



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

This hearing was scheduled to deal with an application by the tenant to cancel a notice to end tenancy for landlord's use of the property.

The landlord, tenant, and representatives for each party attended the teleconference hearing. I refer to the parties as "landlord" and "tenant" for convenience, however the status of the parties is at issue.

As a preliminary matter, the tenant's representative advised that the matter of ownership of the purported rental unit is before the courts. The tenant provided a copy of a Notice of Civil Claim in the Supreme Court of British Columbia, in which, *inter alia*, the tenant claims an ownership interest in the property.

The tenant takes the position that the RTB should not deal with the matter at least until such time as the courts have ruled on whether the tenant has any interest in the property.

I advised the tenant's representative that, since it is the tenant's application, the tenant has the option of withdrawing his application. In that case, it would be up to the landlord to file an application for an order of possession if she wishes to proceed with ending the purported tenancy. The tenant could raise jurisdictional arguments at that point.

The tenant's representative therefore withdrew the tenant's application. I did not seek the landlord's position on jurisdiction and I make no findings regarding the jurisdiction of the RTB in this matter.

The *Residential Tenancy Act* at Section 49 states at subsections (8) and (9):

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that the tenant in this case has made an application pursuant to subsection (8). For that reason, the presumption in subsection (9)(a) does not apply. If the landlord should apply for dispute resolution seeking an order of possession, the tenant will not be conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

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: August 26, 2014

Residential Tenancy Branch

