



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MacGregor Realty & Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      O, MNDC, MNSD, MNR,FF

### Introduction

This was an for an Order for possession pursuant to the tenancy agreement and section 44(1)(b) of the Act. The applicant abandoned all other monetary claims except for the filing fee at the hearing. The applicant abandoned all claims as against the respondent NG. Only the applicant was represented at the hearing.

### Issue(s) to be Decided

Is the applicant entitled to an Order for Possession?

### Background and Evidence

The applicant's agent DM testified that sent the dispute resolution package to the respondent SF by registered mail on June 24, 2014. With reference to Canada Post's web site I find that the respondent was served on the respondent on June 25, 2014. DM testified that the tenancy agreement commenced on August 26, 2012 with rent currently amounting to \$ 2,800.00 per month. The respondent SF paid a security deposit of \$ 1,300.00 and pet deposit of \$ 1,300.00 on August 21, 2012. The original tenancy agreement was a fixed term requiring the respondent SF to vacate at the end on August 31, 2013 . The respondent SF refused to move but continued to pay rent through July 2014. The applicant emailed the respondent upon each payment confirming that each payment was accepted as for "use and occupancy only."

On October 11, 2013 a hearing was held at the RTB file No. 812086 in which the matter was settled as follows:

1. The parties reached a mutual agreement that they would enter into an extension of the fixed term lease signed August 21, 2012. Monthly rent is \$2,800.00 due on the first day of each month. The tenancy will end at 1:00 p.m. on April 30, 2014, and the Tenants must move out of the rental unit unless the parties negotiate another tenancy agreement.
2. The Tenant will authorize his bank to make to make an automatic payment (PAD) from his account to the Landlord's account for rent payments.
3. The Tenant will pay the Landlord the amount of \$850.00 on October 16, 2013. On October 16, 2013, the Landlord will refund the Tenant his demonstrated costs for replacing a faucet and a door handle at the rental unit.

DM testified that subsequent to this hearing the respondent SF refused to sign any new tenancy agreement but all monthly payments were made through July 2014 and each time the applicant confirmed that all payments were accepted for "use and occupancy only" by email. DM requested an Order for Possession at this hearing effective July 31, 2014.

### Analysis

I find that pursuant to the decision of October 11, 2014 File No.812086 aforementioned the respondent SF was required to vacate on April 31 2014 unless a new tenancy agreement was negotiated by the parties. I find that although the applicant accepted payments from the respondent SF it did so clearly "for occupancy only" and not rent. Accordingly the applicant is entitled to an Order for possession as requested on July 31, 2014 pursuant to section 44(1)(b) of the Act.

**44** (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

### Conclusion

I have granted the landlord an Order for Possession effective July 31, 2014. This order may be filed in the Supreme Court and enforced as an Order of that Court. I order that the landlord retain the filing fee of \$ 100.00 from the security deposit of SF and that the

balance of SF's security and pet deposit be distributed in accordance with section 38 of the Act. This Decision and all Orders must be served on the respondent SF as soon as possible. I have dismissed all other claims by the applicant. I have dismissed all claims against the respondent NG.

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: July 08, 2014

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Residential Tenancy Branch

