

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

CNR

### **Introduction**

This hearing dealt with an application by the tenant to cancel a notice to end tenancy based on a Ten (10) Day Notice to End Tenancy for Unpaid Rent or Utilities issued January 7, 2009, with an effective date of January 21, 2009.

Both parties were in attendance at the hearing and each gave solemnly affirmed testimony.

During the hearing the landlord requested an Order of Possession effective March 31, 2009

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

Is the Landlord's Ten(10)Day Notice to End Tenancy invalid to warrant its cancellation?  
If the Ten(10)Day Notice to End Tenancy is found valid Is the landlord entitled to an order of possession?

### **Background and Evidence**

On November 1, 2008 the tenants failed to pay \$636 of their rent of \$1200 due on that date, and failed to pay this same amount on December 1, 2008 and on January 1, 2009. On January 7, 2009 the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenants have not paid the outstanding amount, and they have not paid rent for February 2009. The landlord has requested an order of possession.

The tenant supplied testimony and evidence that, as of November 1, 2008, the landlord cancelled or failed to apply the tenant's rent subsidy from BC Housing, in the amount of \$636 per month, toward their rent obligation of \$1200 per month. Since November 1, 2008 the tenant continued to pay each month, "our (their) portion of the rent before the subsidy", in the amount of \$564. Without the benefit of the subsidy portion of the rent the tenant accrued arrears as they did not pay their,"market", or true rent, of \$1200.

The landlord supplied testimony that according to **the test they have applied to the tenancy** the landlord determined the tenants were in breach of their Rent Subsidy Agreement and therefore no longer qualified for the subsidy. The tenant was notified of this in a letter dated October 23, 2008. It further states that the tenant was in breach of their Lease Agreement (vs. Rent Subsidy Agreement) of clauses pertaining to "Noise" and "Animal". It then states that, *"Since we have been receiving complaints from neighbours in your area for over a year about excessive noise late at night and police attendance to deal with these complaints, you are advised herewith that rent subsidy is being cancelled effective November 1, 2008 at which time your rent will be \$1200 per month."* The letter further informed that the cancellation of the rent subsidy was not a rent increase. The landlord testified the tenants were now simply obligated to pay their true rent. The landlord did not supply evidence to support claims of complaints or contentious conduct of the tenancy, or how the rent subsidy can be cancelled for the reasons stated in the landlord's letter of October 23, 2008.

The tenant testified that the landlord's issues about his family's conduct do not have bearing on whether or not he qualifies for the subsidy. He supplied a letter dated December 4, 2008 which he claims is the true means test for the subsidy, and not the landlord's claims of complaints from neighbours. He further testified that his communication with BC Housing informed him that the landlord cannot cancel the subsidy; however, this was not substantiated by the tenant with any supporting evidence from BC Housing.

## **Analysis**

In this type of application, in which the tenant disputes a Notice to End for unpaid rent, the burden of proof typically rests with the tenant to prove they paid the rent. In this matter however, there is a claim by the tenant of impropriety by the landlord, in that the portion of the rent in the form of a subsidy for which the tenant is entitled to have applied to the rent has been annulled by the landlord's discretion, and therefore has caused an artificial condition of rent arrears. In this situation, the burden of proof shifts to the landlord to show that the rental arrears are not artificial. I find that the landlord has not met this burden of proof and did not provide sufficient or compelling evidence to support the validity of the Ten (10) Day Notice to End Tenancy for Unpaid Rent. Therefore the landlord is not entitled to an Order of Possession, as requested.

### **Conclusion**

The Ten (10) Day Notice to End Tenancy for Unpaid Rent dated January 7, 2009, with an effective date of January 27, 2009 is hereby CANCELLED, and the tenancy, for now, continues. On this basis the landlord's request for an Order of Possession is denied.

Dated February 18, 2009