

Introduction

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On March 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”).
- [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:

Current Rent	Proposed Rent (21.8%)	Effective Date
\$575.00	\$700.00	June 1, 2024

- [4] On June 14, 2024, the Landlord submitted into evidence a *Form 10 Landlord Statement of Income and Expenses* (the “Statement”).
- [5] On June 27, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). A Landlord representative (the “Representative”) and the Tenant participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [6] The Landlord submitted 27-pages of documents into evidence to support the Application and the Statement. The documents include: a copy of the *Form 8*, receipts, invoices, and bills.
- [7] The Rental Unit is situated in three-unit apartment building (the “Residential Property”), which the Landlord purchased in 2020 and the Statement reflects the income and expenses for the Residential Property. The Representative stated the Rental Unit would reflect 25% of the overall costs of the Residential Property based on the size of the unit. The Officer adjusts the Statement in the Appendix “A” to reflect the income and expenses portioned to the Rental Unit only.

Landlord’s Evidence and Submissions

- [8] The Representative stated that costs for the Residential Property have been rising and he will have to re-mortgage the property soon at a higher interest rate. He stated the rent is low at the Rental Unit and it should be increased to reflect market conditions.

Tenant’s Evidence and Submissions

- [9] The Tenant did not submit any documents into evidence. She stated that social assistance pays her rent and they may not pay the increase the Landlord is seeking. The Tenant stated she has been paying \$575.00 per month since the Landlord purchased the property in 2020. The Tenant pays her own phone, internet, and cable bills.

Adjustments to the Statement

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

a) **[Line 1 – Rental Income]**

The current annual rental income for the Residential Property is \$33,300.00 and \$6,900.00 for the Rental Unit. The requested additional rent increase of 21.8% would increase the gross rental income to \$34,800.00 for the Residential Property. The Officer adjusts the proposed rental income for the Rental Unit to \$8,400.00.

b) **[Line 4 – Interest Payments on First Mortgage]**

The Statement disclosed \$4,858.00 for annual interest payments for the Residential Property. The Officer adjusts the annual interest payments to represent the Rental Unit in the amount of \$1,214.50.

c) **[Line 7 – Water and/or Sewer Charges]**

The Water and Sewer Charges are included in the Electricity charges.

d) **[Line 8 – Electricity]**

The Statement disclosed \$7,737.00 for electricity for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$1,934.25.

e) **[Line 9 – Insurance]**

The Statement disclosed \$4,671.00 for insurance however the Representative agreed the documentary evidence shows this should be \$1,725.00 for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$431.25.

f) **[Line 10 – Property Tax Provincial]**

The Statement discloses \$1,665.00 for provincial property tax for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$416.25.

g) **[Line 11 – Property Tax Municipal]**

The Statement discloses \$1,232.00 for municipal property tax for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$308.00.

h) **[Line 12 – Management fees]**

The Statement discloses \$0.00 for management fees. The Representative stated that he and other owners of the property do the property management themselves. 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 for the Rental Unit is \$6,900.00 and the Officer adjusts this line in the statement to \$345.00.

i) **[Line 13 – Maintenance]**

The Statement discloses \$3,219.00 for maintenance expenses for the Residential Property. The Officer adjusts the expense to reflect the Rental Unit in the amount of \$804.75.

j) **[Line 14 – Capital Expenditures]**

The Statement discloses \$2,608.00 for capital expenses from 2022-2023, which included a new fridge and stove. The Landlord stated these appliances were for another rental unit. The Officer will keep line 14 as \$0.00.

k) **[Line 15 – Other Expenses]**

The Statement discloses \$1,651.00 for other expenses which include phone, internet, and cable. The Tenant stated she pays for her own phone, internet, and cable. The Representative stated he was unaware of this and the expenses would just be for the other two units. The Officer adjusts this line to \$0.00.

l) **[Value of the Investment in the Rental Unit]**

The Statement disclosed \$218,601.00 for the value of the property. The Representative stated the Residential Property was purchased for \$250,000.00 and the outstanding mortgage is \$193,394.16. Therefore, the value of the Landlord's investment in the Residential Property is \$56,605.84 and the investment in the Rental Unit is \$14,151.46.

Analysis

- [11] 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.

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

- [12] The Landlord provided the rent for the past three years and there have been no rent increases at the Rental Unit during that time.

Clause 50(3)(b)

- [13] The Landlord submitted documents into evidence to assist in disclosing a change in the operating expenses over the past three years. In the disclosed three years, the operating expenses for the Rental Unit have changed, with some of the expenses decreasing, such as the interest on the mortgage, or remained the same, such as the property taxes, year over year. Expenses for electricity has increased.

Clause 50(3)(c)

- [14] After making the adjustments to the Statement's income and expenses as shown in Appendix "A", the Landlord is currently making a return on investment of 10.2%. With the inclusion of the requested additional increase (21.8%), the Landlord would be making a return on investment of 20.8%. The Officer notes that if the income and expenses were used for the entire Residential Property, the Landlord is currently making a return of 18.9% and with the increase would see a return of 21.5%.

- [15] The Island Regulatory and Appeals Commission (the "Commission") in Order LR23-80, 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."*

- [16] 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:

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)

- [17] The Act requires a consideration of the expectation of the tenant that rent increases will remain within the annual guidelines. In this case, the Officer finds that the parties confirmed that since the Landlord purchased the Rental Unit in 2020, the rent has remained at \$575.00.

Clause 4 of the Regulations

- [18] The Rental Unit was purchased by the Landlord in 2020. The Rental Unit was not purchased in the past 12 months and this additional factor is not applicable.

Weighing the Factors for the Application

- [19] The Officer finds in this case the totality of the factors does not weigh in the Landlord's favour for approval of an additional rent increase for the Rental Unit. In coming to this conclusion, the Officer notes in particular:
- a. Most of the operating expenses for the Rental Unit have either decreased or remained the same over the past three years.
 - b. The Landlord is currently making a reasonable return on their investment at 10.2%. With the requested additional rent increase, the Landlord's return on investment would be 20.8%.
 - c. 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

- [20] The Application is denied.
- [21] The Landlord is entitled to the annual allowable for 2024 for a total increase of 3.0%.
- [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 to the parties by e-mail.

IT IS THEREFORE ORDERED THAT

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

Rent	Effective Date
\$592.25	August 1, 2024

DATED at Charlottetown, Prince Edward Island, this 17th day of July, 2024.

(sgd.) Mitchell King
Mitchell King
Residential Tenancy Officer

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

	<u>2023/2024</u>	<u>Proposal (21.8%)</u>	<u>Allowed (3.0%)</u>
<u>Income</u>			
Rental Income at 100% (Line 1)	\$6,900.00	\$8,400.00	\$7,107.00
Vacancy Arrears/Losses (Line 2)	\$0.00	\$0.00	\$0.00
<u>Net Income before expenses (Line 3)</u>	<u>\$6,900.00</u>	<u>\$8,400.00</u>	<u>\$7,107.00</u>
<u>Expenses</u>			
1st Mortgage Interest (Line 4)	\$1,214.50	\$1,214.50	\$1,214.50
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$0.00	\$0.00	\$0.00
Electricity (Line 8)	\$1,934.25	\$1,934.25	\$1,934.25
Insurance (Line 9)	\$431.25	\$431.25	\$431.25
Property Tax (Provincial) (Line 10)	\$416.25	\$416.25	\$416.25
Property Tax (Municipal) (Line 11)	\$308.00	\$308.00	\$308.00
Management Fee (Line 12)	\$345.00	\$345.00	\$345.00
Maintenance Fee (Line 13)	\$804.75	\$804.75	\$804.75
Capital Expenditures (Line 14)	\$0.00	\$0.00	\$0.00
Other (Line 15)	\$0.00	\$0.00	\$0.00
<u>Total Operating Expenses (Line 16)</u>	<u>\$5,454.00</u>	<u>\$5,454.00</u>	<u>\$5,454.00</u>
Net Profit or (Loss) (Line 17)	\$1,446.00	\$2,946.00	\$1,653.00
Value of Investment in Property	\$14,151.46	\$14,151.46	\$14,151.46
Operating Income (Line 17)	\$1,446.00	\$2,946.00	\$1,653.00
Return on Investment (ROI)	10.2%	20.8%	11.7%

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.