



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC FF

### **Introduction**

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated November 27, 2017 to be effective December 31, 2017 and the tenant confirmed it was served November 28, 2017 by posting it on the door. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated December 18, 2017 and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 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; and
- b) To restrict the landlord's entry into their suite pursuant to section 29.

### **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**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 23, 2016 on a fixed term to December 1, 2018. Rent is \$900 a month and a security deposit of \$450 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by the tenant has:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord; and put the landlord's property at significant risk.
- b) The tenant or a person permitted on the property by them has engaged in illegal activity that has or is likely to:

- (i) damage the landlord's property.
- (ii) adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord said there had been many letter complaints from other tenants concerning the significant disturbance of their peaceful enjoyment. The manager testified that she has received many complaints about noise of the tenants' stereo late at night and in the early hours. A number have also complained about the noises the tenant makes on his deck; the noises include hammering, drilling, sawing and moving things around late at night and in the early hours. Some tenants are working and this is seriously interfering with their sleep. She said the other tenants are very frustrated and she has spoken to the tenants and sent warning letters but the problem continues. In addition she said the tenant has persons sometimes pick him up in the morning. These people honk their horn loudly disturbing others and on one occasion, when the tenant did not come down, the driver drove off honking loudly all the way. The landlord also provided evidence that the female tenant has persons calling up to her in the late hours and she has had complaints about that.

The tenant said he sometimes moves stuff around on the deck but not all night. He said some neighbours are unreasonable and the person next to them does not hear their noise.

The landlord also said there was drug involvement. In July 2017, a girl died from an overdose and she was doing drugs with the female tenant. The female tenant explained she had just met the girl; she does not do drugs herself. At the time of the incident the girl and 3 others were in these tenants' apartment. The girl said she knew where to get heroin and one of the other men left with her. Then the man came back and told the female tenant she needed to go down to the girl's unit and the female tenant went down and found the girl had overdosed and died.

The landlord also states the tenant changed the locks and has not given keys to them to the landlord. After much effort, they managed to do an inspection in October 2017. They found the tenant had removed all the cupboard doors and left them on the deck in the rain. They were also painting various cupboards without approval or permission of the landlord. When they tried to query the tenant, the landlord and manager both testified that he seemed to be under the influence of something for he was 'out of it'. The male tenant said he was just nervous in speaking to the landlord, not under the influence of drugs. He changed the locks because he lost the key and he did not give a

copy of the new key to the landlord. He said he removed the cupboard doors and did some repainting without permission because they were falling apart.

The landlord requested an Order of Possession effective February 28, 2018 if the tenant is unsuccessful. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, 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 they or a person permitted on the property by them have significantly interfered with or unreasonably disturbed another occupant or the landlord. Many tenants in letter complaints to the manager support the landlord's oral sworn testimony that these tenants play music too loud late at night or in the early hours, they are moving things around and making construction noises on the deck late at night or in the early hours and they have persons picking them up or coming to see them that yell from outside or loudly honk their horns. I find the weight of the evidence is that these tenants and guests significantly disturb the peaceful enjoyment of other tenants in the building as they are kept awake by the noise.

In respect to the drug incident, I find the tenants had guests in their unit, one of whom went to find heroin and overdosed and died. I find the tenant **or a person permitted on the property by them** has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

I find the weight of the evidence is the landlord has sufficient cause pursuant to section 47 of the Act to end the tenancy. I dismiss the Application of the tenant to set aside the notice. The tenancy is ended. Section 55 of the Act provides that a landlord is entitled to an Order of Possession in these circumstances. I find the landlord entitled to an Order of Possession effective February 28, 2018 as requested.

I find it unnecessary to consider further causes such as damage to the landlord's property as the landlord successfully proved the above causes to end the tenancy.

In respect to the tenant's request to restrict the landlord's entry into their suite, I find insufficient evidence that the landlord has illegally entered their suite. In fact, the evidence is that the locks have been changed and the landlord does not have a key. I dismiss this portion of the tenant's application.

**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 pursuant to the Notice to End Tenancy. 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 21, 2018

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Residential Tenancy Branch