



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### Dispute Codes

Landlord: OPR, MNRL, FFL

Tenant: CNR, RP, FFT

### Introduction

On August 23, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing.

On September 12, 2018, the Tenant submitted an Application for Dispute Resolution under the Act to cancel a 10-day Notice to End Tenancy for Unpaid Rent, to request an order for repairs and to be compensated for the cost of the filing fee. The Tenant’s Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

### Preliminary Matters

The Tenant applied to cancel a Notice to End Tenancy and advised that this was his priority issue in his Application. I advised the Tenant that the secondary issue regarding

an order for repairs is not related to the tenancy and would only address it if there was time and there was a decision that the tenancy would continue.

During the hearing, the Landlord testified that they refused any attempts from the Tenant to pay his rent for September and October 2018. The Landlord stated that his priority was to obtain an Order of Possession and that he was not pursuing a monetary claim for unpaid rent.

In accordance with Section 64(3) of the Act, I have amended the Tenant's Application by removing his request for an order for repairs and amended the Landlord's Application by removing his request for a Monetary Order for unpaid rent. Both parties have an opportunity to reapply if they choose.

#### Issue to be Decided

Should the 10-Day Notice to End Tenancy for Unpaid Rent, dated August 8, 2018 (the "Notice"), be cancelled pursuant to Section 46 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession for the rental unit, pursuant to Section 46 and 55 of the Act?

Should either of the parties be reimbursed for the cost of the filing fee, pursuant to Section 72 of the Act?

#### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the Tenancy Agreement:

The one-year, fixed term tenancy began on April 1, 2015, and continued on as a month-to-month tenancy after March 31, 2016. The monthly rent of \$958.88 is due on the first of each month. The Landlord collected a security deposit of \$432.50 and currently holds this amount.

The Landlord stated that the Tenant is regularly late with his rent and as of August 1, 2018, had not paid his rent in full. On August 8, 2018, the Landlord posted the Notice on the Tenant's door which indicated that the Tenant owed \$395.52 in outstanding rent as of August 1, 2018. The Landlord stated that he received \$785.00 towards the August rent on July 31, 2018 and another \$200.00 in rent on August 8, 2018, and then another \$100.00 on August 13, 2018. The Landlord stated that there was still \$95.52

outstanding in rent but couldn't account for why the Tenant owed more than the \$958.88 for August's rent.

The Landlord stated that the Tenant attempted to pay more rent near the end of August, but the Landlord refused to accept any more rent from the Tenant including the rent for September and October 2018 as the Landlord believed that the tenancy had ended.

The Landlord is requesting an Order of Possession for the rental unit and stated that if granted, that it could be for the end of October 2018.

The Tenant stated that, although he sometimes pays the rent late, he always pays his rent. The Tenant stated that he provided the Landlord a total of \$1085.00 in rent in August and did not understand that there was an outstanding balance.

The Tenant would like to maintain his tenancy and although the Landlord would not accept rent payments, is prepared to pay any outstanding rent.

### Analysis

Section 46 of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

The Landlord, through his own testimony, admitted that he regularly accepts late rent from the Tenant. The Landlord had difficulty explaining why the Tenant owed the amount claimed on the Notice and stated that his accounting department would have accurate records, but that he did not submit them as evidence. As I attempted to make sense of the claims for outstanding rent, I referred to the Monetary Order Worksheet that was submitted as evidence by the Landlord and noted that as of July 1, 2018, it appeared that the Landlord was in possession of \$537.24 more than was required for the July 2018 rent. After the Tenant paid \$985.00 sometime in July 2018, the records indicate that the Tenant had over-paid the Landlord \$563.36 and was at a negative balance for August 1, 2018. The records indicate that the Tenant paid another \$300.00 towards August rent and as of August 13, 2018, the Tenant owed the Landlord \$95.52. The Landlord is claiming \$95.52 as unpaid rent and the reason to end the tenancy.

During a hearing where the Landlord serves a Notice to End Tenancy, the Landlord has the burden to prove that the Notice was valid and in the correct form. Based on the testimony and the evidence referred to by the Landlord, I find that the Landlord failed to

provide sufficient evidence that the Tenant failed to pay the August 2018 rent. Although there were records provided, I found them confusing and that they required further explanation by the Landlord, which he did not provide.

As a result of reviewing the details of this hearing, I find that the past practice of regularly accepting late rent from the Tenant has established a new agreement between the parties. Without any written notice from the Landlord to the Tenant to reassert that rent is due on the first of each month, I find that the Notice to End Tenancy for Unpaid Rent would have been quite unexpected.

Based on the testimony and evidence provided during the hearing, I find that the Notice is invalid and therefore, I uphold the Tenant's Application to cancel the Notice. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. As a result of cancelling the Notice, I dismiss the Landlord's Application for an Order of Possession.

As the Tenant was successful in his Application, I find that he should be reimbursed for the \$100.00 filing fee. I find that the Landlord should not be reimbursed for the filing fee.

I acknowledge that the Tenant has been living in the rental unit without paying rent, as the Landlord refused to collect the rent. Both parties agreed that the Tenant owes the Landlord outstanding rent for September and October 2018. As this tenancy will continue, I make the following orders in accordance with Section 62 of the Act:

1. I order the Landlord to provide the Tenant with a written notice that clearly documents the balance of any outstanding rent for the duration of the tenancy up until October 31, 2018.
2. I order the Tenant to pay the balance of any outstanding rent to the Landlord within 30 days of receiving the written notice. Reference term #1.
3. I order the Tenant to ensure that the Landlord receives the monthly rent on or before the first calendar day of each month, unless the parties agree in writing, in advance, to a different date (as noted in the Tenancy Agreement). This term begins on November 1, 2018.
4. If the Tenant fails to abide by terms #2 or #3, the Landlord may consider serving a Notice to End Tenancy in accordance with the Act.
5. If the Tenant fails to pay the outstanding rent, the Landlord may consider applying for Dispute Resolution and making a monetary claim.

As this tenancy will continue, I recommend to all parties that they work together to resolve their conflict in a respectful manner and when required, to communicate in writing to ensure clear understanding and as a means to keep track of their interactions.

Conclusion

I dismiss the Landlord's Application for an Order of Possession without leave to reapply.

I uphold the Tenant's Application and cancel the Notice. The Tenant may deduct \$100.00 from a future rent payment as compensation for the filing fee, in accordance with Section 72 of the Act.

This tenancy will continue until it is ended in accordance with the Act.

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 18, 2018

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Residential Tenancy Branch