



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      DRI, FF

### Introduction

This original hearing convened on February 7, 2023, by teleconference to deal with the applicant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) to dispute a rent increase that is above the amount allowed by law and recovery of the filing fee.

At the original hearing, the applicant attended, and the respondent did not attend.

Another arbitrator conducted a full hearing and heard the merits of the applicant's application in the absence of the respondent. The original arbitrator found in favour of the applicant and determined the applicant's monthly rent had increased contrary to the Act and granted the applicant deductions in future rent payments to compensate.

The respondent filed an application for review consideration and in a Review Decision, dated February 15, 2023, another arbitrator granted the respondent a new hearing on the applicant's application, having suspended the original Decision of February 7, 2023.

At this review hearing, the applicant and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

As to the evidence, the respondent confirmed they finally received the applicant's evidence by email. The respondent submitted they did not serve the applicant their evidence as required by the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). As a result, I have excluded the respondent's documentary evidence from consideration in making a Decision in these matters.

The parties were provided the opportunity to present their evidence orally and to refer to the accepted relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

At the beginning of the hearing, the respondent submitted that their position is that this dispute was not under the jurisdiction of the Act and asked that this matter be addressed first.

The parties were informed that I would consider their respective submissions and conclude the hearing. They were further informed that if I determined that I had jurisdiction to decide this dispute, the hearing would be adjourned and reconvened to consider the applicant's application. If not, I would issue a final decision declining jurisdiction.

#### Issue(s) to be Decided

Does this dispute fall under the jurisdiction of the Act?

If so, is the applicant entitled to the relief sought?

#### Background and Evidence

The undisputed evidence is that there is no written tenancy agreement in these circumstances and no security deposit was paid. The applicant pays the respondent a monthly amount they considered rent. The applicant began occupying the home in 2016.

The unit in question is the upper floor of a float home currently moored in a marina. The respondent rents moorage from the marina owners to have the float home moored.

In their application, the applicant wrote the following:

*On Nov. 1, 2016 I made a verbal agreement with my friend (of 8-9 years) (respondent name) that I could rent the upper suite for \$1585.00 all in, and it would be my forever home. On June 15th, 2021 I was notified via email that rent would increase to \$1725.00 starting July 1, 2021. I told him at that point that it was almost my whole pension. This amounted to an 8.8% increase with only 2 weeks notice. I didn't have the finances to challenge the increase and I didn't know I could go to RTB.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The applicant testified as follows:

- Their understanding with the respondent from the beginning was that the unit would be their forever home.
- For this reason, they installed a kitchen, including a peninsula, new cupboards, and a gas cooktop and oven.
- They also upgraded the bathroom and installed a new vanity and shower.
- They installed a washer and dryer.
- The respondent pays all utilities, including internet.

The respondent testified as follows:

- They have had both their boat and float home at the marina since 2002.
- The respondent lived in the float home until 2013 or 2014.
- There will be a change in ownership shortly, as the marina ownership group is returning 50% of the marina to an indigenous group and they will retain the other 50%.
- The ownership group will retain the part of the marina with the boats and the indigenous group will own and maintain the side with the float homes.
- The respondent is giving up their boat slip and the moorage rental agreement is ending shortly, within the next month or two.
- The float home will have to be moved from its current location and is being sold.

- At the time the applicant came to live at the float home, they were a family friend of the applicant and there is no landlord-tenant relationship.
- The respondent has documents in place which allow the respondent to assist the applicant with their personal affairs. For instance, the respondent was appointed co-attorney in the applicant's Power of Attorney, as co-trustee in the applicant's last Will, and as witness to the applicant's Living Will.
- The agreement to live in the float home was more in the way of allowing the applicant a place to live at the time, as a family friend.

The applicant provided responsive testimony as follows:

- They agreed they were informed the respondent had to move their float home from the site, but they needed more time to find another place to live.
- The respondent offered to let the applicant go with the sale of the home, but the applicant refused.
- The applicant acknowledge that the float home section of the marina was owned by the indigenous group.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Under the Act, the rental unit must be on residential property. Residential property is defined as being the parcel or parcels where the building is located. I find a reasonable interpretation of a parcel is a parcel of land.

I find the undisputed evidence is that the float home is moored on water in a slip owned by a business group or now, by an indigenous group.

I do not find there is evidence that shows the respondent owns or rents the land under the float home, rather, I find that land either belongs to the ownership group, or shortly, by the indigenous group. The respondent pays for moorage for the float home, but that agreement is ending shortly, according to both parties' submissions.

Tenancy Policy Guideline also provides that a float home may be under the Act if the owner rents their float home for a fixed term of 6 months, the Act likely would apply. In

these matters, there was no fixed-term tenancy agreement, which I find shows the Act does not apply to this dispute.

As I find that the float home is not located on residential property, I find that the living accommodation here meets the above criteria for exclusion under the Act, and I therefore decline to find jurisdiction to resolve this dispute.

For this reason, I find the applicant has no status as a tenant.

The applicant is at liberty to continue to seek the appropriate legal remedy to their dispute.

As I have declined to find jurisdiction to decide this dispute, pursuant to section 82(3) of the Act, I **set aside** the Decision issued on February 7, 2023, granting the applicant's application. The Decision of February 7, 2023, is of no force or effect.

### Conclusion

Due to the above, I decline to accept jurisdiction of the applicant's application.

The applicant is at liberty to seek any appropriate legal remedy to this dispute.

I do not grant the filing fee as a result.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 13, 2023

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Residential Tenancy Branch