



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 18, 2020 the Dispute Resolution Package was sent to the Tenant, via email. Service of documents via email was permitted on May 18, 2020 due to the COVID-19 pandemic. The Tenant acknowledged receipt of these documents.

On August 13, 2020 an Adjudicator with the Residential Tenancy Branch granted the Landlord authority to serve evidence to the Tenant by email, as the Tenant's email address currently on file with the Residential Tenancy Branch.

On May 15, 2020, August 20, 2020, and August 27, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that all of this evidence was served to the Tenant, via email, on August 27, 2020. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 09, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that all of this evidence was personally served to the Landlord on September 09, 2020. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 09, 2020 and September 11, 2020, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via email, on September 09, 2020 and September 11, 2020. The Tenant stated that she received this evidence; that she has not had sufficient time to consider the evidence; and that she would like an adjournment for more time to consider the evidence.

The Landlord was advised that I was inclined to grant the Tenant's request for an adjournment as the Landlord's evidence was not served to the Tenant in accordance with the timelines established by rule 3.14 of the Residential Tenancy Branch Rules of Procedure. The Landlord stated that she will withdraw the evidence she submitted on September 09, 2020 and September 11, 2020, as she does not want the matter adjourned. I find that the Landlord has withdrawn this evidence and it was not considered during these proceedings.

The Landlord and the Tenant each affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

#### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on November 01, 2019;
- the Tenant agreed to pay monthly rent of \$2,200.00 by the first day of each month; and
- the Tenant paid a security deposit of \$1,100.00.

The Landlord stated that this rental unit was rented to the Tenant as a live/work space and she was under the impression that the Tenant would be living and working in the unit. She stated that she is aware the rental unit was being used as office space. She stated that the Tenant told her that the couch in the unit may be used for the Tenant or an employee to stay overnight on occasion, but she does not know if the couch was ever used for that purpose.

The Tenant stated that she has never lived in the rental unit and that it has been used entirely as an office space for the duration of the tenancy. She stated that she lives at another address in this community and that she has resided at that address for approximately 3.5 years. She stated that neither she, nor any of her employees, have stayed overnight at the rental unit.

In an email dated October 10, 2020 the Tenant informed the Landlord that she is looking for a “small office” and that the rental unit would fit as a “live/work space”.

The Tenant submitted photographs of several desks in the rental unit.

The Landlord stated that this unit is zoned for residential/commercial use.

### Analysis

Section 4(d) of the *Residential Tenancy Act (Act)* stipulates that the *Act* does not apply to living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement.

On the basis of the undisputed evidence, I find that a person who rents this rental unit has the option of living and working from the unit. On the basis of the undisputed testimony of the Tenant and the absence of evidence to the contrary, I find that during this tenancy the unit was primarily used as a business office.

In deciding this matter, I was influenced to some degree, by the photographs submitted in evidence by the Tenant. I find that these photographs corroborate the testimony of the Tenant, as the space is clearly furnished with several desks.

As the rental unit was primarily used as a business office, I find that the *Act* does not apply to this tenancy, pursuant to section 4(d) of the *Act*.

In deciding this matter, I have placed no weight on the Landlord’s testimony that she was told that the couch in the unit may be used for the Tenant or an employee to stay overnight on occasion. Even if the couch was used for that purpose on occasion, I would still conclude that the premises were primarily occupied for business purposes.

In deciding this matter, I have placed limited weight on the email dated October 10, 2020 in which the Tenant informed the Landlord that she is looking for a “small office”

and that the rental unit would fit as a “live/work space”. I find this email is somewhat contradictory and does little to establish how the unit was actually used.

### Conclusion

The *Act* does not apply to this tenancy and I therefore decline 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 *Act*.

Dated: September 18, 2020

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Residential Tenancy Branch