

INTRODUCTION

- [1] The Landlord applied for approval of two 5.3% rent increases, being an additional 3% increase above the 2025 annual allowable guideline.
- [2] At the hearing, the Landlord requested further additional rent increases be phased in to achieve a reasonable return on investment.
- [3] Further, at the hearing, the Landlord requested heat by furnace oil be removed as an included service from Unit 3.

DISPOSITION

- [4] I find that the evidence supports a 5.3% rent increase for Unit 1 but not for Unit 3.
- [5] I find that it would be procedurally unfair to approve a phased in rent increase as that was not requested in the Applications.
- [6] I find that I do not have the jurisdiction under the *Residential Tenancy Act* (or the "Act") to remove included services and adjust the rent accordingly.

BACKGROUND

- [7] On September 27, 2024 the Landlord filed two *Form 9 Landlord Applications to Request Additional Rent Increase* (the "Applications") with the Residential Tenancy Office (the "Rental Office").
- [8] The Applications show the current rents, proposed rents, the date of the last rent increases and the proposed effective date for the rent increases as follows:

Details	Unit 1 Amount	Unit 3 Amount
Current Rents	\$1,040.00	\$1,369.00
Proposed Rents (5.3%)	\$1,095.00	\$1,442.00
Date of Last Increases – January 1, 2024	3.0% increase	3.0% increase
Effective Date of Proposed Increases	January 1, 2025	January 1, 2025

- [9] On September 27, 2024 the Landlord hand-delivered the Applications and the *Form 8 Tenant Notice of Annual Allowable Rent Increases* (the "Notices") to the Tenant. One of the rental units is vacant.
- [10] On October 29, 2024 the Rental Office mailed the parties notice of a teleconference hearing.
- [11] On November 13, 2024 the Rental Office emailed the parties an evidence package (or "EP"). Included in the evidence package were two *Form 10 Landlord Statements of Income and Expenses* (the "Statements").
- [12] On November 21, 2024 the Landlord participated in the teleconference hearing. The Tenant did not participate in the hearing and the hearing proceeded in the Tenant's absence. The other rental unit is vacant.

ISSUES

- i. Does the evidence support 5.3% rent increases for the Units?
- ii. Should further additional rent increases be phased in to achieve a reasonable return on investment?
- iii. Do the Applications allow the removal of an included service and to adjust the rent?

ANALYSIS**Adjustments to the Statements**

[13] The adjustments to the Statements are provided below and are reflected in Appendix "A" and "B".

Vacancy / Arrears Losses for Unit 3 (Appendix "B")

- [14] The Landlord stated that for September of 2024 he lost (\$1,369.00) in rental income due to vacancy. The Landlord stated that a family member is moving into Unit 3.
- [15] As the Landlord has disclosed vacancy and arrears for one month over the past three years, I adjust Line 2 to reflect the average arrears lost over that period of time. Line 2 is adjusted to \$456.33 (\$1,369.00 divided by 3).

Comments on the Second Mortgage (Appendix "A" and "B")

- [16] The Tenant submitted an email as additional evidence. In the email, the Tenant does not object to the additional rent increase, however, the Tenant questioned why the second mortgage had a different address associated to it (EP19).
- [17] The Landlord stated that the second mortgage was used as a 20% down payment for the Unit. The second mortgage's collateral is another property owned by the Landlord, which is the other address the Tenant was questioning.

Value of Investment in the Property (Appendix "A" and "B")

- [18] The Statements listed the value of the investment in the property as \$152,352.00 for (Unit 1) and \$152,173.75 for (Unit 3). This represents the purchase price of the Unit in 2019 plus capital expenditures. The Landlord stated that he did not include the outstanding mortgages for the Units on the Statements because it does not request that information. The Landlord stated that the outstanding mortgages for the Units are \$202,611.89 for the first mortgage and \$50,945.98 for the second mortgage.
- [19] When determining the Landlord's return on capital investment, the Island Regulatory and Appeals Commission (the "Commission") in Order LR24-27 stated:
- "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] The circumstances were generally that the Commission would consider a recent purchase price, the tax assessed value or an averaging of the tax assessed with a third-party appraisal.
- [21] The Landlord opposes a mortgage deduction for calculating the capital investment value for the Units. However, it would appear that a mortgage deduction is necessary in order to normalize the treatment of landlords with varying amounts of loaned funds for residential properties.

- [22] For example, consider a landlord that purchases a residential property using partly its own funds and loaned funds. If there is no mortgage deduction when calculating the value of the landlord's capital investment, then the landlord's return on investment could be calculated based upon the entire original purchase price and capital expenditures. This landlord could also include the mortgage interest as a deduction in the landlord's expenses.
- [23] Had the landlord used only its own funds to purchase the property, without any loan, then the landlord would have the same capital investment value, but no mortgage interest deduction.
- [24] When the landlord did not borrow any funds it puts more of its own funds at risk. However, it would have less support for an above guideline rent increase compared to if it had borrowed funds. By including the mortgage deduction in the value of the landlord's capital investment, the treatment of landlords with varying amounts of loaned funds is normalized.
- [25] I also note that the Commission in Order LR23-80, paragraph 43, referred to "equity" when calculating return on investment.
- [26] In this case, I find it appropriate to use the 2019 purchase price of \$290,099.00 plus the capital expenditures, which are heat pumps. The calculations are as follows:
- [27] Purchase Price = $\$290,099.00 / 2 = \$145,049.50$.
- [28] Unit 1 = $\$145,049.50 + \$7,302.50$ (capital expenditure: heat pump) = $\$152,352.00$
- [29] Unit 3 = $\$145,049.50 + \$7,124.25$ (capital expenditure: heat pump) = $\$152,173.75$
- [30] Deducting the outstanding mortgages: half of first mortgage (\$101,305.95) and half of second mortgage (\$25,472.99), for a total amount of (\$126,778.94) per rental unit. Therefore, the value of the investment in the Units are as follows:
- [31] Unit 1: $\$152,352.00 - (\$126,778.94) = \$25,573.06$.
- [32] Unit 3: $\$152,173.75 - (\$126,778.94) = \$25,394.81$.
- [33] The Landlord's return on investment is shown in Appendix "A" and "B".

Factors

i. Does the evidence support 5.3% rent increases for the Units?

- [34] In order to determine the Applications, I must consider the following factors in subsection 50(3) of the Act, which are as follows:
1. The rent history for the affected Unit in the three years preceding the date of the Applications;
 2. A change in operating expenses and capital expenditures in the three years preceding the date of the Applications that the Director considers relevant and reasonable;
 3. The expectation of the Landlord to have a reasonable return on their capital investment; and
 4. The expectation of the Tenants that rent increases will remain within the annual guideline.

- [35] Subsection 50(4) Act provides that I have the discretion to consider any other relevant factor and any factor prescribed in the *Residential Tenancy Regulations* (or the “Regulations”). The only other factor stated in the Regulations is that the purchase of the 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.
- [36] I find this factor is not relevant in this case because the Landlord has owned the Unit since 2019.

Review and Weighing the Factors

- [37] The documentary evidence shows the rent history for the last three years of the Unit. The last rent increase occurred on January 1, 2024 and it was the annual allowable 3% set for 2024.
- [38] The evidence establishes that the Landlord’s operating costs and capital expenditures have increased over the past three years.
- [39] The Landlord is currently obtaining a 3.1% return on capital investment for Unit 1 and a 7.9% return on capital investment for Unit 3. After the adjustments to the Statements, including the proposed additional rent increase and the 2025 annual allowable guideline, the Landlord’s return on investment would increase to 5.6% for Unit 1 and 11.3% for Unit 3.
- [40] In Order LR24-27, the Commission commented on a reasonable return on investment as follows:

“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...”

- [41] The additional rent increase would provide the Landlord with a 5.6% return on investment for Unit 1, which is below the 7% reasonable return on investment. However, the additional rent increase for Unit 3 would provide the Landlord with a 11.3% return on investment. This is higher than the 7% reasonable return on investment.
- [42] The Tenant did not object to the additional rent increase and did not provide any submissions as it relates to their expectation that the rent increase would remain within the annual guideline.
- [43] I find that the factors when weighed together do support a 5.3% rent increase for Unit 1; however, does not support a 5.3% rent increase for Unit 3, as the Landlord is already obtaining a reasonable return on investment.
- [44] Therefore, I find that the Applications for an above annual guideline rent increases are allowed in part.
- [45] The Landlord is permitted to increase the rent for Unit 1 by 5.3% and is permitted to increase the rent for Unit 3 by the 2.3% annual guideline set by the Director for 2025 effective January 1, 2025.

ii. **Should further additional rent increases be phased in to achieve a reasonable return on investment?**

[46] I find that it would be procedurally unfair to approve phased in rent increases as that was not requested in the Applications.

[47] At the hearing, the Landlord stated that next year he intends to apply to the Rental Office for a rent increases be phased in. The Landlord requested that a phased in rent increase be considered in the Applications to achieve a reasonable return on investment.

[48] The Applications and the Notices do not request phased in rent increases, and the Tenants did not participate in the hearing. To approve a further rent increase would not be procedurally fair to the Tenants.

[49] Further, I find that the Landlord is currently obtaining a 3.1% and 7.9% return on investment. As noted above, the Commission finds that when relying on a purchase price, a 7% return on investment is reasonable.

[50] Therefore, the Landlord's request for phased in additional rent increases are denied.

iii. **Do the Applications allow the removal of an included service and to adjust the rent?**

[51] At the hearing, the Landlord stated that under the *Rental of Residential Property Act* (or the "Former Act"), a landlord could apply to the Director (or the Rental Office) to have an included service removed and adjust the rent. The Landlord stated that under the Act there does not appear to be an application process where he can request a service be removed and the rent adjusted.

[52] The Landlord stated that he wants to remove heat by furnace oil from Unit 3's tenancy agreement. The Landlord stated that he is unsure how to do these through the Act, and does not want to arbitrarily adjust the rent without the Director's approval. The Landlord requested this adjustment be considered in the Application.

[53] Under the Former Act, a landlord could apply to the Director to have an included service removed from a tenancy agreement and an adjustment (or reduction) to rent would be applied. However, there is no such application avenue for landlords under the Act and therefore I have no jurisdiction to remove included services and adjust the rent.

[54] Subsection 1(s) of the Act defines "services or facilities" and section 21 of the Act outlines the restrictions and details regarding terminating services or facilities during a tenancy.

[55] The Applications are made under section 50 of the Act. Section 50 does not mention the ability to restrict, remove or change services or facilities.

[56] Further, my remedial powers are authorized by the Act. Subsection 85(1) of the Act outlines the powers I have after hearing an application. Upon reviewing subsection 85(1) I find that I have no such ability to grant the Landlord's request.

[57] I find that I do not have the jurisdiction to remove services and adjust the rent through the Applications.

[58] **This decision contains sensitive information and the parties are required to preserve its confidentiality under subsection 75(3) of the Act.**

IT IS THEREFORE ORDERED THAT

1. Effective January 1, 2025, the maximum allowable rent for Unit 1 is \$1,095.00.
2. Effective January 1, 2025, the maximum allowable rent for Unit 3 is increased by 2.3%, as follows:
 - Unit 3: \$1,400.48.

DATED at Charlottetown, Prince Edward Island, this 16th day of December, 2024.

(sgd.) Cody Burke

Cody Burke
Residential Tenancy Officer

APPENDIX "A" (Unit 1)
Revised Statement of Income & Expenses (Form 10)

	Current	Allowable (2.3%)	Requested Increase (5.3%)
Rental Income			
Income (Line 1)	\$12,480.00	\$12,767.04	\$13,140.00
Arrears (Line 2)	\$0.00	\$0.00	\$0.00
Net Income (Line 3)	\$12,480.00	\$12,767.04	\$13,140.00
Expenses			
1st Mortgage Interest (Line 4)	\$5,772.55	\$5,772.55	\$5,772.55
2nd Mortgage Interest (Line 5)	\$1,515.98	\$1,515.98	\$1,515.98
Fuel (Line 6)	\$0.00	\$0.00	\$0.00
Water & Sewer (Line 7)	\$529.20	\$529.20	\$529.20
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$830.50	\$830.50	\$830.50
Property Tax (Provincial) (Line 10)	\$1,410.50	\$1,410.50	\$1,410.50
Property Tax (Municipal) (Line 11)	\$648.83	\$648.83	\$648.83
Island Waste Fee (Line 12)	\$213.00	\$213.00	\$213.00
Maintenance Fee (Line 13)	\$92.00	\$92.00	\$92.00
Capital Expenditures (Line 14)	\$365.13	\$365.13	\$365.13
Other (Line 15)	\$322.00	\$322.00	\$322.00
Total Expenses	<u>\$11,699.69</u>	<u>\$11,699.69</u>	<u>\$11,699.69</u>
Annual Net Profit	\$780.31	\$1,067.35	\$1,440.31
Value of Investment	\$25,573.06	\$25,573.06	\$25,573.06
Net Profit	\$780.31	\$1,067.35	\$1,440.31
Return on Capital Investment	3.1%	4.2%	5.6%

APPENDIX "B" (Unit 3)
Revised Statement of Income & Expenses (Form 10)

	Current	Allowable (2.3%)	Requested Increase (5.3%)
Rental Income			
Income (Line 1)	\$16,428.00	\$16,805.84	\$17,304.00
Arrears (Line 2)	(\$456.33)	(\$456.33)	(\$456.33)
Net Income (Line 3)	\$15,971.67	\$16,349.51	\$16,847.67
Expenses			
1st Mortgage Interest (Line 4)	\$5,772.55	\$5,772.55	\$5,772.55
2nd Mortgage Interest (Line 5)	\$1,515.98	\$1,515.98	\$1,515.98
Fuel (Line 6)	\$2,269.62	\$2,269.62	\$2,269.62
Water & Sewer (Line 7)	\$529.20	\$529.20	\$529.20
Electricity (Line 8)	\$0.00	\$0.00	\$0.00
Insurance (Line 9)	\$830.50	\$830.50	\$830.50
Property Tax (Provincial) (Line 10)	\$1,410.50	\$1,410.50	\$1,410.50
Property Tax (Municipal) (Line 11)	\$648.83	\$648.83	\$648.83
Island Waste Fee (Line 12)	\$213.00	\$213.00	\$213.00
Maintenance Fee (Line 13)	\$92.00	\$92.00	\$92.00
Capital Expenditures (Line 14)	\$356.21	\$356.21	\$356.21
Other (Line 15)	\$322.00	\$322.00	\$322.00
Total Expenses	<u>\$13,960.39</u>	<u>\$13,960.39</u>	<u>\$13,960.39</u>
Annual Net Profit	\$2,011.28	\$2,389.12	\$2,887.28
Value of Investment	\$25,394.81	\$25,394.81	\$25,394.81
Net Profit	\$2,011.28	\$2,389.12	\$2,887.28
Return on Capital Investment	7.9%	9.4%	11.3%

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.