46 the Commission wrote:

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)

- [21] The Act requires consideration of the expectation of the tenant that rent increases will remain within the annual guidelines. In this case, the Rental Unit is vacant, and there has been no rent increase for the Rental Unit since January 2022.

Clause 4 of the Regulations

- [22] The Landlord purchased the Rental Unit in 2009 and started renting the Rental Unit in 2016. This factor does not apply in this case.

WEIGHING THE FACTORS

- [23] The Officer finds in this case; the totality of the factors weighs in favour for approval of an additional rent increase for the Rental Unit. In coming to this conclusion, the Officer notes in particular:
- a) The rent has not increased since January 2022, and the Rental Unit has been vacant since March 2023.
 - b) The Landlord submitted documentary evidence establishing operating expenses have increased, particularly, the interest on the mortgage.
 - c) The Landlord is currently operating at a financial loss and, as a result, is not seeing a return on investment. Even with an additional rent increase, the Landlord will still not have a reasonable return on investment for the foreseeable future.
- [24] After weighing all the factors and considering the evidence, the Officer finds that the Landlord is entitled to an additional rent increase.
- [25] The Application requests an additional rent increase of 67%. The Officer notes that a 67% additional rent increase, in addition to the 3% allowable for 2024 would yield the Landlord a 5.3% return on investment and increase the rent by \$720.00. The Commission has found when calculating a landlord’s return on investment 5.3% would be reasonable when relying on the actual purchase price of the residential property.
- [26] However, the Officer notes that clauses 50(6) and (7) of the Act state:

Director’s powers

- (6) *Subject to subsection (7), in considering an application under this section, the Director may*
- (a) *grant the application, in full or in part;*
 - (b) *refuse the application;*
 - (c) *order that the increase granted be phased in over a period of time; or*
 - (d) *order that the effective date of the increase granted is conditional upon the landlord’s compliance with an order of the Director respecting the residential property.*

Limitation on increase

(7) *Where the Director grants an application under subsection (6) or orders that the increase granted be phased in over a period of time, the amount of the increase in rent in a calendar year shall not exceed 3 per cent in addition to the maximum percentage increased permitted under section 49.*

- [27] Despite the Officer finding that the Landlord is entitled to a 67% additional rent increase, the legislation restricts the additional rent increase to 3% each year in addition to the allowable guideline set by the Director.
- [28] The Landlord is permitted to increase the rent by the annual allowable set by the Director for 2024 in the amount of 3% and the Landlord is entitled to increase the rent by an additional 3% for a total of 6% effective August 1, 2024.
- [29] When the annual increase under this Order for the Rental Unit totals \$1,750.00, the Landlord may not implement more additional rent increases without a further Order of the Director.
- [30] The Landlord is permitted to increase the rent every **August 1** by the annual allowable amount set by the Director and the Landlord is permitted to increase the rent by an additional 3% until the Rental Unit reaches its permitted rent increase. For greater clarity:

Unit	Approved Additional Rent Increase Permitted (to be phased in)	New Rent (6%)	Effective Date	Future Increases
73	\$720.00	\$1,091.80	August 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines

CONCLUSION

- [31] The Application is allowed.
- [32] **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.**

IT IS THEREFORE ORDERED THAT

I.

Unit	Approved Additional Rent Increase Permitted (to be phased in)	New Rent (6%)	Effective Date	Future Increases
73	\$720.00	\$1,091.80	August 1, 2024	Previous year's rent + 3% of previous rent + % increase per annual allowable guidelines

DATED at Charlottetown, Prince Edward Island, this 5th day of July, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

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

	Current	Requested (70%)	2024 Increase (6%)
Rental Income			
Income (Line 1)	\$12,360.00	\$21,000.00	\$13,101.60
Arrears (Line 2)	(\$12,360.00)	\$0.00	\$0.00
Net Income (Line 3)	\$0.00	\$21,000.00	\$13,101.60
Expenses			
1st Mortgage Interest (Line 4)	\$6,000.00	\$6,000.00	\$6,000.00
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$1,200.00	\$1,200.00	\$1,200.00
Water & Sewer (Line 7)	\$650.00	\$650.00	\$650.00
Electricity (Line 8)	\$600.00	\$600.00	\$600.00
Insurance (Line 9)	\$1,200.00	\$1,200.00	\$1,200.00
Property Tax (Provincial) (Line 10)	\$1,384.00	\$1,384.00	\$1,384.00
Property Tax (Municipal) (Line 11)	\$701.96	\$701.96	\$701.96
Management Fee (Line 12)	\$618.00	\$618.00	\$618.00
Maintenance Fee (Line 13)	\$4,448.00	\$4,448.00	\$4,448.00
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15) IWM	\$213.00	\$213.00	\$213.00
Total Expenses	<u>\$17,014.96</u>	<u>\$17,014.96</u>	<u>\$17,014.96</u>
Annual Net Profit	(\$17,014.96)	\$3,985.04	(\$3,913.36)
Value of Investment	\$75,323.94	\$75,323.94	\$75,323.94
Net Profit	(\$17,014.96)	\$3,985.04	(\$3,913.36)
Return on Capital Investment	-22.6%	5.3%	-5.2%

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.