



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: March 18, 2025

Docket: LR25001

Type: Rental Appeal

INDEXED AS: Jason Shakespeare v. Vacant Unit, 3 Penzie Lynn Drive

Order No: LR25-13

BETWEEN:

Jason Shakespeare (the "Landlord")

Appellant

AND:

Vacant Unit, 3 Penzie Lynn Drive

Respondents

ORDER

Panel Members:

Douglas M. Clow, Acting Vice Chair
Murray MacPherson, Commissioner

A. INTRODUCTION

1. This appeal was filed with the Commission on January 6, 2025, and appeals Order LD24-418 issued by the Director of Residential Tenancy on December 16, 2024. The Notice of Appeal asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office” or “Director”) erred in determining the Landlords’ request for an additional rent increase.

B. BACKGROUND

2. This appeal concerns a rental unit located at Unit 3 Penzie Lynn Drive, Cornwall (the “Rental Unit”). The Rental Unit is presently vacant. We note that Order LD24-418 considers both units 1 and 3 Penzie Lynn Drive, as the property is a duplex. However, the Landlord only appealed the order in respect of one half of the duplex, being Unit 3. Therefore, this order will only consider Unit 3.
3. On September 27, 2024, the Landlord filed a Form 9 Landlord Application to Request Additional Rent Increase (the “Application”) with the Rental Office. The Application requested a rent increase above the annual allowable guideline established by the Director of Residential Tenancy. The Application provided the current rent, proposed rent, and effective date as follows:

Unit (Vacant)	Current Rent	Proposed Rent (5.3%)	Date of Last Rent Increase	Proposed Effective Date
3 Penzie Lynn Drive	\$1,369.00/month	\$1,442.00/month	January 1, 2024	January 1, 2025

4. The Application requested a proposed rent increase that would exceed the allowable percentage established by section 49(4) of the *Residential Tenancy Act*, RSPEI 1988, c. R-13.11 (the “Act”) for 2025, which is 2.3%.
5. In Order LD24-418 the Director denied the Landlord’s Application for an additional rent increase for Unit 3. The Order directed that the permitted rent increase for Unit 3 was the 2.3% annual guideline amount.
6. The Landlord filed an appeal with the Commission on January 6, 2025.
7. The Commission heard the appeal on February 14, 2025, by way of telephone conference. The Landlord attended the hearing.

C. DISPOSITION

8. The Commission allows the appeal. The permitted rent increase for 3 Penzie Lynn Drive, Cornwall, is 5.3%, effective April 1, 2025. This equals an allowable rent of \$1,441.56/month.¹

¹ We note that the Landlord’s requested rent increase to \$1,442/month equates to a 5.33% increase. We have, therefore, limited the allowable rent to a maximum of \$1,441.56/month.

D. SUMMARY OF EVIDENCE

9. The Landlord's evidence included written submissions and other documentary evidence to support his claim for an additional rent increase (e.g. property tax and property insurance information, furnace oil bills, mortgage statements, water and sewer bills, etc.).
10. At the hearing before the Commission, the Landlord provided testimony and submissions in support of his position. In particular, the Landlord referenced previous decisions of the Commission that used alternate methods to calculate the value of investment than that which was used in Order LD24-418. However, he stated that the Rental Officer did not inquire whether he had any appraisals for the property or other information that may change the method of calculation respecting his capital investment. The Landlord submitted into evidence before the Commission an appraisal, completed in November 2023, and argued that using the average of the appraisal and tax assessed value resulted in the most accurate value of the property.
11. With respect to operating expenses, the Landlord agreed with the expenses and amounts accepted by the Rental Officer at Appendix B of Order LD24-418.
12. We pause here to note that the Landlord raised several other issues in his evidence and submissions respecting the Form 10 Landlord Statement of Income and Expenses, the determination of a landlord's value of capital investment, and the appropriate range for a return on investment given the changes and limits on additional rent increases under the *Residential Tenancy Act*, for example. We have not dealt with these issues in this Order because it was not necessary in order to dispose of the Landlord's appeal. However, we appreciate the Landlord's submissions in that respect and have taken note of the issues raised.

E. ANALYSIS

A. Application for Additional Rent Increase – Factors to Consider

13. Subsection 50(3) of the *Residential Tenancy Act* provides a list of factors the Director must consider in deciding whether to approve an application for an additional rent increase. Those factors are:
 - (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 guideline.
14. We note that subsection 50(4) also provides the Director with discretion to consider any other relevant factor and any factor prescribed by the regulations. Currently, the only factor prescribed in the regulations is one which permits the Director to consider that the purchase of a residential property should not require a rent increase within the first year

in order to achieve a reasonable return on investment. The Commission has not considered this factor because the Landlord has owned this property for many years.

B. Clause 50(3)(a)

15. According to the Landlord's Form 9 Application, the rent for Unit 3 was last increased over one year ago, effective January 1, 2024.

C. Clause 50(3)(b)

16. The Commission accepts the Landlord has incurred the expenses for 3 Penzie Lynn Drive for 2024 as submitted on his Form 10 Landlord Statement of Income and Expenses, and as accepted by the Rental Officer in LD24-418. The total of those expenses was: **\$13,960.39.**

17. Each of these expenses was supported by documentary evidence (e.g. statements and invoices) to corroborate the claimed amounts. The Commission, therefore, accepts the evidence submitted by the Landlord in respect of his Form 10 and is satisfied that there has been a modest increase in operating expenses and capital expenditures over the three years preceding the date of the application.

D. Clause 50(3)(c)

18. Clause 50(3)(c) requires a consideration of the expectation of the landlord to have a reasonable return on the landlord's capital investment. As noted above, it is this factor, in particular, that the Landlord has concerns with.

19. The Director accepted that the value of the Landlords' investment in Unit 3 was \$25,394.81. They arrived at this number as follows:

[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: $\$152,173.75 - (\$126,778.94) = \$25,394.81$.

20. Based on this value of investment, the Director calculated the return on investment ("ROI") to be 11.3%, should the requested increase be granted. On appeal, the Landlord has argued that the value of capital investment the Director used, and the resulting ROI, was unrealistically low. He submitted that the Rental Officer did not ask him, at the hearing,

whether he had appraisals, or other information, in order to calculate the value of investment in a different way.

21. The Landlord submitted, to the Commission, an appraisal of the property, dated November 2023, that was prepared for his bank. The Landlord submitted that the appraisal would help determine a more accurate property value. The appraisal concludes that the duplex was appraised at \$470,000. The Commission accepts the appraisal value as reasonable.
22. The Landlord presented evidence that the most recent (2024) provincial tax assessed value of his property is \$282,100. We also accept this evidence.
23. In previous orders of the Commission, we have accepted that there is more than one method to determine the value of a landlord's investment. One of those methods involves taking the average of an appraisal value and the provincial tax assessed value, minus the principal value of the outstanding mortgage.² In this case, we accept that approach is reasonable.
24. The average of the appraisal value and the tax assessed value, is \$376,050, for both units. This amounts to \$188,025 *per unit*.
25. After deducting the outstanding mortgage amount of \$126,778.94 (for each unit), the value of the investment in Unit 3 equals: **\$61,246.06**.
26. Therefore, the Landlords' current ROI is:

Value of Landlord's Capital Investment:	\$61,246.06
Net Income: $\$15,971.61^3 - \$13,960.39^4 =$	\$2,011.28
Current Annual ROI:	3.2%

27. The Landlord has requested an increase to of 5.3% per month. Such an increase amounts to an ROI calculated as follows:

Annual rent (\$1,441.56 x 12 months):	\$17,298.72
Less arrears:	(\$456.33)
Less Operating Expenses:	<u>(\$13,960.39)</u>
Net Income:	\$2,882.00
Return on Investment $((\$2,882.00/\$61,246.06) \times 100)$:	4.7%

² See Order LR21-18, *Ryan Grant v. Joel Dennis*.

³ Rental Income for 3 Penzie Lynn at current rent.

⁴ Operating Costs/Expenses and Capital Expenditures accepted above at paragraph 16.

28. The Landlords' current ROI is 3.2% on Unit 3. The requested rent increases would yield a 4.7% ROI. The Commission agrees that the Landlord's request is reasonable and that 4.7% is a reasonable ROI to expect.

E. Clause 50(3)(d)

29. The new *RTA* requires a consideration of the expectation of the tenant(s) that rent increases will remain within the annual guideline. In 2025, the annual guideline increase is 2.3%⁵.

30. In this case, the unit is vacant. The requested rent increase is modest.

31. While clause 50(3)(d) must be considered, in the circumstances, the Commission finds, in the context of this matter, that it does not outweigh the other factors to be considered when determining an appropriate rent increase.

F. Weighing of the Factors and Approved Additional Rent Increase

32. Based on the above, the Commission finds that an additional rent increase, above the annual guideline, is warranted in this case.

33. The Commission has determined that a weighing of the factors and evidence favour the requested increase. In particular:

- i. The Landlord has demonstrated an increase in operating expenses/costs and capital expenditures in the last year; and
- ii. The requested rent rates in comparison to operating expenses yields a return on investment in a reasonable and acceptable range.

F. CONCLUSION

34. The Commission allows the appeal.

IT IS ORDERED THAT

1. **The appeal is allowed.**

⁵ *Residential Tenancy Act*, s. 49(4).

2. The maximum allowable monthly rent for 3 Penzie Lynn Drive, Cornwall, is \$1,441.56/month, effective April 1, 2025.

DATED at Charlottetown, Prince Edward Island, March 18, 2025

BY THE COMMISSION:

(sgd. Douglas M. Clow)

Douglas M. Clow, Acting Vice Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.