



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, seeking monetary compensation and to keep all or part of the security deposit, for alleged damages to the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

Based on the submissions of the parties, at the outset of this matter the issue of jurisdiction was raised.

### Issue(s) to be Decided

Does the Act apply to this relationship?

### Background and Evidence

In the Application of the Landlords the main issue is raised in the particulars provided, "The hardwood floors and walls were significantly damaged during this tenancy due to the operation of the daycare..."

An addendum has been incorporated into the tenancy agreement and includes, but is not limited to, the following terms:

“It is a material term of this contract that the tenant pay the landlords one full month’s [\$2100] damage deposit for the business use of the property as a home daycare...”

“It is a material term of this contract that the tenant provide the landlord with a copy of their business insurance naming the landlords as additionally insured to cover any such loss...”

“It is a material term of this contract that the tenant provide the landlord with a copy of their business license, work safe British Columbia certificate, and any other business operational requirements...”

[Reproduced as written.]

In the Tenants’ submissions they set out the use of the rental unit for a daycare as being 1545 square feet of 2131 square feet. The Tenants testified they use the rental unit for a daycare for 80% of the time the tenancy was in effect. The Tenants also testified that they would not have rented the rental unit if they could not run the business of a daycare. They testified they could not have afforded the rental unit if they could not conduct the business of a daycare.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Act does not have jurisdiction to resolve this dispute.

The Act does not confer upon the Branch the authority to hear all disputes regarding every type of relationship between two parties.

The Act sets out in section 4(d), that it does not apply to living accommodations included with premises that are primarily occupied for business purposes and are rented under a single agreement. Policy Guideline 14 to the Act sets out that the Act does not apply to a commercial tenancy.

*Shea v. Tyrell* (2007), 2007 B.C.S.C. 1601, a decision of the Supreme Court of British Columbia, sets out that in determining whether premises were excluded from the Act the predominate use of the rental unit is the determining matter.

In this instance I find the main or predominate use of the rental unit was for the business purpose of the Tenants. They would not have rented it unless they could conduct their business from it, they used nearly 75% of the rental unit to conduct the business, the

business ran from Monday to Friday each week, and the business was run for 80% of the tenancy.

Therefore, I find that in this instance the Act does not apply to this relationship and has no jurisdiction over the matter.

### Conclusion

I find that the Act has no jurisdiction over the parties in this matter, and therefore, I decline to hear the Landlord's Application.

The parties are advised to seek legal advice on the proper forum to hear this dispute.

This decision is final and binding on the parties, except as provided under the Act, and 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: February 06, 2012.

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Residential Tenancy Branch