



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      CNC, MNDC, MNR, MNSD

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. Whether or not the Residential Tenancy Act has jurisdiction;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property
2. For money owed and
3. To recover the cost of filing the application.

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 at the hearing.

### 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]**

In this matter, the parties agreed that the premises are rented for \$1,550.00, this includes retail storefront commercial space, and living accommodation. Both are rented under a single agreement.

The tenant testified that as of August 1, 2015, the contract became frustrated as the commercial space had black mould, asbestos and is no longer useable until the problems are rectified. The tenant stated that since that time they have not been able to work out a secondary agreement to rent the residential portion under a single agreement.

The landlord testified that they have attempted to negotiate a contract for the residential portion, however, they have not been able to define the terms, such rent, utilities and the common areas as the fire exits are shared in the common areas, which the tenant wants exclusive possession.

The landlord testified that since the original contract has been frustrated, the tenant has not paid any rent for any portion of the premises.

Based on the above, I find the property is a primarily occupied for business purpose. The property consists of a retail storefront. The residential accommodation is included within the building and is rented under a single agreement. Although the tenant states that the commercial contract has been frustrated; there is only one contract between the parties, which is to rent the entire building.

I find it is not within my jurisdiction to sever the commercial contract and decide what rent will be or what common areas are to be shared between the commercial portion or the residential portion. That is a business decision of the landlord.

Therefore, due to the above, I decline to accept jurisdiction of their respective applications.

### Conclusion

I decline to accept jurisdiction of their respective applications.

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: October 02, 2015

---

Residential Tenancy Branch

