



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

### Tenant's application

This is an application to have a section 47 Notice to End Tenancy cancelled; however the Notice to End Tenancy was served on the tenant on August 31, 2009 and the Residential Tenancy Act requires that the tenant apply to dispute the notice within 10 days and if they fail to do so they are conclusively deemed to have accepted the end of the tenancy. In this case the tenant did not file a dispute of the notice until November 12, 2009, a full two months and 12 days after it was received. Therefore I will not accept this application as it has been filed far too late.

The tenant's application is therefore dismissed without leave to reapply.

## Landlords application

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue, (which is a request for an Order of Possession), to be dealt with together.

I therefore will deal with request for an Order of Possession and I dismiss the remaining monetary claim with liberty to re-apply.

## Background and Evidence

August 31, 2009 the landlord served the tenant with a section 47 Notice to End Tenancy for cause, and the tenant did not file a dispute of that notice within the time limit set out in the Residential Tenancy Act. The applicant is therefore requesting an Order of Possession for December 31, 2009, based on that notice.

The Advocate for the tenant argued that the landlord has accepted October 2009 rent and November 2009 rent, and since no receipt was given for "use in occupancy only" this has re-establish the tenancy.

The landlord testified that although no receipt was given stating "use in occupancy only", the tenant was fully aware that the money was being accepted for use in occupancy only and that they fully intended for this tenancy to end. They have granted

him extra time to make it easier for him to find a place to move to; however they do not believe that the tenancy has been re-established.

The tenant testified that the landlords did make it clear in all communication with him that they were proceeding with the end of tenancy and they fully expected him to vacate the rental unit, and at no time did they tell him that the tenancy had been re-established.

## Analysis

It is my decision that this tenancy has not been re-established. The tenant himself admitted that the landlords were always very clear with him, that they were proceeding with the end of tenancy. Therefore it's my decision that the landlords do have a right to an Order of Possession.

## Conclusion

I have issued an Order of Possession to the landlords for 1 p.m. on December 31, 2009. I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

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: December 01, 2009.

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Dispute Resolution Officer