



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed on June 2, 2016. The Applicant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Applicant, the Applicant's witness; the two Respondents; the Respondents' witness; and the Respondents' legal counsel (Counsel).

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions regarding jurisdiction of this matter. Following is a summary of those submissions.

### Issue(s) to be Decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act* (the *Act*)?

### Background and Evidence

The Applicant and Respondents entered into a rental agreement relating to a 183 acre piece of property which included: a house located within a fenced 1 acre section; and a barn; corrals; and pastures located throughout the remaining 182 acres.

The Respondents submitted they were aware the Applicant had a lot of horses and would be moving upwards of 25 horses onto the property and they were initially seeking \$100.00 per month per horse plus the house rental. After negotiations they settled on the rent for the house plus \$500.00 per month and the Applicant would install and/or repair fences. They also discussed the possibility of the Applicant bringing a pig onto

the property along with her two dogs. The Respondents stated they were aware the Applicant had horses at different farms and she was training the horses as a business.

The Applicant testified she was the sole owner of all of the horses. She stated she takes in rescue horses; rehabilitates them; and then “re-homes” the horses. The Applicant asserted she pays to take the horses in and then sells them in attempts to recover her costs.

The Applicant submitted she currently has approximately 25 horses on the property. She argued the Respondents knew she had horses in foal that were being brought onto the property; therefore, the numbers would be increased once the foals were born.

The Applicant testified that in addition to the horses, she current has 2 dogs; 2 cats; 29 chickens, and 1 rooster.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 2 of the *Act* stipulates that the *Residential Tenancy Act* pertains to tenancy agreements, rental units and other residential property except as otherwise provided in this *Act*.

Section 4 (d) of the *Act* stipulates that this *Act* does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement.

The *Residential Tenancy Policy Guideline # 27* (6) provides clarification of jurisdiction on commercial tenancies as follows. Where the premises are used primarily for residential purposes and the tenant operates a home-based business from the premises, this does not mean the premises are occupied for business purposes. The distinction is whether the premises are business premises which include an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose. For example, if a tenant uses part of the residential premises as an art studio, or operates a bookkeeping business from the home, the *Act* would apply as the premises are not primarily used for business purposes. However, if the primary purpose of the tenancy was to operate a business, then the *Act* may not apply and the arbitrator may decline jurisdiction over the dispute.

In this case the undisputed evidence was the parties entered into a tenancy agreement which included occupation of the house and use of 182 acres of pasture land; corrals; and a barn for upwards of 25 horses and at least 2 dogs and 2 pigs. The Applicant confirmed she operates a rescue business, rescuing horses, retraining them, and then selling them to owners.

Based on the above, I find that from the onset, 99% of the rented property (182 acres of the 183 acres) was intended for, and is currently being used for the purpose of the Applicant's horse rescue business and housing farm animals. Accordingly, I declined to hear this matter for want of jurisdiction. The parties are at liberty to seek a remedy through the court which holds competent jurisdiction.

As I have declined to hear this matter for want of jurisdiction, I further decline to award the Applicant recovery of the filing fee.

### Conclusion

I declined to hear this matter for want of jurisdiction.

This decision is final, legally binding, and 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: July 06, 2016

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Residential Tenancy Branch