



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes

CNL, FF

### Introduction

This is an application by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use.

Despite being served by registered mail sent on September 12,, 2011, the respondent did not appear.

### Preliminary Matter

At the outset of the hearing the tenant testified that his position was that the tenancy agreement did not relate to the use of the rental unit for residential purposes, but only involved a contract for a commercial tenancy.

The tenant testified that he does not reside in the unit. The tenant testified that he is only renting workshop space that does not include access to any kitchen or bathroom facilities and is used solely for commercial purposes. The tenant testified that he felt this matter was beyond the jurisdiction of the Residential Tenancy Act .

Section 2(1) of the Residential Tenancy Act states that, “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.” (my emphasis)

Section 6 of the Act states that rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines “*tenancy*” as a tenant's right to possession of a rental unit under a tenancy agreement. Under the Act “*tenancy agreement*” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and

includes a licence to occupy a rental unit. The Act defines "*rental unit*" as living accommodation rented or intended to be rented to a tenant and defines "*landlord*", to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Given the above, I find that the contract between the applicant and respondent fails to meet the above criteria and there exists no genuine residential tenancy agreement between these two parties being that the unit is only used for commercial purposes.

Accordingly, I find that this contractual relationship and matters under dispute do not fall under the jurisdiction of the Residential Tenancy Act.

As this matter does not pertain to any provision in the Act, or a tenancy agreement as defined under the Act, I find that I lack any authority to hear or decide this matter. This application therefore cannot proceed and must be dismissed in its entirety, including the applicant's request for reimbursement of the \$50.00 filing fee, which is beyond my power to award under these circumstances

The landlord and the tenant are at liberty to seek remedy in another legal forum.

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: October 06, 2011.

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Residential Tenancy Branch