



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Amber Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the notice to end tenancy been waived or the tenancy reinstated?

Does the Tenant’s application have merit?

### Background and Evidence

The following are undisputed facts: The tenancy started in March 2000. Rent is payable on the last day of each month. On October 9, 2015 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The effective date of the Notice is November 30, 2015. The Tenant paid December 2015 rent in full. The Landlord did not give the Tenant a receipt indicating that the rent had been taken for “use and occupancy only” and did not say anything else to the Tenant about the Landlord’s intention to continue to pursue the end of the tenancy. The Tenant told the Landlord after paying the rent that the tenancy would continue despite today’s hearing.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant is repeatedly late paying rent. Residential Tenancy Act Policy Guideline #11 provides that a Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether a receipt was issued that shows the money was received for use and occupation only;
- whether the landlord specifically informed the tenant that the money would be for use and occupation only; and
- the conduct of the parties.

Given the undisputed evidence of the Parties that the rent was collected by the Landlord after the effective date of the tenancy and that the Landlord provided no receipt for “use and occupancy only” and made no attempt to inform the Tenant that the Notice was not being waived, I find that the Parties have acted to reinstate the tenancy. As such I find that the Notice is not valid due to the reinstatement and that the Tenant is entitled to a cancellation of the Notice.

As the Tenant’s application was successful I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Tenant to deduct this amount from future rent payable in full satisfaction of the claim.

### Conclusion

The Notice is cancelled and 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: December 15, 2015

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Residential Tenancy Branch

