



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENTICTON DISTRICT SOCIETY COMMUNITY LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 2, 2015 (the "Notice").

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Landlord confirmed they sought an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*.

Issues to be Decided

1. Should the Notice be cancelled?
2. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows: the tenancy began December 19, 2014 for a four month fixed term; the tenancy continued for another fixed four month term; and, then continued for another two month fixed term with an end date of November 30, 2015. The Landlord confirmed they did not intend to extend the tenancy beyond November 30, 2015 and did not wish to enter into another tenancy agreement with the Tenant.

The Landlord stated that monthly rent was subsidized to some extent and payable by the Tenant in the amount of \$320.00. The Tenant was also responsible for paying \$40.00 for cable television which was included in her monthly rent payment of \$360.00.

The Tenant failed to pay rent for the month of September 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 4, 2015; the Landlord confirmed the Tenant did not apply to dispute this earlier notice. The Landlord testified that the Tenant stated she would pay the outstanding amount and the Landlord agreed not to take any further steps in furtherance of the September notice.

The Landlord then issued the Notice which is the subject matter of this application on October 2, 2015. The Landlord submitted a copy of the Proof of Service Notice to End Tenancy which confirmed the Tenant was personally served the Notice on October 2, 2015. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 7, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant testified that her rent was paid by a government ministry. She confirmed she did not pay the September rent and stated that when she was given notice that her tenancy would not be extended, she told the government ministry not to pay the rent directly to the Landlord. She stated that she used a cheque cashing company to cash the cheque she received from the government ministry and they applied the funds to her credit card. She confirmed she had not paid the outstanding rent at the time of the hearing.

The Landlord confirmed they were agreeable to the Tenant remaining in the rental unit until November 30, 2015; the Landlord also requested that the Order of Possession be effective November 30, 2015, the date the fixed term tenancy is scheduled to end.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 26 of the *Residential Tenancy Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent. The Tenant's application to cancel the Notice is dismissed.

Pursuant to section 55 of the *Residential Tenancy Act*, I find that the Landlord is entitled to an Order of Possession effective **November 30, 2015**, the date proposed by the Landlord. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and her application to cancel the Notice is dismissed.

The Landlord is granted an Order of Possession effective November 30, 2015.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 17, 2015

Residential Tenancy Branch

