



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding WD Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPT, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- for an order of possession pursuant to section 54 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord's agent WB and counsel KS appeared. Tenant AS with advocate DD appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord acknowledged that they received the tenant's dispute notice and materials and based on their testimony I find the landlord was served in accordance with sections 88 and 89 of the Act. The landlord further testified that they provided the tenant with their evidence package by registered mail sent May 8, 2023. The landlord confirmed in affirmed testimony that the package was sent to the address for service provided by the tenant on the dispute notice. I therefore find that tenant was served with the landlord's evidence on May 13, 2023 pursuant to sections 88 and 90 of the Act.

### **Issue(s) to be Decided**

1. Is the tenant entitled to an order of possession for the rental unit?
2. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy agreement is in evidence. The tenancy commenced on August 25, 2016. Rent was \$900.00 per month due on the 1<sup>st</sup> of the month and the tenant was given a \$50.00 rent reduction if the rent was paid in full on the due date. The landlord holds a security deposit of \$425.00 in trust for the tenant. The tenant still occupies the rental unit.

The tenant testified that in 2020 she acquired a horse and needed a place to board it. The landlord verbally agreed that the tenant could keep the horse on a parcel of land owned by the landlord but not immediately adjacent to the rental property. The parties agreed that the tenant would pay \$100.00 per month for boarding her horse on a separate parcel of property.

The tenant stated that on April 22, 2023 the landlord advised the tenant that they would no longer rent her the parcel of land used to board her horse and that the horse had to be removed by April 28, 2023. The tenant filed an application for dispute resolution seeking an order of possession allowing her to keep her horse on the parcel of land. The tenant asserts that the verbal agreement for the portion of land rented to board the horse is part of the initial tenancy agreement and was incorporated into that agreement. The horse is still on the land.

The landlord takes the position that the agreement to rent the tenant land to board the horse is a separate agreement from the tenancy agreement. The horse is not on a portion of residential property and does not contain living accommodations. The agreement required separate additional rent and the rent for the parcel of land was treated separately in the landlord's accounts. The landlord provided proof of his record keeping system in evidence showing that the rent payments were collected and processed separately. The landlord stated that the parcel of land that the horse is on has a separate residential address then the tenant's rental unit. The landlord also provided a notice of rent increase dated November 27, 2022 in evidence showing that rent for the rental unit was increased, and that increase did not include the rent paid for the horse.

### Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that

the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the evidence of the parties, I find that the rental agreement to board the horse is separate from the tenant's tenancy agreement. The agreement was made separately and contains no reference to the rental agreement for boarding the horse. I have no evidence in front of me that both parties agreed that the rental agreement for the horse was meant to be incorporated into the tenancy agreement.

The rental agreement for the horse required additional rent. The landlord treated the rent for the horse separate from the rent for the tenancy agreement. The land that the horse is on is not adjacent to the rental unit and is a separate address. I therefore find that the rental agreement to board the horse was a separate agreement from the tenancy agreement.

Section 2 of the Act states that the Act applies to applies to tenancy agreements, rental units and other residential property. I must consider whether the rental agreement for the horse is a tenancy agreement. Based on all of the evidence I find that the rental agreement to board the horse is not a tenancy agreement and therefore the Act does not apply. I specifically accept the landlord's undisputed evidence that there is no residential property on the parcel of land rented for the horse. I therefore have no jurisdiction over this matter. The tenant's application is dismissed.

### Conclusion

The tenant's application is dismissed due to lack of jurisdiction.

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: May 24, 2023

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Residential Tenancy Branch