

DECISION

Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution filed on July 3, 2025 (the Application) under the *Residential Tenancy Act* (the Act) for:

- Cancellation of the Respondents' One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act
- An order to suspend or set conditions on the Respondents' right to enter the rental unit under section 70(1) of the Act
- Authorization to change the locks to the rental unit under section 70(2) of the Act
- An order requiring the Respondents to return the Applicants' personal property under section 65 of the Act
- An order requiring the Respondents to comply with the Act, regulation, or tenancy agreement under section 62 of the Act

This decision should be read together with the Interim Decision dated August 14, 2025 (the Interim Decision), which withdrew and severed some of the Applicants claim, and adjourned this matter to written submissions on the issue of jurisdiction.

The Interim Decision also adjourned this matter to be crossed with the Respondent's Application for Dispute Resolution, filed on July 29, 2025 (the Cross Application) and currently scheduled to be heard on October 7, for:

- Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- An Order of Possession based on the vacate clause in a fixed term tenancy agreement under sections 44(1)(b) and 55 of the Act
- A Monetary Order for damage to the rental unit or common areas under sections 37 and 67 of the Act
- Authorization to recover the filing fee for the Cross Application from the Applicants under section 72 of the Act

Service of Documents After the Interim Decision

The Applicants submitted a two-page written statement to the Residential Tenancy Branch (RTB) on August 30, 2025, as permitted by the Interim Decision. The Applicants also provided a Proof of Service form (#RTB-55) and a copy of the outgoing email to the

Respondents to confirm service of the written statement to the Respondents on August 28.

The Respondents submitted a seven-page written statement and 10 pages of response evidence to the RTB on September 10, 2025, as permitted by the Interim Decision. The Respondents also provided a Proof of Service form (#RTB-55) and a copy of the outgoing email to the Applicants to confirm service of the documents to the Applicants on September 10.

Based on the evidence before me, I find that each party's written submissions were duly served to the other in accordance with the Interim Decision.

Issue to be Decided

Does the Act apply, and do I have jurisdiction to decide this dispute?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Interim Decision contains a summary of the relevant background, facts, and evidence and should be read in conjunction with the current decision.

The Applicants' written submissions dated August 28, 2025 take the position that the Act applies to the living arrangement and the agreement entered into by the parties by email on July 31, 2023 (the Agreement). The Applicants state this matter falls within the jurisdiction of the RTB because the Respondents did not get consent or permission to touch or move their personal belongings. The Applicants' written submissions also note:

- They did not realize how many personal belongings the Respondents would be leaving in the rental unit and on the rental property
- They believed that the Respondents would be making trips to the rental property together, not that Respondent B.M. would be making these trips on his own
- They were given notice and timelines for Respondent B.M.'s visits to the property and generally agree with the summary of dates contained in the Interim Decision regarding Respondent B.M.'s visits to the rental property
- The kitchen and washroom were shared with the Respondents when they visited the rental property
- The Applicants spent approximately 150 hours a month taking care of livestock for the Respondents' hobby farm in the winter and between 240 and 360 hours a month doing work on the hobby farm and taking care of the livestock in the summer

The Respondents' written submissions in response take the position that the RTB does not have jurisdiction over this dispute based on the Applicants being granted only a license to occupy the property.

The Respondents disagree that the Agreement formed a tenancy agreement for the purposes of the Act or that a tenancy agreement between the parties was otherwise established. The Respondents' written submissions further note:

- The rent payable under the Agreement was regularly reduced to compensate the Applicants for the required labour and maintenance they were expected to perform on the rental property, and for care of the livestock
- As a result of the above rent reductions, the Applicants only paid the full monthly rent of \$900.00 for three of the 24 months they resided on the rental property
- The Applicants received payment for managing the Respondents' "Hip Camp" destination tourism bookings and providing services to guests in August 2023
- The Agreement did not grant exclusive possession of the rental unit to the Applicants, but rather gave the Applicants a license to occupy part of the rental unit and access other areas of the rental property
- The time-bound and temporary nature of the Agreement was never intended to grant the Applicants the right to remain in the rental unit indefinitely
- By reserving rights to occasionally visit the rental property and require access to the bathroom, kitchen, and personal possessions, the Respondents never gave up exclusive possession of the rental property
- Clause 10, which waives the 24-hour notice requirement for entry, is a direct contradiction of a fundamental tenancy right under the Act and a clear indicator that the agreement is not a tenancy
- The intent of the parties at the time the Agreement was made was to blend goat herds and chicken flocks, and for the Applicants to provide services such as farm-sitting, home improvements, caretaking of the property, use of equipment, and managing donations for a local farm-feed program. These activities, and terms such as hours of work, supplies, and reimbursement for all supplies were discussed and negotiated extensively by text message.
- The entire five-acre property, including the rental unit, is commercially zoned

The Respondents' written submissions also address the Applicants' claim for compensation relating to an incorrect notice to end tenancy being issued and the allegations that a new tenant now occupies the rental property. On this issue, the Respondents' written submissions clarify that, contrary to the summary contained in the Interim Decision, they deny the rental unit is now occupied by someone other than the Respondents. To the contrary, the Respondents' written submissions assert that they have moved back into the rental unit.

The Respondents confirm that L.M. was on the property to collect the keys from the Applicants, stating she was there because she now operates a business out of one of the other buildings on the rental property. The Respondents' reply evidence includes a sworn affidavit of L.M. stating her business is now located in the "post-office" building on the rental property and denying that she has ever entered the rental unit.

The above summary, in addition to the facts and evidence summarized in the Interim Decision summarizes the testimony and evidence of the parties that I found to be relevant for my decision

Analysis

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.

My authority to resolve disputes is provided by the Director of the RTB and is limited to disputes involving tenancies that fall under either the Act or the *Manufactured Home Park Tenancy Act* (the MHPTA). Regarding my jurisdiction to proceed, where there is a question of jurisdiction, the Applicant bears the burden to prove the Act applies.

I have considered the oral testimony and evidence of the parties, as well as their written submissions summarized above. I first note that the Respondents' position is that Act does not apply because the Applicants were granted a license to occupy the rental unit and property.

Policy Guideline #9, which discusses tenancy agreements and licenses to occupy, lists factors to consider in determining whether an arrangement constitutes a license to occupy. I agree that many features of the Agreement before me are indicative of a license to occupy, such as the lack of a security deposit and the personal relationship between the parties. However, as noted in the Policy Guideline, this does not preclude jurisdiction under the Act because the definition of a "tenancy agreement" includes a license to occupy.

While the existence of a license to occupy is not determinative of the question of jurisdiction, I note that section 4(c) of the Act states that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. I also note that the burden is on the Applicants to establish that the Act does apply where jurisdiction is in dispute.

The terms of the Agreement state the Respondents will have access to the bathroom and cooking facilities when they are visiting the property. The Applicants' written submissions confirmed that, during these visits, the parties shared the bathroom and kitchen. Despite the limited duration of these visits and that the Agreement stated such visits were not to exceed more than 30 days per year, I find that the Applicants agreed to share bathroom and kitchen facilities with the Respondents for up to 30 days per year under the terms of the Agreement. Therefore, I find that the Agreement sets out a living arrangement as described in section 4(c) of the Act.

Additionally, Policy Guideline #9 states a tenancy agreement grants a tenant exclusive possession of the rental unit. Based on the terms in the Agreement regarding the Respondents' rights to visit and stay on the rental property and share kitchen and bathroom facilities with the Applicants in the rental unit for up to 30 days a year, I find

that the Agreement cannot be said to have granted the Applicants exclusive possession of the rental unit.

As a result, I find that the Act does not apply to the living arrangement or the Agreement under section 4(c) of the Act.

Furthermore, section 4(d) of the Act states that the Act does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement.

Policy Guideline #14 states that to determine whether premises are primarily occupied for business purposes or not, an arbitrator will consider the “predominant purpose” of the use of the premises. Factors to consider in this analysis are relative square footage of the business use compared to the residential use; employee and client presence at the premises; and visible evidence of the business use at the premises.

The Applicants described the farm operations at the rental property as a hobby farm. At the hearing, the Applicant testified they had previously farm-sat for friends and that they have goats and chickens of their own, so they knew it would be a lot of work, but that they were unaware of the poor fencing circumstances at the rental property.

Given the significant number of hours the Applicants state they were putting towards the farm-sitting and caretaking duties, and based on the other ventures described by the Respondents, such as the Hip Camp and local farm-feed program, which the Applicants managed for the Respondents while the Respondents were away, I find on a balance of probabilities that the premises were primarily occupied for business purposes.

I find that a monthly rent of \$900.00 for a five-acre property is also consistent with the Respondents’ evidence that the nature of the Agreement arrived at between the parties was a barter for services and farm-sitting arrangement. Furthermore, based on the image of the rental property submitted by the Respondents, I find that the rental unit is one of five buildings located on the rental property. Given the relative square footage of the rental unit compared to the five-acre property that the Applicants were responsible for managing under the terms of the Agreement, I am not satisfied that residential use of the rental unit was the predominant purpose of the Agreement.

For the reasons set out above, I find that the Applicants have not provided sufficient evidence to prove on a balance of probabilities that a tenancy under the Act exists. Instead, I find that the Act does not apply to the license to occupy in the case before me based on sections 4(c) and (d) of the Act.

Though not necessary to determine the matter before me, I note that the Respondents’ submission that they were not required to provide 24 hours notice of any visits to the rental property under the terms of the Agreement was not persuasive in determining whether the Act applies.

Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and provides that any attempt to do so is of no effect. Therefore, was it not for the other features of the Agreement weighing against the application of the Act, the clause excluding the Respondents from the requirement to provide proper notice under the Act would simply have been of no force or effect.

As I have found that the Act does not apply to the Agreement, I decline to accept jurisdiction over this dispute.

To seek legal recourse regarding the matters in dispute under the Agreement, such as compensation for damage or losses and return of personal property, the parties remain at liberty to pursue a remedy in the appropriate legal forum.

Conclusion

I decline to proceed due to a lack of jurisdiction regarding the Applicants' Application and the Respondents' Cross Application for Monetary Orders for compensation for damage or loss under the Act, regulation, or tenancy agreement under sections 37 and 67 of the Act.

I decline to proceed due to a lack of jurisdiction regarding the Applicants' Application for an order requiring the Respondents to return the Applicants' personal property under section 65 of the Act.

I decline to proceed due to a lack of jurisdiction regarding the Respondents' Cross Application for an Order of Possession under sections 44(1)(b), 47 and 55 of the Act.

I decline to proceed due to a lack of jurisdiction regarding the Respondents' Cross Application for recovery of the filing fee for the Cross Application from the Applicants under section 72 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 18, 2025

Residential Tenancy Branch