



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PAULS SOUTH SUMAS HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL O OLC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for: more time to make an application to cancel the landlord's Notice to End Tenancy for Landlord's pursuant to section 66; cancellation of the 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49; an order requiring the landlord to comply with the *Act* pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 2 Month Notice and the landlord confirmed receipt of the tenant's Application for Dispute Resolution.

### Preliminary Issue: Jurisdiction

Landlord agent AH (the "landlord"), the tenant and his co-tenant/wife attended the hearing. The landlord is a shareholder in the landlord company named in this application. The tenant confirmed that he made a previous RTB application in July 2016. At a RTB hearing in February 2017, both parties attended for the tenant's application. At that time, the RTB arbitrator declined jurisdiction over the claims writing,

The parties testified that this tenancy is based on an oral agreement which began July 1991 on a month-to-month basis. The agreement included exclusive possession of an 18 acre farm which included the house, shop, barn and shed. Sometime in 2008, the landlord leased 13 of the 18 acres to a separate party. The tenant retained 5 acres which housed all buildings.

Throughout the tenancy the tenant operated a business that was dependent on the farm land. The tenant testified that the first 5 years of the tenancy he utilized the farm for boarding horses and the following ten years for boarding cattle. Since 2016 the tenant has reverted to boarding horses and has only discontinued this business this very month.

Section 4 of the *Act* establishes that living accommodation included with premises that are primarily occupied for business purposes do not fall under the jurisdiction of the *Act*.

In his submissions, the tenant acknowledged that this arrangement was commercial in nature. Under these circumstances and based on the evidence before me, and in accordance with the findings of the previous arbitrator's decision, I find that the arrangement described by the applicant/tenant does not constitute a tenancy enforceable under the *Residential Tenancy Act*. I therefore have no jurisdiction to render a decision in this matter.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider 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: March 27, 2017

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Residential Tenancy Branch