**Dispute Resolution Services**
Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:  OLC, OPT, AAT, LAT

Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the Act, an order of possession, an order permitting access to the rental unit and an order authorizing the tenant to change the locks on the rental unit.  Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is this a residential tenancy?

Background and Evidence

The parties agreed that the tenancy began in or about February 2008.  The rental unit is a studio space in a building which has a permit from the City of Vancouver permitting it to be used as a studio and as retail space.  When the parties first discussed the tenancy they agreed that the space would be used by the tenant for storage and as a work space.  In April 2008 the tenant needed a place to live and the landlord permitted him to stay in the rental unit but advised him that it was not a healthy place to live and that it was illegal for him to live there.  In December 2008 the landlord evicted the tenant and changed the locks.  The tenant

Analysis

The tenant seeks orders under the *Residential Tenancy Act* which can only be considered if the tenancy is a residential rather than a commercial tenancy.  After hearing the testimony of both parties and considering the evidence, I have determined that the tenancy is not a residential tenancy.  The parties formed a contract in February 2008 and at that time they both confirmed that the tenancy was intended to be a commercial tenancy.  Although at some point the tenant began sleeping in the unit, I find that the tenancy did not become a residential tenancy at that point but remained a

commercial tenancy.  Accordingly I find that I do not have jurisdiction to hear the tenant's claim.

<u>Conclusion</u>

The tenant's claim is dismissed for want of jurisdiction.

Dated February 24, 2009.