



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY REALTOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

Only the landlord/respondent attended the hearing and gave sworn or affirmed testimony. After 10 minutes, the tenant/applicant had not attended and the hearing proceeded in his absence. The One Month Notice to End Tenancy is dated November 29 to be effective December 31, 2018 and the landlord said it was served personally on the tenant on November 29, 2017. The landlord said the personally received the tenant's Application dated December 8, 2017. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Only the landlord/respondent attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2017, rent is \$900 a month and a security deposit of \$425 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has put the landlord's property at significant risk; and
- c) The tenant has engaged in illegal activity that jeopardizes a lawful right or interest of another occupant or the landlord.

The landlord provided three letters from the City in evidence. The Bylaw officers have found the tenant is operating a business on the property in contravention of zoning and licensing bylaws. He has a tow truck with which he tows wrecked cars to the property

and then he fixes them up and sells them. The Bylaw officers have been watching this since August 2017 and said they sent the letter in October because the tenant was not cooperating after they warned him. The neighbours are significantly disturbed by the noise and mess and are complaining to the City also. The landlord has been issued one fine but the City has held off issuing more until they see the result of the hearing today. They realized the landlord had to go through the process to end the tenancy.

Included with the evidence is the Notice to End Tenancy, letters from the City, statements from the tenant denying the facts provided by the landlord. He said he corrected what was wrong. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 47 of the Act lists causes for which a tenancy may be legally ended. The onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he has put the landlord's property at significant risk and has engaged in illegal activity that jeopardizes the lawful right or interest of another occupant or the landlord. I find the landlord's credibility is well supported by the letters from the City in evidence. The letters note the tenant owns a tow truck which he uses to earn income. The City advised him that this residential zone does not permit this kind of business and he also does not have a valid business license. They also advised him they had received numerous complaints from neighbours regarding wrecked vehicles being repaired with accompanying noise, excess vehicles being stored on the property and a tow truck business being operated without a valid business license. The Bylaw officer wrote that he attempted to resolve matters with the tenant but he received additional complaints and on November 21, 2017, he returned to inspect the property. He observed the tenant's truck towing vehicles into the driveway and there were 5 vehicles in the driveway and vehicles parked around the house. The Bylaw officer informed the agent in this letter that these bylaw infractions can result in daily fines issued against the property owner.

I find the weight of the evidence is that the tenant's activities are putting the landlord's property at significant risk. I find his illegal activity in contravention of zoning and noise bylaws is jeopardizing the lawful right of other occupants and neighbours who have the right to peaceful enjoyment. I dismiss the Application of the tenant to set aside the Notice.

Section 55 of the Act provides that when the tenant's Application to set aside the Notice is dismissed, the landlord must be issued an Order of Possession. The landlord requested an Order of Possession effective February 28, 2018 as the tenant has paid rent for February.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The filing fee was waived. The tenancy is at an end on December 31, 2017 as the Notice stated. An Order of Possession is issued to the landlord effective February 28, 2018.

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 13, 2018

Residential Tenancy Branch