



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 41; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by an agent, SX. The landlord's agent acknowledged service of the tenant's Notice of Dispute Resolution Proceedings and stated she had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

At the commencement of the hearing, the landlord sought a ruling that the *Residential Tenancy Act* did not apply to the living accommodation. She testified that the named landlord is the owner of the residential property and lives in the house alongside the tenant who has free access to the kitchen and bathrooms.

The tenant testified that she only occupies the lower unit of the house while the landlord lives upstairs. There are two bathrooms in the lower unit, one for herself and the other for a tenant in common sharing the space with her. She acknowledges there is no

kitchen, however there is a microwave and other small appliances she purchased herself to use for cooking. She has never used the kitchen facilities of the upper unit, nor has she ever used any of the bathrooms of the landlord's upper unit. The tenant testified that the landlord has never used her bathroom.

Section 4(c) states the *Residential Tenancy Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The landlord's agent provided hearsay information from the landlord who advised her of the living situation while the tenant provided firsthand affirmed testimony. I find the testimony of the tenant to be more credible than the testimony of the landlord's agent. I find that the owner of the accommodation does not share a kitchen or bathroom facility with the tenant and that the *Residential Tenancy Act* applies to this living accommodation.

Issue(s) to be Decided

Was the tenant served with an effective notice to increase the rent?

Background and Evidence

The tenant testified that the landlord tried to increase her rent from \$900.00 to \$1,000.00 via a chat message in the social media app WEchat. A copy of the message, written in Chinese and not translated to English, was provided as evidence. According to the tenant the effective date of the rent increase is January 1, 2023. The tenant was not served with a formal Notice of Rent Increase Residential Units #RTB-7 form.

Analysis

Section 42(3) of the Act states that a notice of rent increase must be in the approved form.

Pursuant to section 43(1)(a), a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. In accordance with 22.1(3) of the *Residential Tenancy Regulations*, for the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024, a landlord may impose a rent increase that is **no greater than 2%**.

I find that the tenant was not served with a notice of rent increase in the approved form [form #RTB-7]. Further, I find the landlord sought to increase the rent in an amount greater than the 2% as allowed under section 22.1(3) of the Regulations. Accordingly, I find the WEchat message seeking to increase the tenant's rent from \$900.00 to \$1,000.00 is invalid and of no force or effect.

If the landlord seeks to increase the tenant's rent, he must do so in accordance with Part 3 of the Residential Tenancy Act.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The rent increase is of no force or effect. The tenant's rent shall remain at \$900.00 per month unless it is increased in accordance with Part 3 of the Act.

In accordance with the offsetting provisions of section 72, the tenant may withhold \$100.00 of a single payment of rent due to the landlord to recover the filing fee for the cost of this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 09, 2023

Residential Tenancy Branch