



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sandhill Properties Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, O, OPR, MNR

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for recovery of her \$100.00 filing fee.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for outstanding rent totaling \$11,000.00, and a request for recovery of the \$100.00 filing fee.

The landlord has provided evidence that both respondents were served with notice of the hearing by registered mail that was mailed on March 16, 2016.

The tenant has provided evidence that the landlord was provided with notice of the hearing by registered mail that was mailed on March 9, 2016.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Further, in this decision I will be referring to the tenants by their initials only, T.J.S for the female tenant, and D.W.S. for the male tenant

### Preliminary Matters

T.J.S. had requested that I make a finding as to whether the Residential Tenancy Act has jurisdiction over this matter, and as to whether or not she is a tenant of the rental unit.

T.J.S. argued that the Residential Tenancy Act has no jurisdiction over this matter because there was an option to purchase agreement in place, made in September of 2011.

T.J.S. has also argued that the original tenancy agreement, which she signed on September 28, 2011, expired on October 14, 2013, and there was a requirement in that agreement for the tenants to vacate on that date. T.J.S. further stated that at no time has she come to any verbal or written agreement with the landlord for new tenancy, and if any agreement was reached it was between D.M.S. and the landlord.

T.J.S. further stated that she has never paid any rent to the landlord and that, if any rent was paid, or if there was any agreement for amount of rent to be paid, it was between D.M.S. and the landlord and therefore she does not believe she should be bound by any agreement reached between D.M.S. and the landlord

T.J.S. therefore argues that if anyone is a tenant, it is D.M.S, and she is simply an occupant of the rental unit under D.M.S's tenancy.

The landlord testified that the original tenancy agreement did expire in October of 2013, however he had a verbal agreement with both tenants to continue the tenancy, and D.M.S., continued paying the rent. He therefore believes that both parties are his tenants and both parties can be held liable for any outstanding rent.

In response to the landlord's testimony the tenant testified that D.M.S. may well have made an agreement with the landlord to continue the tenancy, but she was not a party to that agreement and she did not make any verbal agreement with the landlord.

### Decision in the Preliminary Matters

As stated above T.J.S. argued that the Residential Tenancy Act has no jurisdiction over this matter, because there was an option to purchase, made in September of 2011; however it is my finding that that option to purchase had an expiry date of September 1, 2013, and therefore, since the parties did not act on the option to purchase before the expiry date, that option to purchase is no longer in effect, and has no bearing on any tenancy after that date.

It is my finding however, that the landlord has not met the burden of proving that T.J.S., ever entered into a new agreement with the landlord after the original agreement expired.

The original agreement, which was signed on September 28, 2011, had an end of tenancy date of October 14, 2014, which required the tenants to vacate the rental unit on that date; therefore, for the tenancy to continue, the parties would have to enter into a new tenancy agreement. In this case it is my finding that the landlord has met the burden of proving that he has a tenancy agreement with the male respondent, as D.M.S. has been paying rent; however T.J.S. denies ever being a party to that agreement.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against that of the other that burden of proof is not met.

Therefore in this case it is my finding that T.J.S. is not a tenant but is simply an occupant of the rental unit under the tenancy of D.M.S..

I gave this decision during the conference call, and asked T.J.S. if she was acting on behalf of D.M.S., in either her application, or the landlords application, and she stated she was not, and I therefore informed T.J.S. that the Residential Tenancy Act has no jurisdiction in her application as there is no landlord tenant relationship between herself and the landlord, and since she is not representing D.M.S., she made the decision to leave the conference call.

Since the landlord has provided evidence that the male respondent, D.M.S. was properly served with notice of today's hearing I proceeded with the landlords application in the absence of the respondent.

Issue(s) to be Decided

The issues are whether or not the landlord has established the right to an Order of Possession, and whether or not the landlord has established a monetary claim against the respondent, and if so in what amount.

### Background and Evidence

The landlord testified that the respondent had agreed to pay rent of \$2000.00 per month and had been paying that rent in full until September of 2015.

The landlord further testified that since September 2015 rent has fallen behind as follows:

September 2015	\$500.00
October 2015	\$2000.00
November 2015	\$500.00
December 2015	\$1000.00
January 2016	\$2000.00
February 2016	\$2000.00
March 2016	\$2000.00
April 2016	\$2000.00
Total	\$12000.00

The landlord further testified that, since rent was so far behind, a 10 day Notice to End Tenancy was personally served on the respondent on March 6, 2016, and he has provided evidence showing that the respondent signed for that document.

The landlord is therefore requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding rent, plus his \$100.00 filing fee.

### Analysis

It is my finding that the landlord has shown that the tenant has fallen behind on the rent, and that, at this time, there is a total of \$12,000.00 in rent outstanding, and I therefore allow the landlords request for that outstanding rent. I have allowed rent to the end of April 2016, as the tenant has failed to vacate the rental unit, and therefore should reasonably have anticipated that, more rent would be due by the date of today's hearing.

It is also my finding that the landlord has served a valid 10 day Notice to End Tenancy, and the tenant has failed to comply with that notice, and I therefore allow the landlords

request for an Order of Possession pursuant to section 55 of the Residential Tenancy Act.

I also allow the landlords request for recovery of his \$100.00 filing fee.

### Conclusion

#### Tenants Application for Dispute Resolution

As stated previously I decline jurisdiction over T.J.S's application for dispute resolution.

#### Landlords Application for Dispute Resolution

I have removed T.J.S. as a respondent from the landlord's application because, as stated above, she is not a tenant in this tenancy, and her name will not be included in either of the Orders issued.

Pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession to the landlord that is enforceable two days after service on the respondent.

Pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order for respondent D.M.S, to pay \$12,100.00 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: April 20, 2016

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Residential Tenancy Branch