



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CROSSROADS ENT. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC MNDCT RP FF

### **Introduction**

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated July 20, 2017 to be effective August 31, 2018 and the tenant confirmed it was served by registered mail. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated July 26, 2018 by Fedex and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To obtain compensation for lost food due to a refrigerator having to be replaced.

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

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application? Has the tenant proved on a balance of probabilities that they are entitled to compensation as claimed?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2017, it is now a month to month tenancy, rent is \$850 a month and a security deposit of \$425 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reason:

- a) The tenant is repeatedly late in paying rent.

The landlord provided copies of five 10 Day Notices to End Tenancy for unpaid rent to illustrate that the tenant is repeatedly late in paying. The tenant said the manager had told him it was okay to be late, provided he paid the \$20 late fee which he has been doing. The manager responded by saying that tenants must pay rent on time but if one has an unexpected circumstance, she tells them it is okay but they cannot continue to be late.

The tenant said he is unhappy with the manager's responses to requests for repair. He had a broken refrigerator and lost food costing about \$200; he does not have receipts for it so will waive this claim. He said the manager first said there was nothing wrong with the refrigerator but then it was replaced about 2 days later. In evidence is a note complaining about the refrigerator and a manager's notation on the bottom saying there was nothing wrong with it but it was set too low at "2" and they had turned it up to "5". The owner said the tenant called him repeatedly (about 3 times in an hour) to complain about this incident so he told the manager to just replace it to avoid the hassle. The manager said they still have the tenant's old refrigerator and it is working fine.

The tenant also said the kitchen sink or faucets are leaking and he has towels around it that are always soaked. The landlord said they had no record of a written request regarding the sink. However, when they entered after 24 hour Notice in July in respect to the refrigerator issue, there was a young man in bed. When they asked him if there were any other problems besides the refrigerator, he said he knew of none. Furthermore, in July 2017, there is no mention of a sink problem in the move in report and there are no reports of leaking water underneath the tenants unit. The maintenance manager said he responds to reports of water leakage immediately because of the possible consequences. He noted they had a plumber fix a bathtub leak for the tenant and he said all was okay. He saw no towels at the kitchen sink.

When the weight of the evidence of repeated late payment of rent was discussed, the parties negotiated a possible effective date for the Order of Possession. The tenant was concerned that he has some time to find a new place. The parties agreed as follows:

1. The landlord will receive an Order of Possession effective two days from service.
2. Provided the tenant pays rent for October 2018, the landlord will not serve the Order until late October in order for it to be effective October 31, 2018.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that the tenant has been repeatedly late paying rent. I find the evidence of service of five 10 day Notices on the tenant supports the landlord's credibility and is consistent with their statements that they did not agree the rent payment could be repeatedly late. I dismiss the tenant's Application to cancel the Notice Pursuant to section 55 of the Act which provides when the tenant's application to cancel the Notice is dismissed, I find the landlord entitled to an Order of Possession effective two days from service.

I find the tenant waived his claim for compensation for lost food as he has no receipts and he got another refrigerator. I find insufficient evidence of a failure of the landlord to repair the kitchen plumbing. The tenant supplied no documentary evidence of complaints to support his application, although he filed one regarding the refrigerator problem. I dismiss this portion of his Application.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy and for repair is dismissed; the filing fee was waived. The tenancy is at an end on August 31, 2018. An Order of Possession is issued to the landlord effective two days from service. I note the landlord has agreed not to enforce this until the end of October for a move out date of October 31, 2018, provided the tenant pays rent for October.

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: September 18, 2018

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Residential Tenancy Branch