



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPT, FFT**

### Introduction

This hearing dealt with an application filed pursuant the Residential Tenancy Act for:

- An order of possession to a tenant pursuant to section 54; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The applicant attended the hearing accompanied by his lawyer, MP and his son, SK. The respondent attended the hearing with her son, SG. The respondent acknowledged being served with the application for dispute resolution and the applicant acknowledged service of the respondent's evidence however stated that it could not be accessed due to the size of the file sent. Despite this, applicant's counsel advised that they were prepared to have the merits of their application heard.

### Preliminary Issue

At the commencement of the hearing, applicant's counsel advised me that the tenancy before me is not residential. The leased land is farmland, and the parties erroneously used a Residential Tenancy agreement as a contract. When I asked whether the applicant resided on the property, counsel responded that no humans live on the land. He further clarified that it's only livestock that lives on the leased land. The applicant raises some livestock there and grazes them on the land. The applicant's home is in a different municipality.

The respondent agreed with the above statement.

Black's Law Dictionary, Sixth Edition, defines **residence** as:

A place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house.

Section 1 of the Residential Tenancy Act defines the following:

**"residential property"** means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 2(1) of the Residential Tenancy Act states:

**What this Act applies to**

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Based on the facts before me, I find that this property is leased land where livestock is raised and not a residential property where the applicant lives or has a home. The tenancy agreement was not entered into respecting a rental unit and there are no rental units on this pastureland. Consequently, I find the agreement between the parties is not a residential tenancy and that the *Residential Tenancy Act* does not apply. Pursuant to sections 62(1)(b) of the *Act*, I find I do not have the authority to resolve this matter as it does not arise under the *Residential Tenancy Act*.

Conclusion

Pursuant to sections 62(1)(b), the Director does not have the authority to determine this matter as it does not arise under the *Residential Tenancy Act*. Jurisdiction is declined.

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: October 07, 2022

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Residential Tenancy Branch