



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, FF

### Introduction

This matter dealt with an application by the Tenant to be granted an Order of Possession and to have the tenancy continue and recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 16, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order of Possession?

### Background and Evidence

This was an assigned tenancy starting on June 1, 2018 as a month to month tenancy. Rent is \$970.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit from a previous tenancy of \$395.00 and a pet deposit of \$200.00 during the tenancy. .

The Tenant said the Landlord received an Order of Possession dated February 14, 2019 by way of a Direct Request application. The Tenant said he saw a picture of the Order of Possession but never saw the actual Order. The Tenant continued to say that he paid the unpaid rent and thought that the tenancy would continue. Further the Tenant said he continued to pay the rent for March, April, May, June, July, August, September and October, 2019 and the Landlord accepted the rent so the Tenant thought the tenancy was reinstated. The Tenant is now being told the Landlord wants to end the tenancy and is trying to enforce the Order of Possession from February 14, 2019. The Tenant said this is wrong and he would like to continue the tenancy.

The Landlord said they were trying to work with the Tenant to move out and find a new rental so they agreed to extend the tenancy to July 31, 2019. The Landlord said he did this because he thought the Tenant would sign a Mutual Agreement to End Tenancy for July 31, 2019. The Landlord said he continued to collect rent and issued receipts with "for use and occupancy only" written on them. The Landlord said he hired an eviction service to handle the eviction and just did what they told him to do.

The Landlord's agent from the eviction service said they had agreement from the Tenant that he would sign the Mutual Agreement to End Tenancy for July 31, 2019, but then he changed his mind and did not want to move out. The Agent said the Tenant did not carry through with what was agreed to.

The Tenant said he thought that because he was paying the rent on time and that he had lived in the unit for 8 years the Landlord had reinstated the tenancy by accepting the rent for 8 months. The Tenant said the "use and occupancy" provision is for short term use only and if a Landlord continued to accept rent then the tenancy is reinstated.

The Landlord said in closing that they tried to work with the Tenant to end the tenancy so that he could find a new rental unit, but now the Tenant has not done what he agreed to and the Landlord said this is wrong. The Landlord requested that the Order of Possession stand and the tenancy is should end.

The Tenant said in closing that the Landlord's intent was shown by accepting the rent for 8 months even if the rent receipts said "for use and occupancy only". The Tenant said the Landlord's actions show intent of reinstating the tenancy by accepting the rent for 8 months after the Order of Possession of February 14, 2019 was issued.

### Analysis

I have review the testimony of both the Tenant and Landlord and evidence that the Tenant submitted in the absence of any evidence submitted by the Landlord. Both parties agree that the Tenant continued to pay the rent from March 2019 to October 2019. As well the parties agree that the rent receipts indicated the rent was for "use and occupancy only". The Landlord said he was trying to work with the Tenant by extending the tenancy so that the Tenant could find a new renal unit. The Tenant said he understood that because the rent was paid the tenancy would continue. The Tenant said he thought the tenancy was reinstated. The disagreement is in the intent of the Landlord in accepting the rent and issuing rent receipts with "for use and occupancy only" on the receipts.

If the tenant pays the overdue rent or utilities after the five day deadline, the landlord should clearly tell the tenant in writing that:

The payment for rent or utilities is being accepted for use and occupancy only and it does not cancel the 10 Day Notice to End Tenancy.

The tenant must still move out but by using rent receipts with the “use and occupancy” arrangement can extend the tenancy. This arrangement is very short-term – it allows a tenant to stay only for the rest of the month in which they received the Notice to End Tenancy and made a payment. A landlord should not continue accepting rent or utility payments under this arrangement otherwise they run the risk of reinstating the tenancy.

As the Landlord continued to accept the rent payments for 8 months, I accept the Tenant’s testimony that he believed the Landlord’s actions show the intent of reinstating the tenancy. Consequently, I find for the Tenant and cancel the Order of Possession dated February 14, 2019 as stale and I order the tenancy to continue as agreed in the tenancy agreement.

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee from the Landlord by reducing the November 2019 rent by \$100.00.

### Conclusion

I order the Order of Possession dated February 14, 2019 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I find no need to issue an Order of Possession to the Tenant as he already has possession of the rental unit.

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: October 22, 2019.

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Residential Tenancy Branch