



# Dispute Resolution Services

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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      CNR, OPR-DR, OPRM-DR, FFL

### Introduction

In the first application the tenant seeks to cancel a ten day Notice to End Tenancy for unpaid rent dated October 23, 2020 and received October 28.

In the second application the landlord seeks an order of possession pursuant to a second ten day Notice to End Tenancy for unpaid rent, dated November 5, 2020. The landlord also seeks a monetary award for half of October 2020 rent and all of November 2020 rent, a total of \$2864.52 plus recovery of the filing fee paid for its application.

Both parties attended the hearing, the corporate landlord by its representative JA, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Did either ten day Notice act to end the tenancy? What, if anything, is the landlord owed.

### Background and Evidence

The rental unit is a one bedroom apartment in a 46 unit apartment building. The parties met near the end of September 2020 and confirmed a tenancy to start October 15, 2020 under a written tenancy agreement at a monthly rent of \$1850.00. It was agreed \$1014.50 would be due at the start of the tenancy October 15, for the balance of rent for that month.

By October 15 the landlord had not heard from the tenant about arrangements for move-in and had not received the rent. By October 20 the parties connected and the landlord stated its position that it would issue a ten day Notice to End Tenancy if the tenant did not pay the required money. The tenant stated she would not be moving in.

The tenant had a good intention to take possession and live in the rental unit, however the government source for her financial assistance determined that she did not fully qualify. The tenant was thus unable to come up with the initial money required and determined she would not move in.

The parties attempted to resolve the matter in late October but did not.

The landlord issued its ten day Notice for the October money and the tenant brought her application to challenge the Notice. When the November rent was not paid, the landlord issued a second ten day Notice on November 5. It attempted to serve the tenant with the second Notice by registered mail to the rental unit and by email. Email is not an acceptable method of service under s. 88 of the *Residential Tenancy Act* (the "RTA"), nor was the registered mail to the rental unit because the tenant was not residing there.

### Analysis

The tenant signed a lawful and binding tenancy agreement. It was not conditional on her ability to arrange financial assistance. Under the tenancy agreement the amount of \$1014.50 was due October 15, 2020. It was not paid and so the landlord was entitled to issue the ten day Notice dated October 23.

I find that the tenant has no lawful grounds to dispute that Notice. Her failure to secure financial assistance is not a lawful ground as it was not a pre-condition of the tenancy

agreement. As a result, the Notice has caused this tenancy to end. In such circumstances s. 55 of the *RTA* requires the issuance of an order of possession, however the landlord has regained possession and is attempting to re-rent the rental unit, thus no order of possession will issue.

By the terms of the agreement the landlord is owed \$1014.50 for the last half of October rent and I award it that amount.

On November 1 the tenancy had not ended. The tenant may have attempted to repudiate the tenancy agreement by informing the landlord she would not be moving in, but it is apparent the landlord did not accept that repudiation. On that day the November rent came due in full. It was not paid. I award the landlord \$1850.00 in that regard.

The tenant's advocate raised the issue of mitigation, arguing that the landlord had failed to mitigate its loss by attempting to re-rent the rental unit at a reasonable rent. Clearly, a landlord has a duty to minimize its exposure to loss when a tenant defaults under a tenancy agreement. However, I determine that mitigation is not a factor in this case. First, the landlord's claim is one in debt, for a contractual amount, the half October and full November rents as they came due. It is not a claim for damages, to which a defence of failure to mitigate applies. Second, the landlord was not able to offer the rental unit to others in October or for a tenancy starting November 1, because it continued to have a binding agreement under which the tenant was entitled to exclusive possession of the rental unit. While the ten day Notice dated October 23 may have ended the tenancy within time to re-rent the rental unit for a portion of November, the tenant's application to cancel that Notice put the question of the landlord's right to re-enter and re-let the rental unit in doubt, prevented it from bringing the tenancy to a definitive end and finding a new tenant at that time

### Conclusion

The tenant's application is dismissed.

The landlord will have a monetary award against the tenant in the amount of \$2864.50 plus recovery of the \$100.00 filing fee. The landlord will have a monetary order against the tenant in the amount of \$2964.50.

During the hearing it seemed apparent that the tenant had not paid the \$925.00 security deposit because of the failure of financial assistance. However, the tenancy agreement indicates that a \$925.00 security deposit was paid to the landlord on September 22. If that deposit was, in fact, paid, then I authorize the landlord to retain in, reducing the amount of the monetary order accordingly.

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 14, 2021

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Residential Tenancy Branch