



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR-MT, FFT

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. More time to make the application to cancel the notice to end tenancy - Section 66; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.
3. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the tenancy been reinstated?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed or undisputed facts: there is no written tenancy agreement for the unit is currently in. The original tenancy in a different unit with the Landlord started 17 years ago. The tenancy for the current unit started January 1, 2020. Rent of \$480.00 is payable on the first day of each month. On January 17, 2022 the Landlord served the Tenant in person with a 10-day notice to end tenancy for unpaid rent dated January 17, 2022 (the "Notice"). The Notice is for unpaid rent of \$480.00 due November 1, 2021. The effective date of the Notice is January 27, 2022. The November 2021 rent was paid by the Tenant on February 7, 2022.

The Tenant states that within two days receipt of the Notice the Tenant went into the hospital with a serious illness. The Tenant states that in the past year the Tenant has been seriously ill with at least 4 hospitalizations and has been "near death" each time. The Tenant states that as soon as they were out of hospital on February 7, 2022, they paid the outstanding rent on the Notice. The Tenant states that in the past 17 years this is the only time rent was missed. The Tenant states that they are aged 67 years.

The Landlord states that after the Tenant paid the rent on February 7, 2022 the Tenant was given a receipt indicating that the rent was collected for "use and occupancy only". The Landlord provides a copy of that receipt. The Landlord states that the Tenant has paid rents for December 2021 and thereafter on the first day of each month and that for each of those months the Landlord issued a receipt for "use and occupancy only" on the first day of each of those months. The Landlord states that these receipts were provided to the Tenant in person by another agent of the Landlord and the witness to that service was not in attendance at the hearing. The Landlord did not provide copies of those receipts. The Tenant states that they receive such receipts from the Landlord. The Tenant's Advocate submits that the matter of such receipts was the subject of multiple conversations with the Tenant and that the Tenant informed the Advocate that the Landlord accepted rents with no questions asked.

### Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. RTB Policy Guideline #11 provides the following:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant. For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Given the Tenant’s evidence of the Landlord accepting continuous and timely rents after the Notice was served and without any supporting evidence that the Tenant was given receipts for “use and occupancy only” for the collection of those rents, I find on a balance of probabilities that by implication the Parties intended to continue the tenancy and the tenancy was reinstated. The Notice is therefore cancelled, and the tenancy continues. As the matter has been decided on the basis of the reinstatement of the tenancy it is not necessary to consider whether the Tenant applied to dispute the Notice in time or whether the Tenant is entitled to more time to make the application to dispute the Notice.

As the Tenant’s claim has been successful, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim. I make this order in the names of the Parties as provided in the Tenant’s application.

The Landlord's application is dismissed.

Conclusion

The Notice is cancelled, and the tenancy continues.

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 16, 2022

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Residential Tenancy Branch