



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR OLC RP LAT FF

### Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy, as well as for orders that the landlord comply with the Act and do repairs, and an order allowing the tenant to change the locks to the rental unit. The tenant, the landlord and an agent for the landlord participated in the teleconference hearing.

During the hearing, the tenant stated that he did not receive the landlord's evidence, as he receives a lot of mail that is not his, and nothing was in his mail from the landlord that was addressed to the tenant. The landlord stated that they served the tenant's evidence by putting it through the tenant's mail slot. Under the Act, evidence may be served by putting it through the mail slot, and it is deemed served three days later. However, deemed service is a rebuttable presumption. In this case, I accept the tenant's testimony that he did not receive the landlord's evidence. I noted that the landlord's documentary evidence was comprised of notes that the landlord had addressed in his testimony. I have reviewed all testimony. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. The remainder of the tenant's application is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

The tenancy began on or about November 15, 2012. Rent in the amount of \$900 is payable in advance on the first day of each month.

### *Landlord's Evidence*

The tenant failed to pay rent in the month of December 2012, and on December 12, 2012 the landlord served the tenant with a notice to end tenancy for non-payment of rent. When the landlord was serving the notice to the tenant, the tenant turned around and picked up some money, and then offered it to the landlord. The landlord did not know how much money it was. The landlord told the tenant that he did not want the money, he just wanted the tenant to move out. The tenant further failed to pay rent in the month of January 2012.

### *Tenant's Response*

The tenant stated that he attempted three times to pay the rent, but the landlord would not accept it. The landlord told the tenant, "I'll take your money, but I'll still evict you."

### Analysis

Based on the evidence, I find it more likely than not that the landlord refused to accept the tenant's rent payment. Therefore, the notice to end tenancy is not valid.

As the tenant was successful in his application to cancel the notice to end tenancy, he is entitled to recovery of his \$50 filing fee. The tenant may deduct \$50 from his rent.

### Conclusion

The notice to end tenancy for unpaid rent dated December 12, 2012 is cancelled, with the effect that the tenancy continues.

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 18, 2013

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Residential Tenancy Branch

