



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FF

### Introduction

This was a hearing with respect to the tenants' application to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The named tenant and the landlord called in and participated in the hearing. The landlord was assisted at the hearing by his friend, who acted as his representative and translator.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated April 10, 2015 be cancelled?

### Background and Evidence

The rental property is a side by side duplex in Burnaby. The tenants occupy one of two rental units in the duplex. The tenants have rented the unit and lived in the rental property for 19 years. The property was recently sold; the landlord became the new owner on or about April 9<sup>th</sup>.

On April 10, 2015 the landlord served the tenants with a two month Notice to End Tenancy for landlord's use. The Notice requires the tenants to move out of the rental property by June 30, 2015. The stated ground for the Notice to End Tenancy is that the landlord has all the permits and approvals required by law, and intends in good faith to convert the residential property to strata lots under the *Strata Property Act*. The landlord submitted copies of documents, including a copy of an application to the City of Burnaby for approval of the conversion of the residential property into two strata lots. At the hearing the landlord testified that he has made application and hired a surveyor to draw the necessary plans. It is his intention, when the stratification is complete, to live in one of the strata units and have a family member live in the other unit.

The tenant did not receive copies of the landlord's documents that were given to the Residential Tenancy Branch. At the hearing the landlord acknowledged that he did not provide copies to the tenants. The landlord said that he has not received approval of his application to convert the property to strata units, but it is his understanding that the rental property will have to be vacant before his application can be approved. I do not

have any evidence to suggest that rental units must be vacant before an application to convert a residential property to strata units can be approved.

### Analysis

The landlord did not provide the tenant with copies of his documentary evidence and I therefore decline to accept it as evidence on this application. The landlord acknowledged at the hearing that his application to approve the conversion of the rental property to strata units has not yet been approved.

Section 49 (6) (c) of the *Residential Tenancy Act* provides that a landlord may end a tenancy by giving a Notice to End Tenancy in the proper form if he has all the permits and approvals required by law to convert the property to strata lots. The landlord is still in the application stage and his application has not been approved. I therefore find that the landlord's Notice to End Tenancy has been given prematurely and I order that the Notice to End Tenancy dated April 10, 2015 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The landlord is at liberty to issue a new Notice to End Tenancy for landlord's use. If it is the landlord's understanding that vacant possession is required in order to obtain approval of the strata conversion, then he should provide a definitive written statement from the approving authority to confirm the requirements of the approval process.

### Conclusion

The tenants' application is allowed; the Notice to End Tenancy has been cancelled and the tenancy will continue. The tenants are entitled to recover the \$50.00 filing fee for their application. They may deduct the said sum from a future installment of rent due to the landlord.

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: May 27, 2015

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Residential Tenancy Branch

