



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MT, MNDC

### Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent dated September 10, 2016 and for a monetary award, claiming he had paid the September 2016 rent twice.

It was agreed at hearing that the tenant paid the September rent to the landlord within five days after receiving the ten day Notice and so, by operation of s. 46 of the *Residential Tenancy Act* (the “Act”), the Notice is no longer a valid Notice to end the tenancy.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Had the tenant already paid the rent before the Notice was issued?

### Background and Evidence

The rental unit is the one bedroom main floor of a house. The landlord lives in a suite above it.

The tenancy started in January 2011. The monthly rent is currently \$925.00, due on the first of each month. The landlord holds a \$425.00 security deposit.

The tenant says that he was away for the first part of September. He returned September 5 and the landlord reminded him he had not paid the rent. He told her he'd pay the next day.

The tenant says he went to the bank and withdrew funds to pay the rent in cash, as was his habit. He produces a bank statement showing the withdrawal.

He says he went to the landlord's door but she wasn't home. The landlord says she was home.

The tenant says he put the rent money, contained in a bank envelope, through the landlord's mail slot. The landlord says he didn't and had told him before that she didn't want to be paid that way.

The tenant says that two days later the landlord asked him where the rent was and he told how he had paid. Together they searched the "blue bin" waste receptacle in case the envelope had been thrown out. They did not find the envelope.

The tenant says the landlord had company on September 6 and her company may have taken the money. The landlord says that her company did not arrive until September 7, 2016.

### Analysis

The onus of proving payment of a debt is on the debtor. In this case, the debtor is the tenant.

Proof of payment of a debt is usually by production of a receipt for payment. The Act, s. 26, provides that a landlord must provide a tenant with a receipt for rent paid in cash.

A tenant who pays rent in cash without obtaining a receipt runs a significant risk of not being able to prove payment later.

In this case, I find that the evidence is equally divided between the landlord and the tenant. Since the initial burden of proof of payment is on the tenant, I must find that he has failed to satisfy that burden.

Conclusion

The tenant has failed to prove payment of rent on September 6, 2016. His application is dismissed.

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 15, 2016

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Residential Tenancy Branch