



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Thandi Enterprises (1985) Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant and his daughter, also an occupant of the rental unit called in and participated in the hearing. The landlord's named representative took part in the hearing. The landlord and the tenant exchanged documentary and photographic evidence. The landlord's evidence was not submitted until January 4<sup>th</sup>. The tenants were able to respond to the evidence in testimony during the hearing, but they were unable to submit their own documentary evidence in reply before the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated October 28, 2015 be cancelled?

### Background and Evidence

The rental unit is a house on farmland in Richmond. The tenancy started in 2013. Neither party provided a copy of a written tenancy agreement. According to the landlord, the tenant rented the upstairs portion of the house at a monthly rent of \$2,000.00 and paid a security deposit of \$1,000.00 at the start of the tenancy.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated October 28, 2015. The Notice to End Tenancy required the tenants to move out of the rental property by November 30, 2015. The tenant applied to cancel the Notice to End Tenancy on November 5, 2015. The landlord cited a number of reasons for ending the tenancy on the Notice and added additional grounds to the form of notice that are not part of the official form. The landlord said that the tenant has allowed an unreasonable number of occupants in the rental unit. The landlord claimed that the tenant has damaged the landlord's property and put the property at significant risk. The landlord was particularly concerned about the large number of cars and trucks parked

on the rental property and the fact that the tenant is parking large tandem axle dump trucks and a trailer on the property. He referred to a letter from his insurance agent dated April 6, 2015 threatening to cancel house insurance because of business activities on the rental property. The insurance agent mentioned the presence of commercial trucks and tires at the property. The landlord submitted a copy letter to the tenant dated January 22, 2015 wherein the landlord complained about the number of cars and trucks parked on the property and soil contamination from oil dropping from the trucks on the land. The landlord also claimed that the tenant was storing dangerous goods in and around the house and was using a room inside the house for storage that was not part of the rental unit. The landlord said the tenant's use of electricity was excessive and that the tenant had a large dog on the property that was not disclosed at the start of the tenancy and for which no pet deposit was paid.

The landlord submitted photographs of the rental property. One picture showed a pile of old plywood and lumber and a quantity of large truck tires piled haphazardly on a graveled area next to a cultivated field. Other pictures showed several vehicles, including a pickup truck with a large fuel tank in the bed. The tenant's large dog was also shown in the picture. Other photographs showed two dump trucks, one with a trailer on the property. In the pictures there was evidence of oil spills from the trucks on the property. In several pictures there were a large number of plastic jerry containers used to carry fuel that had been left outside on the driveway area of the property. The landlord's representative testified that the land was used for growing crops and the oil and chemical contamination was putting the landlord's farming activities at risk. The landlord submitted a picture of one of the interior room of the house that was filled with tools and equipment, including an air compressor. The landlord submitted a picture of the exterior of the house. He said that it showed an upper floor exterior window broken by the tenant.

The landlord's representative also said there were an unreasonable number of occupants living in the rental unit; he referred to the large number of cars and trucks parked at the rental property as evidence that there was an unreasonable number of occupants living in the rental unit.

The tenant testified that the landlord agreed before the tenancy began that the tenant could park his dump truck on the rental property and this was set out in the tenancy agreement. The tenant and his daughter testified that the landlord's pictures were out of date and did not reflect the current condition of the rental property. The tenant said that some of the landlord's pictures show construction waste and debris left by the landlord after construction work on the house. The tenant said the pictures were taken last summer; that the oil on the graveled portion of the property was minor and it had been removed. The tenant, at his own expense has removed the contaminated soil. He purchased and spread gravel over the affected areas after removing the soil. The

landlord's daughter testified that she lives at the rental property with her mother and father and her two brothers and there are no other occupants living in the rental unit. The tenant denied any responsibility or a cracked window pane in the house.

The landlord's representative acknowledged at the hearing that the tenancy agreement does permit the tenant to park a truck on the property, but he said that it was not contemplated that the tenant would have two large dump trucks parked on the property, or that he would be using the property for commercial purposes. The landlord's representative said that a large enclosed semi-trailer shown in one of the pictures was actually the landlord's property and was stored on the rental property by the landlord.

The landlord said that he has received a recent complaint from the City of Richmond. The City has objected to a commercial vehicle stored on the rental property and has ordered they be removed. He referred to a letter dated November 13, 2015 wherein a bylaw officer directed the removal of a commercial vehicle from the rental property. The tenant disputed the landlord's testimony; he said that he is not operating any commercial business out of the rental property and his truck is permitted to be stored by the tenancy agreement; he said the letter from the City was based on a misunderstanding. The tenant said that the letter from the landlord's insurer was given in April and since then the property has been cleaned up; the tenant said that there is no current statement from the insurer that the insurance has or will be cancelled.

### Analysis

The testimony of both tenant and landlord confirmed that the tenancy agreement specifically permits the tenant to park his truck on the rental property. The landlord's photographs show that the landlord stores its own large commercial semi-trailer on the rental property. The landlord's photographic evidence was not submitted until January 4, 2016, only two days before the hearing. The tenants testified that they did not have time to respond to the landlord's evidence with their own photographs. The tenant did testify that the pictures were taken more than six months before the hearing and do not depict the current state of the rental property. The Notice to End Tenancy was given to the tenant on October 28, 2015, before any complaint was received from the City about the truck parking.

Because the tenancy agreement specifically allows the tenant to park his truck on the property and because the landlord also stores a large commercial trailer on the property, I find that the fact that the tenant has parked his dump truck and trailer on the property does not constitute cause to end the tenancy. The landlord submitted his photographic evidence late; the tenant testified that the photographs do not reflect the current state of the rental property and I accept the tenant's evidence that the landlord's pictures were taken last summer, before the tenant performed work to the property.

I do not find that the landlord has established that the tenant has assigned or sublet the rental property or that there are an unreasonable number of occupants, as alleged by the Notice to End Tenancy. The landlord claimed that the tenant has engaged in illegal activity, but submitted no evidence of any illegal activities on the rental property.

The landlord bears the burden of establishing that there are grounds that justify ending the tenancy. Based on the evidence presented by the landlord at the hearing, I find that the landlord has failed to prove that there are sufficient grounds to support ending the tenancy for cause. I have reached this conclusion based on the fact that the tenancy agreement allows the tenant to keep his truck at the rental property and based on my finding that the landlord's pictures do not accurately depict the current state of the rental property.

I order that the Notice to End Tenancy dated October 28, 2015 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. This decision cancelling the Notice to End Tenancy does not prevent the landlord from issuing a new Notice to End Tenancy based on current evidence as to the condition of the rental property, or its use by the tenant. If the landlord serves a new Notice to End Tenancy it will be helpful if the parties include as part of their evidence a copy of the tenancy agreement.

### Conclusion

The tenant's application has been allowed. The Notice to End Tenancy has been cancelled. The tenant is entitled to recover the \$50.00 filing fee for his application, he 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: February 02, 2016

---

Residential Tenancy Branch

