



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding /Martello Property Services Inc., Executrix of the Estate of EB  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, OLC, FF

### Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied to dispute an additional rent increase, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee paid for this application.

This hearing began on September 23, 2014, and was attended by the tenant, her counsel, the landlord's agent, the current property manager, and the landlord's legal counsel. The parties were informed that the hearing would be adjourned due to the issue raised in the landlord's legal counsel's documentary evidence. The landlord alleged that the Act did not apply to this dispute, and therefore the Residential Tenancy Branch ("RTB") had no jurisdiction in this matter. The hearing was adjourned in order to allow the counsel for the tenant to file responsive submissions, and the same was received on November 6, 2014. The landlord's counsel confirmed receiving the submissions.

This reconvened hearing, attended by the same parties, proceeded on the parties' respective positions as to jurisdiction in this matter, with both parties being given the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules), including the landlord's legal counsel's case law; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Residential Tenancy Act?
2. If so, is the tenant entitled to an order cancelling the landlord's notice of a rent increase, for an order requiring the landlord to comply with the Act, and for recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted that she began her tenancy on October 1, 1992, monthly rent began at \$1250, that she is currently paying a monthly rent of \$1600, which includes \$300 for another tenant living on site, as agreed with the landlord's agent at the time, and a security deposit of \$625 was paid at the beginning of the tenancy.

The evidence also shows that the rental unit is a home located on multiple acres, less than 10, and that the tenant runs a business involving the sale, training, and boarding of horses. It is noted that the listed landlord executing the original tenancy agreement, was a property management firm and acted for the owner. Thereafter, another landlord's agent acted for the owner, and finally, the landlord's agent now listed in the tenant's application, is a property manager company representing the landlord, an estate. According to the landlord's agent they have been managing the property since approximately November 2013.

**Evidence regarding jurisdiction:**

*Landlord's submissions in support of their argument that the Act does not apply to this dispute-*

In written and oral submissions, the landlord's legal counsel argued that the Act does not apply to this dispute as this matter involves a commercial tenancy, not a residential tenancy. The legal counsel submitted that the area on which the rental unit and acreage is zoned for agricultural use and that the predominant use of the premises is for a business purpose. The legal counsel further submitted that the tenant pays the property taxes, that the tenant has commercial liability insurance for her horse business, that the farmhouse on the rental property occupies just a small portion of the rental property, and that clients and employees are present on the rental property.

The landlord's agent categorized the lease as a triple-net commercial lease.

The landlord's written submissions included, but were not limited to, legal precedent from another jurisdiction, a prior dispute resolution Decision, and a Supreme Court of British Columbia Decision.

*Tenant's submissions in support of their argument that the Act applies to this dispute-*

The tenant and counsel submitted that the tenant and landlord executed a standard residential tenancy agreement at the inception of the tenancy in 1992, as shown by a partial copy of the agreement submitted by the tenant, that on April 28, 2007, the landlord issued to the tenant a notice of a rent increase, on the standard RTB form, which increased the monthly rent to \$1300, and that the parties have always acted under the premise that a residential tenancy existed between the parties. The tenant's counsel further argued that the tenant occupies the premises so that she may pursue her interests in raising, caring for, and teaching others about horses, and that any business is secondary to occupying the property for residential purposes.

The tenant argued that the primary purpose in renting was not for business, but as use of the home where she has lived for 22 years and raised her family. The tenant submitted further that the owner of the property has allowed her to use the property and outbuildings from the beginning of the tenancy in return for paying the property taxes as part of the residential tenancy and that the horse business is her primary source of income, but that there is no office on the premises.

In response to questions from the landlord's legal counsel, the tenant confirmed that she carries liability insurance for her horses and business and contents insurance on the rental unit. The tenant submitted that she does not carry insurance on the structure and has never been asked to do so. The tenant submitted further that she has no employees and had horses when she originally moved into the rental property.

**Evidence regarding tenant's application for dispute resolution:**

The notice of a rent increase the tenant has disputed was sent to the tenant from the latest landlord's agent on June 25, 2014, in a letter form, with notification that her rent would be increased from \$1300 to \$3800 per month, to better reflect the current rental market, according to the letter. The tenant submitted a copy of the letter.

In response, the landlord reaffirmed their position that the tenancy is commercial and the rent paid by the tenant is well below market rent.

### Analysis on Jurisdiction

In order for me to make a decision on the tenant's application, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act* due to their contention that the relationship was that of a commercial landlord and tenant.

After a review of all the evidentiary and oral submissions, I find that the landlord/owner and the tenant entered into a residential tenancy agreement in 1992 and that it was intended for that purpose, as I find it highly likely and reasonable that the primary purpose and predominant use of the property was the tenant's use and enjoyment of the home located on the residential property, where she and her then husband, and former co-tenant until the time of their separation, lived and raised their family for the past 22 years. While I accept that the tenant runs a home based business on the premises, as allowed under Residential Tenancy Branch Policy Guideline #27, I find the landlord submitted insufficient evidence that the residential property, defined under the Act as a parcel or parcels on which the building, related group of buildings or common areas are located, is primarily occupied by the tenant for a business purpose.

I also accept that the landlord/owner and tenant agreed to an arrangement that the tenant pay the property taxes as an ongoing part of the agreement between the parties, to include the land as part of the residential property, and I do not find that this arrangement converts this relationship to a commercial tenancy.

I do not accept the landlord's argument that a tenant paying utility bills to be indicative of being a commercial tenant, as tenants quite commonly pay for the utilities they consume according to the terms of their particular residential tenancy agreement.

Due to the above, I find that this dispute does fall under the jurisdiction of the Residential Tenancy Act, and I therefore have authority to decide this dispute.

### Analysis on tenant's application

Under section 42 of the Act, a landlord may not impose a rent increase unless the notice is on the approved form and in the allowable amounts as stated in section 43.

In the case before me, as the landlord has not complied with the Act in issuing a notice of a rent increase in the approved form and in the allowable amount, the tenant's monthly rent remains at the current amount, which was stated to be \$1600, including

\$300 for another tenant on site. I also order the landlord to comply with the Act in issuing any notice of a rent increase.

### Conclusion

I have found that the Residential Tenancy Act applies to this dispute.

I grant the tenant's application seeking cancellation of a notice from the landlord of a rent increase.

As the tenant was successful with her application, the tenant is granted recovery of the filing fee paid for this application in the amount of \$50. I direct the tenant to deduct \$50 from her next or a future month's rent payment in satisfaction of her monetary award, and to notify the landlord when she makes the said deduction.

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: November 19, 2014

---

Residential Tenancy Branch