

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On May 30, 2024 the Landlord filed a *Form 9 Landlord Application to Request Additional Rent Increase* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was emailed to the Tenant.
- [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, the date of the last rent increase and the effective date as follows:

Unit	Current Rent	Proposed Rent (5.97%)	Date of Last Rent Increase	Proposed Effective Date
1	\$1,075.30	\$1,139.50	August 1, 2023	August 1, 2024

- [4] On June 6, 2024 the Rental Office emailed and mailed to the parties notice of a teleconference hearing.
- [5] On July 18, 2024 the Rental Office emailed to the parties an evidence package (“EP”).
- [6] Included in the EP was a *Form 10 Landlord Statement of Income and Expenses* (the “Statement”).
- [7] On July 30, 2024 at 9:00 a.m. a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord’s representative (the “Representative”) participated at the hearing.

ISSUE

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

SUMMARY OF EVIDENCE

- [8] The Rental Unit is an apartment situated in a 4-unit apartment building (the “Residential Property”). The Landlord purchased the Residential Property in 2014.
- [9] The Statement discloses the income and expenses for the Rental Unit, which is 25% of the total income and expenses, over the past three years.

LANDLORD’S EVIDENCE AND SUBMISSIONS

- [10] The Representative submitted documents into evidence including: the Statement, proof of service of documents, a copy of the tenancy agreements, an Island Petroleum Consumption Report 2021-2023, water and sewerage statement reports and bills, insurance documents, property tax documents, invoices for lawn care, and snow removal, receipt for management fees, invoice for paving, a statement of adjustments, and a rent ledger.
- [11] Included in the evidence was Rental Office Order LD23-363, submitted as Director’s Evidence.
- [12] The Representative stated that the Landlord is seeking a 5.97% rent increase because the current rent is low and the operating costs for the Rental Unit have increased. The Representative stated that the Landlord’s return on investment is low and not considered reasonable.

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 \$12,684.50.

The additional rent increase for 2024 with the allowable rent increase would increase the annual income to \$13,674.00 (2.97% + 3%).

II. [Line 2 – Vacancy / Arrears]

The Statement did not disclose any vacancy or rental arrears.

III. [Line 3 – Net Income]

The net income is the same income as disclosed in Line 1.

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

The Statement did not disclose such expenses.

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

The Statement did not disclose such expenses.

VI. [Line 6 – Fuel Expenses]

The Statement disclosed \$2,578.52 for fuel expenses for the Rental Unit. This expense is based on 25% of the Residential Property's consumption for fuel.

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

The Statement disclosed \$258.46 for water and/or sewerage costs.

VIII. [Line 8 – Electricity]

The Statement did not disclose such expenses.

IX. [Line 9 – Insurance]

The Statement disclosed \$460.50 for insurance for the Rental Unit. This expense is based on 25% of the Residential Property's property insurance.

X. [Line 10 – Provincial Property Tax]

The Statement disclosed \$1,152.50 for the provincial portion of the property tax.

XI. [Line 11 – Municipal Property Tax]

The Statement disclosed \$1,048.78 for the municipal portion of the property tax.

XII. [Line 12 – Management fees]

The Statement disclosed \$1,500.00 for management fees.

Subsection 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 \$634.20.

XIII. **[Line 13 – Maintenance]**

The Statement disclosed \$602.32 for maintenance expenses that include: general repairs, painting, appliance repair and yard clean up.

XIV. **[Line 14 – Capital Expenditures]**

The Statement discloses the annual write-off as \$287.50. The capital expenditures in the Statement reflect Line 14 as follows:

Item	Cost	Life Expectancy	Annual Write-off
Driveway and Parking lot repair	\$5,750.00	5 years	\$1,150.00

The annual write-off disclosed on the Statement represents 25% of the total annual write-off for the Rental Unit.

XV. **[Line 15 – Other Expenses]**

The Statement disclosed \$716.13 for other expenses which include: snow removal, lawn care and island waste management.

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

The Statement disclosed \$117,050.00 for the value of the property. The Representative stated that this represents 25% of the purchase price plus capital expenditure. The Representative stated that there is no mortgage outstanding on the Residential Property. The value of the investment in the Rental Unit is \$117,050.00.

ANALYSIS

- [14] The Application is made in accordance with section 75 of the Act, and seeks an additional rent increase pursuant to subsection 50(1) of the Act. Subsection 50(1) of the Act 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.*

- [15] When determining the Application under subsection 50(1), the Officer must consider the factors prescribed in subsections 50(3) and (4) of the Act, and section 4 of the Regulations. The law states:

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)**

- [16] The Landlord submitted into evidence copies of the previous and current tenancy agreements, and a rent ledger for the Rental Unit.

Clause 50(3)(b)

- [17] The Representative stated that over the past three years, operating expenses have increased for the Rental Unit. The Representative stated that fuel, property tax and maintenance have all increased.

Clause 50(3)(c)

- [18] After making the adjustments to the Statement's income and expenses as shown in Appendix "A", the Landlord is making a 4.2% return on investment. With the additional rent increase, the Landlord's return on investment would increase to 5.0%.

- [19] In Order LR23-80, the Island Regulatory and Appeals Commission (the "Commission") commented as it relates to what is considered a reasonable return on investment for residential rental properties:

"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 Order LR24-27, the Commission more recently reiterated their findings as it relates to what a reasonable return on investment for a residential rental property is, the Commission wrote:

"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 received an additional rent increase on August 1, 2023. The Tenant did not participate at the hearing to provide submissions on this point.

- [22] Subsection 50(4) provides the Officer with discretion to consider any other relevant factor and any factor prescribed in the Regulations. The only other factor stated in the Regulations is 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. This factor is not relevant in this case because the Landlord has owned the Units since 2014.

Review and Weighing the Factors

- [23] The Officer finds in this case that 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) The Rental Unit received an additional rent increase in August 2023 of 6%; however, the Tenant did not submit any evidence or testimony disputing the additional rent increase.
 - b) The Landlord submitted documentary evidence establishing that the operating expenses have increased, particularly, the fuel, property tax and the maintenance of the Rental Unit.
 - c) The Landlord has maintained the Residential Property with regular maintenance and capital expenditures.
 - d) With the approval of an additional rent increase, the Landlord would have a 5.0% return on investment. The Commission found that when relying on the purchase price alone, a 7.0% return to be reasonable for a residential rental property.
- [24] After weighing 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 2.97%. The Officer notes that the maximum additional rent increase permitted in a calendar year is 3%. Therefore, the Landlord is entitled to the 2.97% additional rent increase, along with the annual guidelines set by the Director for 2024 in the amount of 3.0% for a total rent increase of 5.97%.

CONCLUSION

- [26] The Application is allowed.
- [27] The Landlord is entitled to a 5.97% rent increase effective September 1, 2024.
- [28] **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. **Effective September 1, 2024 the maximum allowable rent for the Rental Unit is \$1,139.50.**

DATED at Charlottetown, Prince Edward Island, this 21st day of August, 2024.

(sgd.) Cody Burke
Cody Burke
Residential Tenancy Officer

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

	Current	Allowable (3%)	2024 Increase (5.97%)
Rental Income			
Income (Line 1)	\$12,684.50	\$13,290.71	\$13,674.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$12,684.50	\$13,290.71	\$13,674.00
Expenses			
1st Mortgage Interest (Line 4)	\$0.00	\$0.00	\$0.00
2nd Mortgage Interest (Line 5)	\$0.00	\$0.00	\$0.00
Fuel (Line 6)	\$2,578.52	\$2,578.52	\$2,578.52
Water & Sewer (Line 7)	\$258.46	\$258.46	\$258.46
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$460.50	\$460.50	\$460.50
Property Tax (Provincial) (Line 10)	\$1,152.50	\$1,152.50	\$1,152.50
Property Tax (Municipal) (Line 11)	\$1,048.78	\$1,048.78	\$1,048.78
Management Fee (Line 12)	\$634.20	\$664.54	\$683.70
Maintenance Fee (Line 13)	\$602.32	\$602.32	\$602.32
Capital Expenditures (Line 14)	\$287.50	\$287.50	\$287.50
Other (Line 15)	\$716.13	\$716.13	\$716.13
Total Expenses	<u>\$7,738.91</u>	<u>\$7,769.25</u>	<u>\$7,788.41</u>
Annual Net Profit	\$4,945.59	\$5,521.46	\$5,885.59
Value of Investment	\$117,050.00	\$117,050.00	\$117,050.00
Net Profit	\$4,945.59	\$5,521.46	\$5,885.59
Return on Capital Investment	4.2%	4.7%	5.0%

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.