



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 31, 2020, in which the Landlord sought monetary compensation from the Tenant in the amount of \$49,877.35, authority to retain the Tenant's security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlord's Application was originally scheduled for December 14, 2020 and was adjourned to March 9, 2021 due to ill health of the Landlord's Agent, J.D. Neither the Landlord nor the Tenant called into the December 14, 2020 hearing. The matter was adjourned to 11:00 a.m. on March 9, 2021 at which time the Landlord, J.D., and the Tenant called into the hearing.

### Preliminary Matter--Jurisdiction

The Landlord claimed the sum of \$49,877.35. Section 58(2)(a) provides that the monetary jurisdiction of the Residential Tenancy Branch is the same as the B.C. Provincial Court (Small Claims Division), which is \$35,000.00. For clarity I reproduce that section as follows:

58 (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

Although an Arbitrator may award compensation more than \$35,000.00 in the event of a claim pursuant to section 51(2) of the *Residential Tenancy Act*, as well as section 44.1 of the *Manufactured Home Park Tenancy Act*, the claim before me does not fit within those narrow exceptions.

Additionally, an Arbitrator may consider a claim if the claiming party abandons the amount over \$35,000.00. In this case, the Landlord confirmed he did not wish to abandon the additional sums, rather he wished to divide his claim between the B.C. Supreme Court and the Residential Tenancy Branch. Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure* and *Rule 2.9* provides that an applicant may not divide their claim.

For these reasons I decline jurisdiction to hear this claim as the Landlord's claim exceeds the monetary jurisdiction of the Residential Tenancy Branch.

I also note that a significant portion of the Landlord's claim relates to his allegation that the Tenant used rental unit and the neighbouring agricultural land for commercial purposes. The Landlord claimed unpaid rent for the month of April and May 2020, in addition to unpaid rent for agricultural land, which he argues the tenant used contrary to the tenancy agreement. The Landlord also sought monetary compensation from the Tenant for damage to the rental property which he says was caused by the Tenant storing business equipment and materials on the property as well as the adjacent agricultural land.

The Tenant testified that he rented the rental home and five acres of land for commercial purposes to store his business equipment and materials. In support he provided in evidence a copy of another residential tenancy agreement which related to his primary residence and which confirmed he has lived at this other rental property since November 2016.

Section 4(d) of the *Residential Tenancy Act* specifically provides that living accommodation which is occupied for business purposes is outside the jurisdiction of the Residential Tenancy Branch and reads as follows:

**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,

On balance, I find the primary purpose of this tenancy to be commercial. I therefore find this matter to be outside my jurisdiction pursuant to section 4(d) of the *Residential Tenancy Act*.

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: March 10, 2021

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Residential Tenancy Branch