



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Dreality Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on March 26, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord attended the hearing and provided testimony. The Tenant did not attend the hearing. The Landlord testified that he served the Tenant with the Notice of Hearing package and evidence in person on January 27, 2018. I find the Tenant received the package on this day.

In the hearing, the Landlord stated that he wanted to withdraw his application for a monetary order because he was going to apply for this at a later date, once he could assemble all of his records in a comprehensive manner. I hereby amend the Landlord's application accordingly. The Landlord is granted leave to reapply for this matter.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

### Background and Evidence

The Landlord testified that the Tenant rented, via an oral tenancy agreement, the main floor suite of the rental house for \$1,600.00 per month, with rent due on the first of the month. The

tenancy started on August 1, 2017. Then, sometime in the fall of 2017, the Tenant also asked to rent the lower suite in the house. The Landlord stated that since the lower unit was empty, he allowed the Tenant to rent the whole house (upper and lower) for \$2,600.00 per month. The Landlord stated the Tenant began renting the whole house as of December 1, 2017, also by way of an oral tenancy agreement.

The Landlord stated that the Tenant was late paying December 2017 rent, but that he paid the full rent for that month, by December 31, 2017. The Landlord stated that the Tenant did not pay any rent for January 2018 until January 8, 2018, when he paid \$900.00 (out of the \$2,600.00 he owed). Then the Tenant paid \$600.00 on January 10, 2018. The Landlord stated that the Tenant still owed \$1,100.00 at that point. The Landlord stated that the occupants living downstairs in a self-contained suite signed a written tenancy agreement as of February 1, 2018. As a result of this new agreement with the occupants of the lower suite, the Tenant upstairs now only rented the upper suite at a rate of \$1,600.00, under an oral tenancy agreement, as of February 1, 2018.

The Landlord testified that as of February 1, 2018, the Tenant still owed \$1,100.00 from January, plus the additional rent for his upper unit for February (\$1,600.00). The Landlord stated that the Tenant paid \$550.00 on February 9, 2018, and then \$400.00 on February 21, 2018, and \$600.00 on February 22, 2018.

The Landlord also submitted documentary evidence including a worksheet which specifies that as of January 1, 2018, the Tenant owed \$2,600.00. This worksheet also specifies that the Tenant made partial payments, totalling \$2,200.00 on January 18 and 21, 2018. This worksheet also specified that the Tenant owed \$600.00 as of the end of December 2017.

The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Landlord stated that he hand delivered the Notice to the Tenant's girlfriend, who resides with him, on January 12, 2018. The Notice indicated that as of January 1, 2018, the Tenant owed \$2,300.00, plus \$600.00 from December 2017, totalling \$2,900.00.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice,

the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I note the Landlord bears the burden of proof to support the reasons on the Notice. I find the Landlord's evidence is not sufficiently clear with respect to what amount of rent was outstanding, what was paid, and when. In making this determination, I note that the testimony he provided in the hearing with respect to payment dates and amounts conflicts with the dates and amounts on the worksheet in several different ways. The total amount owing on the Notice is not consistent with the amount he stated was owed during the hearing. The amount of rent he stated was outstanding as of the end of December 2017 is also different than the amount he indicated was owed on the worksheet he provided into evidence. Ultimately, I find the Landlord's evidence is not internally consistent and is not sufficiently reliable, such that I could be satisfied that there was rent outstanding at the time the Notice was issued. As such, I find there is insufficient evidence to support the basis for the Notice, including how much was owed. I hereby cancel the Notice, issued on January 12, 2018, and it is of no force or effect. The Landlord's application for an order of possession is dismissed.

Since the Landlord was not successful, I decline to award him the recovery of the filing fee he incurred to make this application.

The Landlord is at liberty to re-issue another Notice, if the Tenant still owes rent, and to obtain an order of possession based on the new Notice.

#### Conclusion

The Landlord's application for an order of possession based on a Notice dated January 12, 2018, is dismissed, without leave to reapply.

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: March 28, 2018

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Residential Tenancy Branch