



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2010.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started on June 1, 2005. When the Tenant is eligible for a rent subsidy, her portion of the rent is \$604.00 per month and when she is not eligible for a subsidy, the Tenant's rent is \$1,342.00 per month. Rent is payable in advance on the 1<sup>st</sup> day of each month.

A term of the Parties' tenancy agreement is that "a breach of any part of [the] agreement will constitute grounds to withdraw the subsidy and to end the tenancy under the Act." The Landlord's agents argued that the Tenant was in breach of a number of terms of the tenancy agreement for which she was given Breach letters and for which she failed to rectify. Consequently, on November 5, 2010 the Landlord gave the Tenant written notice that her rent subsidy would be revoked effective December 1, 2010 and that she would be responsible for paying the full amount of rent. The Landlord's agents said the Tenant did not pay rent for December 2010 when it was due and as a result on December 2, 2010 they served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2010. The Landlord's agents said that the Tenant has not paid the overdue rent alleged on the 10 Day Notice.

The Tenant admitted that she has not paid any rent for December 2010 but claimed that one of the Landlord's agents contacted the Ministry (which pays a shelter allowance on her behalf to the Landlord) and advised them that the Tenant had been served with the 10 Day Notice. As a result, the Tenant said the Ministry withheld her rent payment. The Tenant denied that she breached any of the terms of her tenancy agreement.



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## Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent alleged on the Notice (which has the effect of cancelling the Notice) or apply for dispute resolution if she does not owe any of the amount of rent alleged on the Notice.

I find that the Tenant was served in person on December 2, 2010 with the 10 Day Notice to End Tenancy dated December 2, 2010. I also find that the Tenant applied for Dispute Resolution on December 2, 2010 to cancel that Notice. The Tenant argued that she was not responsible for paying the full amount alleged on the Notice. Even if the Tenant was not responsible for paying the full amount of rent for December 2010 (and I make no finding in that regard), she admitted that she has not paid any rent including her portion of the subsidized rent (which she admits is owed). Given that (at least) \$604.00 of the overdue rent for December 2010 alleged on the Notice is owing and has not been paid, I find that there are no grounds for the Tenant's application to cancel the 10 Day Notice and it is dismissed without leave to reapply.

During the hearing, the Tenant requested an extension of time to pay the overdue rent. Section 66(2) of the Act says that the director may not extend a time limit under s. 46(4) of the Act for a Tenant to pay rent unless the extension is agreed to by the Landlord. The Landlord would not agree to an extension. The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect on January 3, 2011 at 1:00 p.m.

The Tenant requested a monetary order to compensate her for alleged improvements she made to the rental property, however the Tenant did not apply for that relief on her application and therefore she will have to make a separate application for it.

## Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on January 3, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia. 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: December 20, 2010.

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Dispute Resolution Officer