

DECISION

Dispute Codes OPR, MNR

Introduction

This is an application filed by the Landlord for an order of possession following service of a 10 day notice to end tenancy for unpaid rent and a monetary order request for unpaid rent.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing the Landlord noted that the rent arrears of \$859.00 for November 2011 applied for was paid in two instalments on November 29, 2011 and December 4, 2011. The Landlord states that receipts were issued with "for use and occupancy only." The Tenant confirms the Landlord's statements.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

Neither party has submitted any documentary evidence and both parties have agreed to proceed based upon direct testimony only.

The Landlord states that the Tenant was served on November 2, 2011 with a 10 day notice to end tenancy for unpaid rent dated November 2, 2011. Unpaid rent on the notice is shown as \$859.00. The notice displays an effective date of November 12, 2011. The Tenant confirms the Landlord's claims. The Landlord states that rent for November 2011 was paid partially on November 29, 2011 and December 4, 2011 with a receipt issued "for use and occupancy only". The Tenant confirms paying the rent arrears and receiving the receipt. The Tenant confirms that rent was not paid within 5 days nor did he file an application for dispute resolution from receiving the notice.

Analysis

As both parties have attended the hearing by conference call, I am satisfied that the Tenant was properly served with the notice of hearing documents. Neither party has submitted any documentary evidence.

I accept the Landlord's undisputed testimony and I find that the Tenant was served with a notice to end tenancy for unpaid rent. I also find based upon the direct testimony of the Tenant that rent arrears was paid late and that he received a receipt for use and occupancy only. The Tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the Tenancy ended on the effective date of the notice. Based on the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession.

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 05, 2011.

Residential Tenancy Branch