



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC CNC MNDC MNSD FF

### **Introduction:**

Both parties and counsel for the landlord attended the hearing and gave sworn testimony. They agreed the tenant received personally the Notice to end Tenancy dated May 29, 2017 to be effective June 30, 2017 and the Application for Dispute Resolution by registered mail. The tenant said they served their Application by registered mail and the landlord acknowledged receipt. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- c) To cancel a Notice to End Tenancy for cause;
- d) To obtain a monetary order for damages in the amount of \$35,000; and
- e) To recover filing fees for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Are they entitled to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that they are entitled to compensation as claimed?

### **Background and Evidence:**

Both parties and counsel for the landlord attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 2010 with an original rent of \$2000 which was later

reduced to \$1500. The tenant said he paid a security deposit of \$1000 and the landlord said it was not actually paid although it is stated on the tenancy agreement.

The landlord served the Notice to End Tenancy for the following reasons:

1. The tenant or a person permitted on the property by the tenant has
  - (i) put the landlord's property at significant risk
  - (ii) damaged the landlord's property
  - (iii) has caused extraordinary damage to the property
  - (iv) has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord explained that the tenant is storing a large number of vehicles on the property in contravention of the municipal bylaws. The tenant said he is working with the municipality to correct this situation by moving them to another storage place. The landlord said this has been an ongoing issue since 2014 with many emails to the tenant regarding the auto business, storing of derelict vehicles and non compliance with the zoning. He said people complain about the excess vehicles parked on the roadway. The tenant said they are licensed and insured so allowed to park there.

The tenant said this is a home based business allowed under the Bylaws, specifically Bylaw 3520, para. 4.10 and 4.11 as this is a 2.2 hectare property. Counsel for the landlord said only one vehicle was allowed to be parked outdoors and the tenant has numerous vehicles and is in contravention. The tenant said he is working with the municipality and resolving matters. In evidence is an email from a Bylaw Inspector dated June 5, 2017 stating in part, "I have only requested that the property be brought into compliance as it relates to zoning, unsightly premises and building bylaws."

Counsel said that there are multiple issues further to the non compliance. The tenancy agreement has been breached for the tenant has made numerous additions to the property without the landlord's consent. He constructed multiple buildings and put in a fireplace. The tenant said the buildings are just temporary buildings and the fireplace was certified but he agreed he got no written consent from the landlord. He said when the father of the landlord's family was alive, they dealt well orally.

The landlord provided evidence that they have been denied insurance due to the tenant's operation of a business. The tenant said it is a home based business, in an area zoned for it and it is the landlord's obligation to inform the insurer of this and get the appropriate insurance. The denial was likely because the tenant never arranged for the right kind of insurance although the landlord knew from the beginning that there was

a home based business. The tenant said the landlords inspected in 2015 and said everything was okay.

On his Application the tenant has submitted a substantial monetary claim. Items #1-5 all relate to possible removal of his buildings and vehicles and items #6-10 are for improvements to the property such as broom removal, painting, removal of old needles etc., gravel, drainage, pruning and hauling and the installation of a wood stove. The tenant agreed that he never obtained written permission from the landlord to install the buildings or do the improvements claimed. He said the father had dealt verbally and there was never a problem and the stove was necessary for they sometimes lose power and heat.

A large volume of documents are in evidence including the Notice to End Tenancy, submissions from the parties and the Bylaw 3520. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Order of Possession**

I find that the landlord is entitled to an Order of Possession. I find the weight of the evidence is that there is good cause to end the tenancy. I find the tenant has been in significant contravention of Bylaw 3520 for many years as he has stored in excess of 50 vehicles outside and some are still remaining. Although he states they are not derelict because they are driveable, he provided insufficient evidence that they are all licensed and insured as required by Bylaw 3520 part 4.17. I find further the tenant has breached his tenancy agreement by erecting buildings and making improvements such as the fireplace without written permission of the landlord. By so doing, I find he has breached a material term of his tenancy agreement and put the landlord's property at significant risk as the municipality has threatened action and the landlord has been denied insurance. I find the landlord entitled to an Order of Possession.

Some negotiation occurred and the tenant promised if his tenancy was extended to October 31, 2017 for an effective date for an Order of Possession, he would not appeal and cause further delays to the landlord. Based on this assurance, the landlord agreed to an effective date of October 31, 2017. The tenant did not agree to an indemnification agreement if anything happened to the property meanwhile.

### Monetary Order

I find the tenant is not entitled to compensation as claimed. I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find insufficient evidence that the landlord violated the *Act* or tenancy agreement or that such violation caused the tenant's losses. I find the weight of the evidence is that the tenant voluntarily placed the vehicles and buildings on the property in violation of his tenancy agreement and the Bylaws. Therefore, I find him not entitled to compensation for items #1-5 as claimed. I find further that the tenant had no written permission from the landlord to do any of the items listed as items #6-10 or any promise of compensation. Therefore I find him not entitled to any of the compensation claimed. I make no findings on the security deposit, if any, and leave it to be dealt with in accordance with section 38 of the *Act* after the tenant has vacated.

### **Conclusion:**

I find the landlord is entitled to an Order of Possession effective October 31, 2017 and to recover filing fees paid for this application.

I dismiss the Application of the tenant in its entirety without leave to reapply.

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 09, 2017

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Residential Tenancy Branch