



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RPP

### Introduction

This hearing dealt with an Application for Dispute Resolution filed under the *Residential Tenancy Act* (the “Act”) to request the return of personal property. The matter was set for a conference call.

One person representing the Respondent (the “Respondent”) and three persons representing the Applicant (the “Applicant”) attended the hearing and were each affirmed to be truthful in their testimony. The Applicant and Respondent were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter- Jurisdiction

Jurisdictional issues were brought up at the outset of the hearing.

The Applicant testified that the tenancy had been originally started as a commercial lease but that they started living on the property and that it is now a residential tenancy. The lease recorded a start date of December 15, 2017, a monthly rent amount of \$2,500.00, and a business name of “5 Corners Antiques and Things Ltd”. The Applicant submitted a copy of the lease agreement into documentary evidence.

The Applicant testified that they had been living on the property since 2017, in a small kitchen and living area (corner), of the commercial space. The Applicant submitted two pictures of the living area into documentary evidence.

The Respondent testified that they had not known that the Applicant had been living in the commercial space but that they had uncovered this fact in June 2020. The Respondent testified that they took immediate steps to end the commercial lease due to this breach by issuing a 30-day notice to end the commercial lease in June 2020.

The Respondent testified that the Applicant had refused to leave and that on the advice of the local RCMP, they had started proceedings in the British Columbia Small Claims Court to have the commercial lease formally ended.

The Respondent testified that on September 15, 2020, while they were waiting for small claims court proceedings, they had discovered the rental space unsecure, so they locked the space up.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 2 of the Act sets out the limitations on my jurisdiction.

***What this Act applies to***

***2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.***

Additionally, section 4 of the Act states the following:

***“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”***

I have reviewed the commercial lease agreement signed between these parties, and I find that this agreement shows that the Respondent rented this space to the Applicant

with the intent that the Applicant would primarily be using the space to run a small business.

The Applicant has argued that since they had been residing in the rented space for three years, that this was now a residential tenancy that would fall under the *Residential Tenancy Act*. However, in order to have a tenancy agreement, there must be the intention of both parties to form the legal relationship of landlord and tenant. Without this intent, there can be no enforceable agreement that would arise under the *Residential Tenancy Act* from the relationship.

During this hearing, I heard conflicting verbal testimony from the parties as to whether or not the Respondent knew that the Applicant had been residing in the commercially leased property in addition to running their business out of the property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Applicant.

I have reviewed the documentary evidence submitted by the Applicant, and I find that there is insufficient evidence before me to prove to my satisfaction that the Respondent knew or ought to have known that the Applicant had been living in the commercial space. Therefore, I find that the Applicant has failed to provide sufficient evidence to show that there was an intent by the Respondent to form a residential landlord/tenant relationship with the Applicant.

Consequently, I find that this rental property was rented with the intent to be primarily occupied for business purposes and that this lease agreement falls outside the jurisdiction *Residential Tenancy Act*. Therefore, I find that I must decline to accept jurisdiction over the Applicant's dispute with the Respondent.

Conclusion

For the reason stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicant's application. Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: February 16, 2021

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Residential Tenancy Branch