



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated November 11, 2011, and a monetary order for rent owed.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an order of possession and monetary order.

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated January 7, 2012 with effective date of January 17, 2012.

The tenancy began in October 2010 and rent is \$1,200.00 per month due in advance on the 3<sup>rd</sup> day of each month. A security deposit of \$600.00 was paid and is being held by the landlord on behalf of the tenant.

The landlord testified that the tenant had failed to pay all of the rent owed for January and paid portions of the debt over a period of time. The landlord testified that he accepted the payments and the parties discussed whether or not the Notice would be enforced, depending on if the tenant paid the balance. The landlord testified that the tenant finally paid all of the arrears owed, but this occurred long after the 5-day deadline to cancel the Notice.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person. The tenant did not pay the outstanding rent within 5 days to cancel the Notice and the tenant did not make an application to dispute the Notice. In such a situation, it is conclusively presumed under section 46(5) of the

Act that the tenant accepted that the tenancy ended on the effective date of the Notice and the landlord would be entitled to an Order of Possession ending the tenancy.

However, I find that when the landlord accepted payment of the rent, the landlord did not ensure that the tenant was aware that these funds were only being accepted for “*use and occupancy only*” by giving the tenant a receipt that made this clear. Under the Act, the landlord had an obligation to make the tenant understand that acceptance of the funds would not serve to reinstate the tenancy and that the landlord would still be proceeding with the termination of the tenancy despite the late payment satisfying the arrears.

Given the above, I find that the tenancy was reinstated by the landlord and I find that an Order of Possession cannot be granted. I dismiss the portion of the application seeking the Order of Possession and compensation for outstanding rental arrears applicable to January 2012.

### **Conclusion**

I hereby dismiss the landlord’s application in its entirety without leave.

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: February 22, 2012.

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Residential Tenancy Branch