



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on August 22, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business. I find that the Application for Dispute Resolution filed by the landlord was personally served on the tenant on September 29, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 22, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?

- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The rental unit involves the rental of the ground floor which is used to operate a grocery store and a residence on the upstairs portion. The present rent is \$3650 per month payable in advance on the first day of the month. The tenant moved into the rental property in 1994. The present landlord purchased the rental property in 2008.

There is a dispute between the parties as to whether the landlord had agreed to purchase the grocery store from the tenant. The tenant withheld the rent for the last three months. The parties agree the sum of \$10,950 is owed for the months of August, September and October for the rental of the ground floor area and the upstairs residential portion.

### Analysis:

A major issue is whether the tenancy involves two separate leases (a commercial lease on the ground floor and a residential tenancy on the upper floor) or whether it is a tenancy under a single agreement for both areas. The agreement is not in writing. After considering all of the evidence I determined the tenancy relationship involves one tenancy for both the grocery store on the bottom floor and the residential portion upstairs for the following reasons:

- The tenant pays a monthly rent of \$3650 for both areas. The rent is not separated.
- The landlord has raised the rent by a sum that is not permitted if it is a residential tenancy.
- The Notice to End Tenancy claims the full \$3650 and has not separated the rent for the grocery store and the residential are.

Jurisdiction:

The issue that presents itself is whether the Residential Tenancy Branch has jurisdiction to hear this matter. Section 4 of the Residential Tenancy Act provides as follows:

**What this Act does not apply to**

**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,

After carefully considering all of the evidence I determined that the Residential Tenancy Act does not have jurisdiction as this tenancy involves living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement. I determined there is a single agreement for both the ground floor and the upstairs portion. The landlord attempted to separate the rent for the residential portion being \$1200 and the balance for the store. There is no evidence the rent was paid separately. Even if it was the commercial portion for the downstairs portions makes up 2/3 of the rent. I determined the accommodation is primarily occupied for business purposes..

**As a result I determined that I do not have jurisdiction and I declined to proceed with considering this case for lack of 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: October 08, 2015

