



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR OPR FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The tenant agreed they received personally the 10 Day Notice to end Tenancy dated December 7, 2017 to be effective December 17, 2017 on December 8, 2017 and the Application for Dispute Resolution by registered mail. The landlord said the Notice was actually delivered personally on December 7, 2017 and they filed a proof of service. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order of Possession pursuant to Sections 46, and 55; and
- c) To recover the filing fee for this application.

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

Is the landlord 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 31, 2015, a security deposit of \$312.50 was paid and rent is currently \$648 a month. The landlord said the tenant paid December rent on December 28, 2017 and owes no arrears. However, they said the rent was not paid within the 5 days allowed by section 46 after service of the Notice and no dispute was filed so they wish to assert their legal rights and proceed with obtaining an Order of Possession.

The witness, the building caretaker, said she had discussions with the tenant and told her that they were proceeding with the eviction, although accepting rent. The property manager said the tenant was well aware her tenancy was ending as evidenced by the tenant's testimony that she talked to the residential tenancy branch and attempted to file late evidence. 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 entitled to an Order of Possession. I find the tenant was served a Notice to End Tenancy on December 7<sup>th</sup> or 8<sup>th</sup> and did not file an application to dispute it within 5 days or pay the rent within the five days. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective February 15, 2018 as allowed by the landlord.

The landlord has continued to accept rent without giving a receipt for use and occupancy only. Policy Guideline 11 states:

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- *whether the receipt shows the money was received for use and occupation only.*
- *whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- *the conduct of the parties.*

I find the landlord and her witness made it clear to the tenant that they were accepting rent but it was not reinstating the tenancy for they were proceeding with their application for an Order of Possession. I find their intention was clear so the Notice was not waived.

**Conclusion:**

I find the landlord is entitled to an Order of Possession effective February 15, 2018 as they requested and to recover filing fees paid for this application. No rent is owed to date. A monetary order for \$100 for the filing fee is enclosed. **I HEREBY ORDER that the landlord may recover the \$100 filing fee directly from the tenant or may choose to deduct it from the security deposit.**

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: January 11, 2018

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Residential Tenancy Branch