



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      **MNSDS-DR, FFT**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing. The Tenant attended the hearing on his own behalf.

The Tenant testified that he served the Landlord with the notice of dispute resolution proceeding package on October 3, 2022 by registered mail. He provided a Canada Post tracking number (reproduced on the cover of this decision) confirming this. I find that the Landlord has been served with the required documents in accordance with the Act. The Tenant testified that he did not provide the Landlord with copies of the documents he submitted to the Residential Tenancy Branch (RTB). Accordingly, I exclude these documents from evidence.

### **Preliminary Issue – Jurisdiction**

The Tenant testified that he rented a roughly 1,000 square foot single-detached house (the House) and the surrounding property from the Landlord. He testified that the House was zoned for commercial, and not residential, use. He testified that he resided in a motorhome located on the property and used the House's bathroom and kitchen.

The parties did not enter into a written agreement, and the tenant paid the landlord \$400 per month in rent.

The Tenant used the House to operate his shoe repair business. The utility room contained his shoe repair machinery, the living room was used to display merchandise, and the bedroom was used as an office.

The Tenant stated that the landlord ended the tenancy because he wanted to “upgrade” the House’s roof.

Section 4(d) of the Act states that the Act does not apply to living accommodations which are primarily occupied for business purposes and are rented under a single agreement.

As the Tenant paid a single amount to rent both the House and the surrounding property on which his motorhome was located, I find that they were rented under a single agreement.

RTB Policy Guideline 14 states that in order to determine whether a premises is *primarily* occupied for business purposes, an arbitrator should consider what the “predominant purpose” of the use of the premises is. It lists relevant factors to consider as:

- relative square footage of the business use compared to the residential use,
- employee and client presence at the premises, and
- visible evidence of the business use being carried on at the premises.

The Tenant did not testify as to the square footage of the motorhome. However, I find it more likely than not that it was significantly smaller than the House. I also find that the majority of the House used for the Tenant’s business. Only the kitchen and bathroom were used for residential purposes.

The Tenant indicated that the living room is used to display merchandise, which indicates clients attended the House in the course of the Tenant’s shoe repair business, and that there was visible evidence that business was being carried on inside the House.

Furthermore, I find it significant that the House itself was not zoned for residential use. It therefore could not legally be occupied for residential purpose.

For these reasons, I find that the predominant purpose of the use of the House and surrounding property was for the operation of the Tenant’s business.

Accordingly, I do not have jurisdiction under the Act to adjudicate this dispute. I decline to hear this matter.

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: June 14, 2023

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Residential Tenancy Branch