



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail the tenant did not appear nor did she file any evidence.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, on what terms?

### Background and Evidence

This month-to-month tenancy commenced May 1, 2015. The monthly rent of \$900.00 is due on the first day of the month. The tenant paid a security deposit of \$450.00.

On October 27, 2015, the landlord issued and served a 1 Month Notice to End Tenancy for Cause. The tenant never filed an application disputing the notice.

The tenant paid the December and January rents. The payments were late on both occasions. The landlord did not give the tenant a receipt for either payment.

### Analysis

Based on the testimony of the landlord I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause in the prescribed form. The tenant did not file an application to dispute the notice and, pursuant to section 47(5) is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, which is November 30, 2015.

When a landlord accepts rent for the period after the effective date of a notice to end tenancy the question may arise as to whether the landlord has reinstated the tenancy by doing so. If, in a dispute resolution proceeding, a party claims that the tenancy has been reinstated by the payment, the arbitrator must consider all the circumstances,

including the intent of the parties when the payment was made. As explained in *Residential Tenancy Policy Guideline 11: Amendment and Withdrawal of Notices* intent can be established by evidence as to:

- whether the landlord gave the tenant a receipt that said 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; or,
- the conduct of the parties. Here the question is whether the conduct of the landlord is inconsistent with any other honest intention than an intention of waiver, provided that the tenant has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment.

In this case no one claimed that the tenancy was reinstated by the payment of the December or January rent.

I find that the landlord is entitled to an order of possession. As the rent has been paid to the end of January, the order will be effective as of 1:00 pm, January 31, 2016.

#### Conclusion

- a. An order of possession has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. As the landlord was successful on his application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file it. Pursuant to section 72 that amount may be deducted from the security deposit.

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 26, 2016

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Residential Tenancy Branch

