



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, ERP, PSF, FF, O

### Introduction

This hearing dealt with the tenant's application for an order cancelling a 1 Month Notice to End Tenancy for Cause dated July 1, 2017 (the "1 Month Notice"), orders requiring the landlord to make emergency repairs and provide services or facilities required by law, recovery of the application filing fee, and other unspecified relief.

The landlord, the tenant, and a witness for the tenant attended. Both the landlord and the tenant gave affirmed testimony.

Service of the tenant's application and notice of hearing was not at issue.

At the outset of the hearing, the tenant confirmed that the rental unit in question is used exclusively for commercial purposes and that it is not otherwise occupied. I advised the parties that I do not believe that I had jurisdiction to decide the dispute. My reasons for this are set out below.

### Issue(s) to be Decided

Do I have jurisdiction under the Act to consider the application?

### Background and Evidence

The tenant testified that she uses the rental space to operate a play school. The landlord resides above the play school. The tenant resides at another address.

The landlord agreed that a play school operates out of the rental unit.

The tenant further testified that she became aware of the 1 Month Notice when one of her staff members saw it on the door of the play school and delivered it to her, and that one of her staff members (her witness) delivered the landlord her application and notice of hearing by attending at his residence above the play school.

The tenancy agreement is between a landlord (not the landlord involved in this dispute), the individual tenant, and her company. The 1 Month Notice in evidence is addressed to the tenant and to the incorporated child care company.

The landlord's evidence included a letter from the tenant complaining about conditions at the rental property that had caused her client parents concern. The tenant's letter also states that the landlord would not allow her to have a live-in tenant and that this is allowed in the lease agreement. The tenancy agreement provides that the tenant "will have 1 teacher living in the house fulltime".

The landlord's evidence also included copies of rental cheques from the company to the landlord.

### Analysis

Section 4(d) of the Act provides that the Act does not apply to living accommodation that is primarily occupied for business purposes and is rented under a single agreement. Both the tenant and the landlord agree that the rental unit is occupied only for business purposes, and the agreement in evidence is a single agreement.

The documentary evidence confirms that the rental is a commercial one. Rent is paid by the incorporated company.

The tenancy agreement appears to allow for a teacher to reside in the rental unit. However, the documentary evidence suggests that the landlord has not allowed this. Although I do not decide this issue, I would probably not have jurisdiction even if there were a resident teacher in the rental unit. This is because Residential Tenancy Branch Policy Guideline #14 provides that where the rental unit is used for both commercial and residential purposes, the predominant purpose will determine whether there is jurisdiction under the Act.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider it.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: September 19, 2017

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Residential Tenancy Branch