



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1395 W. 14TH AVENUE HOLDING LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNR OPR

### **Introduction:**

Both parties were present at the hearing and confirmed receipt of the 10 Day Notice to End Tenancy dated November 9, 2015 to be effective November 19, 2015 and personal service of the Application for Dispute Resolution. This is the tenant's Application to cancel the Notice to End the Tenancy for non-payment of rent.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on May 1, 2002, the current rent is \$1150 per month and the tenant paid a security deposit of \$435 on April 16, 2002. The landlord's agents testified that the tenant failed to pay the rent for November 2015 and was served with the Notice to End the Tenancy on November 9, 2015. The tenant has paid her rent for December 2015 and January 2016 but has been issued no receipts limiting acceptance to 'use and occupancy' of the unit. They said notices were posted in October 2015 that payments for rent in cash were not acceptable. Tenants could make arrangements for preauthorized payments from their accounts but this tenant did not. They said they informed her by email.

The tenant and her nephew testified they paid the rent for November 2015 in cash. They said the landlord was requiring some garages to be emptied and the tenant misplaced her cheque book. She said she wanted to pay the rent by e-transfer as she was out of town but the landlord did not accept that. She then sent through the bank her half of the rent to her nephew and he withdrew the cash from the bank. Her nephew gave evidence that he put the cash in an envelope and put it through the mail slot of a manager of the building. He went into the bank to get the cash but did not think of getting another form of payment such as a bank draft. The tenant said she has had issues with the landlord over the garages and maintenance of the building. She never saw any notices regarding no cash payments for rent and there was a history of cash payments being accepted by the previous landlord.

No documentary evidence was submitted by either party.

**Analysis:**

The Notice to End a Residential Tenancy is based on non-payment of rent. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, I find insufficient evidence to support the tenant's claim that the rent was paid in cash. Although she said there were bank statements to support the withdrawals and deposits, none were provided.

However, I find the landlord accepted further rent payments from the tenant without limiting the acceptance. Residential Tenancy Policy Guideline 11 notes that 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. Since the landlord did not issue receipts for 'use and occupation only' and there is no evidence before me that they specifically informed the tenant of this, I find that by continuing to unequivocally accept the rent, they implied that they were waiving the end of tenancy notice and continuing the tenancy.

As explained to the parties in the hearing, if the landlord concludes after further diligent search and consideration of the tenant's records, that they never received rent for November, they may issue another Notice to End Tenancy and proceed to a hearing on the issue. The parties were cautioned about the submission of documentary evidence to support their statements and the necessity of providing receipts limiting acceptance of any rent after the Notice to End Tenancy as acceptance for 'use and occupation only'

**Conclusion:**

The Notice to End Tenancy dated November 9, 2015 is hereby set aside and cancelled as it was impliedly waived by further acceptance of rent without limitation. I find the tenant entitled to recover of the filing fee. She may recover the filing fee by deducting \$50 from her rent payment for February 2016.

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 13, 2016

---

Residential Tenancy Branch

