



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This was a hearing with respect to the tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

### Issue(s) to be Decided

Should the 10 day Notice to End Tenancy for unpaid rent dated May 1, 2015 be cancelled?

### Background and Evidence

The rental property is a house in West Vancouver. It was formerly owned by the tenant. The rental property was the subject of foreclosure proceedings and the landlord purchased the property in November, 2013. The landlord and the tenant made an agreement whereby the tenant would be permitted to live in the rental property while he performed renovations to the house with a view to selling it for a profit. The tenant was paid a fee by the landlord; he was permitted to live in the house and he was to share in the profits upon the sale of the house.

The landlord testified that the renovation was completed in August 2014. Since then the house has not sold although it is now listed for sale at a price that will generate little or no profit after taking into account the outlays. The tenant continued to live in the house after the renovations were completed. In January, 2015 the landlord told the tenant that he would have to rent out the house in order to pay his considerable mortgage expenses. The landlord said it was agreed that the tenant, who had nowhere else to stay, would commence to pay \$5,000.00 per month, starting February, 2015. The landlord said that the tenant paid \$5000.00 in several installments in February. He made no further payments thereafter. The landlord was of the view that the relationship was not governed by the *Residential Tenancy Act* and he asked the tenant to move out by April 30, 2015. The landlord had his agent attend to change the locks on that day. The tenant or another occupant of the rental property called the police and asserted that the house was rented and the tenant had not been given proper notice.

The landlord responded by serving the tenant with a 10 day Notice to End Tenancy for unpaid rent as well as other Notices under the *Residential Tenancy Act*. The tenant applied to dispute the Notice to End Tenancy for unpaid rent, although in his application for dispute resolution he claimed that he has never paid to rent or lease the house because it is a business transaction, he has money invested and is living in the house. The tenant said at the hearing that he has other financial dealings and business agreements with the landlord apart from the rental property and these business arrangements are all interconnected. The tenant did not submit any documents or other evidence in support of his application, apart from a copy of the 10 day Notice to End Tenancy for unpaid rent.

There is no dispute that the landlord is the registered owner of the rental property and the tenant has no ownership interest in the property. The tenant has an expectation that he will share in the profits upon a sale of the house, upon terms agreed to between the parties, but that arrangement confers no continuing rights of occupancy or possession.

During the hearing the parties accepted the opportunity to discuss a possible settlement of the matters in dispute in this proceeding, in particular the possibility of an agreement as to the date when the tenant will move out of the rental unit.

### Analysis

At the hearing the parties were given an opportunity to privately discuss a settlement of the dispute. They advised me of the agreement that they reached concerning the occupancy of the rental property. The initial matter to be determined is whether the *Residential Tenancy Act* governs the relationship between the parties and the applicant's occupancy of the rental property and whether I can give effect to the settlement agreement made by the parties.

The *Residential Tenancy Act* defines "tenancy agreement" as follows:

**"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;

Section 2 of the *Act*, entitled: "What this Act applies to" provides that:

**2** (1) 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.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The *Residential Tenancy Act* also provides by section 91 that: "Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia".

At common law a licence to occupy land amounts to a permission to occupy land without which the person's occupancy would be unlawful. It is distinguished from a tenancy on the basis that a tenancy creates an interest in the land by way of a grant of exclusive possession, whereas a licence does not create an interest in land.

The *Residential Tenancy Act* has specifically included a licence to occupy within the definition of tenancy agreement. Section 2 makes it plain that the Act applies to tenancy agreements, rental units and other residential property.

I find that the arrangement whereby the tenant has continued to occupy the rental property after the completion of renovations is a permission to occupy residential property, given by the landlord and that it constitutes a licence to occupy that falls within the definition of a tenancy agreement in the *Act*. I have therefore determined that the *Residential Tenancy Act* applies to the applicant's occupancy of the residential property and that I have jurisdiction to hear and determine this dispute. I so informed the parties at the hearing and I find that I am able to give effect to the settlement agreement that the parties negotiated between themselves at the hearing.

The parties agreed at the hearing that the tenancy will end and the tenant will move out of the rental property on September 1, 2015. The tenant agreed to pay the landlord the sum of \$5,000.00 as a rent payment on or before July 15, 2015 and he agreed to make a further payment of \$5,000.00 to the landlord on or before August 15, 2015.

The tenant agreed to pay all of the outstanding utilities that are currently outstanding or that become due and payable from this date until the tenancy ends on September 1, 2015.

The tenant agrees that he will maintain and keep the rental unit and the rental property clean and tidy and in proper condition for real estate showings from this date until he moves out on or before September 1, 2015.

The tenant agrees that when he moves out of the rental unit he will remove only his personal possessions. All other items and furniture provided by the landlord for the purpose of staging the property for sale will remain in the rental unit.

### Conclusion

Pursuant to section 63 (2) of the *Residential Tenancy Act*, which permits me to give effect to a settlement by recording it in the form of a decision and order, I direct the tenant to pay the landlord the sum of \$5,000.00 on or before July 15, 2015 and I direct the tenant to pay the further sum of \$5,000.00 to the landlord on or before August 15, 2015.

I order that the tenant maintain and keep the rental unit and the rental property clean and tidy and in proper condition for real estate showings from this date until the tenancy ends on September 1, 2015.

I direct the tenant to remove only his personal possessions from the rental property, leaving in the rental unit all other items and furniture provided by the landlord for the purpose of staging the property for sale.

I grant the landlord an order for possession effective September 1, 2015 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

This decision has no bearing upon any other contractual arrangements between the parties, or any potential claims and disputes that may arise between the parties, apart from the right to occupancy of the rental unit as determined by agreement of the parties as recorded herein.

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 18, 2015

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Residential Tenancy Branch

