



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said the 10 Day Notice to End Tenancy dated August 4, 2016 to be effective August 24, 2016 was served by registered mail but was refused by the tenants. The tenants said they never received it or refused it. They said the first time they saw it was when they received the Application for Dispute Resolution dated August 19, 2016 and they immediately paid all the arrears of rent on August 28, 2016. On checking the Canada Post site, I found the Notice to End Tenancy was mailed on August 8, 2016 but was returned to the sender because the recipient was not located at the address provided. No address was on the mailing label submitted as evidence. I find the tenant was not legally served with the Notice to End Tenancy. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

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

Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced December 1, 2014, a security deposit of \$500 was paid and rent is currently \$1029 a month. The tenant said they had paid up all the arrears in cash to the caretaker as authorized by the agent of the landlord. They submitted evidence of receipts. He confirmed the authorization. There is no note on the receipts to limit acceptance of the rent to "use and occupancy only" although it is noted in the landlord's ledger records.

The landlord's agent said there is new management and they wanted an Order of Possession as the tenants have been sporadic and late in rental payments. The tenants said they borrowed money to pay up all arrears and do not want to move. The agent confirmed they had paid all arrears plus over \$100 towards November rent.

In evidence is the Notice to End Tenancy, rent receipts signed by the caretaker, a rent ledger, the tenancy agreement and a notice of rent increase. 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 not entitled to an Order of Possession. I find the weight of the evidence is that the Notice to End Tenancy was not served on the tenant when issued by the landlord. Although the landlord limited acceptance of rent after the Notice to “use and occupancy only” on their ledgers, I find this was not effective as the tenant was not notified on the receipts given at the time. Furthermore, as the Notice to End Tenancy was not served on the tenant, limiting further rent payments after is not effective. The registered mail receipt for the Application for Dispute Resolution shows it was mailed on August 19, 2016. This is deemed to be received by the tenants 5 days after mailing pursuant to section 90 of the Act or on August 24, 2016. I find the tenants’ evidence credible that this was the first time they saw the Notice to End Tenancy. I find their evidence credible that they paid their overdue rent on August 28, 2016 as the agent confirmed this. I find this is within the 5 day limit to make the Notice of no effect according to section 46(4) of the Act. I dismiss the application of the landlord for an Order of Possession.

Likewise I dismiss the application for a monetary order as the evidence is that the tenants have paid all overdue rent with a small credit for November. As pointed out to the agent in the hearing, if new management has problems with the tenants’ payments being sporadic or always late, they should consult section 47 of the Act regarding one month Notices to End Tenancy for cause.

### **Conclusion:**

I dismiss the Application of the landlord without leave to reapply. I find the landlord is not entitled to recover filing fees paid for this application due to lack of success.

**I HEREBY ORDER the Notice to End Tenancy dated August 4, 2016 is of no effect. The tenancy is continued.**

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: October 19, 2016

---

**Residential Tenancy Branch**