



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPUM-DR FFL

### Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent or Utilities, pursuant to sections 46 and 55 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The applicant testified that he personally served the respondent with the Notice of Dispute Resolution for this hearing and evidentiary materials on October 15, 2018, which was confirmed by the respondent. The respondent confirmed that he did not submit any evidentiary materials for this hearing. Based on the undisputed testimonies of the parties, I find that the respondent was served in accordance with section 89 of the *Act*.

### Preliminary Issue – Jurisdiction

I note that the lease agreement, submitted into evidence by the applicant, described the leased premises as “the equestrian premises, equipment...and tack” and specifically excluded the house located on the lands, which the applicant confirmed was leased to another party under a separate agreement.

The applicant explained that he had purchased the property in mid-February 2018 and had assumed the existing lease agreement. Therefore, there was no other agreement in place between the parties at this time.

The parties confirmed that the existing lease agreement pertains to approximately four acres which comprises a barn/horse stable, riding arena and paddocks. A lounge is attached to the horse stable, which includes a kitchen, office, two bathrooms and a sitting area. The respondent explained that this area is used as an office and a client lounge, it is not used as a living area. The respondent acknowledged that he has recently been residing in a motorhome parked on the property, due to his current personal circumstances. The respondent testified that he has previously used the motorhome to house workers on a short-term basis.

At this time, the respondent acknowledged that the volume of his business has significantly decreased, however, he continues to have two client horses boarded at the premises for training.

Section 4 of the *Act* sets out the jurisdictional limitations of the *Act*, as follows, in part:

4 This Act does not apply to

...

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

Based on the testimonies of the parties and the documentary evidence submitted, I find that this property is primarily used for business purposes, therefore I find the *Residential Tenancy Act* does not have jurisdiction in this situation.

Consequently, I dismiss the application as I find I have no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

This application is dismissed due to a lack of jurisdiction under the *Residential Tenancy 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 *Residential Tenancy Act*.

Dated: November 19, 2018

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Residential Tenancy Branch