



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, RR, RR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

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.

### Preliminary Issue

The first issue that I must decide is whether the Act has jurisdiction over the parties in order to proceed with this application.

Section 4 of the Act explains the Act does not apply to:

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that**
  - (i) are primarily occupied for business purposes, and**
  - (ii) are rented under a single agreement,**

**[Emphasis added]**

The parties entered into a commercial lease, which included a living accommodation. They appeared before a legally appointed arbitrator as the parties were unable to agree on the rent for the premises when the commercial lease was being renewed for a further five years. The arbitrator found that he was responsible to determine the rent for both the commercial and residential space based on the offer to lease and the lease for the premises.

The applicant argued that this is a residential unit and that the Residential Tenancy Act should apply. However, I find the property is a commercial property which is primarily occupied for the purpose of running a restaurant. The residential accommodation is

included within the building and is rented under a single agreement that being the commercial lease. Therefore, I find that section 4(d) applies to this matter and I dismiss the tenant's application without leave to reapply due to the lack of jurisdiction under the Act.

Conclusion

I order that the application is dismissed without leave to reapply due to the lack of jurisdiction under 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 *Residential Tenancy Act*.

Dated: June 29, 2012.

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Residential Tenancy Branch