



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an application by the landlord for an order of possession for non-payment of rent. Both parties attended the hearing and had an opportunity to be heard.

### Issues

Is the party entitled to the requested orders?

### Background and Evidence

This tenancy began on October 1, 2014. The rent is \$800.00 due in advance on the first day of each month. Over the course of the tenancy, the tenant began paying the rent later in the month – usually closer to the 19<sup>th</sup> day of the month. The landlord was not happy about this. Accordingly, on July 2, 2015 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant received the notice but did not dispute it. The tenant acknowledged that she has been paying the rent late and is trying to bring things up to date. Both parties then acknowledged that several rent payments have been made since the Notice was served in July. The landlord provided receipts for some of those payments but not others. The receipts did not indicate that the rent was being accepted on a “use and occupancy” basis only.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit. However, in the present case, the tenant continued to pay rent to the landlord, albeit sporadically, in the months following service of the Notice.

I asked the parties specifically about the receipts issued by the landlord for these payments and both confirmed that sometimes receipts were issued and sometimes they were not. But both parties agreed that the receipts that *were* issued did *not* specify that the rent was being accepted by the landlord *on a “use & occupancy” basis only*.

As a result, I find that the landlord reinstated the tenancy when further rents were accepted from the tenant without advising her that the rent was being accepted for use and occupancy only.

### Conclusion

Based on the above background, evidence and analysis I find that the landlord is not entitled to an order of possession. I therefore dismiss the landlord’s application.

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: November 06, 2015

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Residential Tenancy Branch

