



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, RPP

### Introduction

This hearing dealt with the tenant's application for a monetary order for \$25,000.00 and for an order requiring the landlords to return the tenant's personal property.

The parties and the tenant's witness' appeared, were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, and to make submissions to me.

Upon consideration of the documentary evidence submitted by the landlords prior to the hearing, a preliminary issue was raised and repeated at the hearing. The landlords were of the position that I did not have jurisdiction to resolve this dispute and the tenant was of the position the *Residential Tenancy Act* (the "Act") applied and that I had jurisdiction to resolve this dispute.

I heard testimony from both parties with respect to jurisdictional issues.

### Issue(s) to be Decided

Does the *Residential Tenancy Act* (the "Act") apply to this dispute and do I have jurisdiction to resolve this dispute?

Is the tenant entitled to a monetary Order and an order requiring the landlords to return the tenant's personal possessions?

### Background and Evidence

The landlords submitted a document entitled "2011 Commercial Lease" (the "Lease"), photos of the location of the dispute address and a written submission.

The landlords testified that the Lease is the document signed by the parties and is the only agreement between the parties. Further, the landlords submitted that the tenant

used the premises to operate his business, that the premises were a warehouse/ office setup and that residential suites are not allowed per strata bylaw.

The landlords submitted that there are no shower/tub/washing or cooking facilities.

The tenant, in response, stated that the Act did apply as he had his bed, clothing and personal possessions in the upstairs area. Additionally, the tenant had a karaoke machine, cups, dishes, cutlery and other items proving that the premises were being used as his only residence.

The tenant testified that his mail and driver's license showed the dispute address to be his home address.

The tenant acknowledged that he had no bathtub or shower, but stated he did not need to bathe there to establish his residency.

The tenant stated he did not have a stove/oven, but did not need this as he was single and ordered food in.

The tenant had friends over to visit at night.

### Analysis

In order for the Applicant, in this case, the tenant, to succeed in this application, the Applicant must show that the *Residential Tenancy Act* applies.

Section 4 (d) (i) and (ii) 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. [*Emphasis added*]

I find, on a balance of probabilities, that the primary purpose of the agreement was for business purposes, that is, for operating the tenant's commercial business, and not primarily for living accommodation.

In reaching this conclusion, I was persuaded by the Lease itself, which stated that "the Premises have a rented area of approximately 2450 square feet, including downstairs warehouse/office area and upstairs office area."

Further the Lease stated that "the Tenant may use the premises for Office/Storage and for purposes relating to landscaping and vehicle storage."

I was further persuaded by the tenant's admissions that there were no shower/bathtub or cooking facilities onsite.

While I accept that the tenant slept at the leased premises and had items of personal possessions, I find the primary purpose of the agreement was for business purposes and therefore the Residential Tenancy Act does not apply.

As a result, I decline to find jurisdiction to resolve this dispute. The parties are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined 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: July 25, 2011.

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Residential Tenancy Branch