



# Dispute Resolution Services

Page: 1

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      O, FF

### Introduction

On May 4, 2016, the Landlord submitted an Application for Dispute Resolution requesting an order of possession based on a Tenants Notice to end tenancy; a monetary order for unpaid rent; and to recover the cost of the filing fee.

The matter was set for a conference call hearing at 9:00 a.m. on this date. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Is the Landlord entitled to an order of possession based on the Tenant's Notice to end the tenancy?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2016, as a fixed term tenancy to continue until December 31, 2016. Both parties agree that the current rent is \$1,150.00 per month and that a security deposit of \$575.00 was paid to the Landlord by the Tenant.

The Landlord testified that on March 25, 2016, the Tenant provided the Landlord with a notice to end the tenancy with an effective date of April 30, 2016.

The Landlord has provided documentary evidence of an email he received from the Tenant dated March 26, 2016, where the Tenant gives notice to end the tenancy by April 30, 2016. The Landlord has also provided documentary evidence of a letter from the Tenant dated April 27, 2016, where the Tenant asks that the Landlord to disregard her notice to end the tenancy that she previously submitted.

The Landlord testified that on April 18, 2016, the rental unit was re-rented, to a new Tenant effective May 1, 2016. When the Tenant did not move out on April 30, 2016, the Landlord had to find the new Tenant a different rental unit. The Landlord testified that the new Tenant still wants to move into the rental unit and the Landlord is requesting an order of possession. The Landlord testified that the new Tenant will not have to pay any rent for June 2016, because the new Tenant has already had to pay rent for June 2016, at the other rental unit.

The Landlord testified that rent has not been paid for the months of May 2016, and June 2016. The Landlord is seeking a monetary order in the amount of 2,300.00 for unpaid rent.

In response, the Tenant testified that she did send the Landlord the notice to end the tenancy on March 25, 2016. She also testified that she did send a letter to the Landlord on April 27, 2016 asking the disregard the notice she sent on March 25, 2016. The Tenant stated that she was not thinking clearly and would like to stay in the rental unit.

The Tenant testified that the rent money was available to the Landlord as the Landlord has access to withdraw the rent money from her account each month.

The Landlord testified that they did not withdraw the rent money because they did not want to risk re-establishing a tenancy.

Section 52 of the Act states that in order to be effective, a Tenant's notice to end a tenancy must be in writing and must be signed and dated by the Tenant giving the Notice; give the address of the rental unit; and state the effective date of the Notice.

Residential Tenancy Branch Policy Guideline #5 Duty to Minimize Loss states that in circumstances where the Tenant ends the tenancy agreement contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonable economic rent. The Landlord

must make reasonable efforts to find a new Tenant to move in on the date following the date that the notice takes legal effect.

Residential Tenancy Branch Policy Guideline #11 Amendment and Withdrawal of Notices states that a Landlord or Tenant cannot unilaterally withdraw a notice to end tenancy. Only with the consent of the party to whom the Notice was given, can a Notice to end tenancy be withdrawn or abandoned prior to its effective date.

### Analysis

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

While the notice to end tenancy does not comply with requirement under section 52 of the Act that it be signed by the Tenant, I find that it is reasonable to amend the Notice to end tenancy according to the authority granted to me under section 68 of the Act. The Tenant testified that she sent the Notice to end tenancy to Landlord using email. The Notice to end tenancy is dated; provides the address of the rental unit; and provides an effective date. I find that the notice to end tenancy dated March 25, 2016, is effective notice that the tenancy ends on April 30, 2016.

The Landlord took reasonable efforts to re-rent the rental unit and entered into a new tenancy with a new Tenant on April 18, 2016. The Landlord did not consent to withdrawing the notice to end tenancy, and was under no obligation to do so. In fact the Landlord had already re-rented the unit.

Due to the Tenant over holding the rental unit into May 2016, and June 2016, the Landlord has suffered a loss for May 2016, and June 2016, rent.

I find that the Landlord is entitled to a monetary order due to unpaid rent for May 2016 and June 2016, in the amount of \$2,300.00

I find that the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant did not move out in compliance with her notice to end tenancy, I find that the Landlord has established the claim that the Tenants pay the amount of \$100.00 for the cost of the Application.

The Landlord has established a total monetary claim in the amount of \$2,400.00.

### Conclusion

The Tenant gave notice to end the tenancy. The Landlord is granted an order of possession effective two days after service on the Tenant.

The Landlord is granted a monetary order in the amount of \$2,400.00 comprised of unpaid rent and the cost of the filing fee.

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: June 06, 2016

---

Residential Tenancy Branch