



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55.

The applicant/tenant did not attend this hearing that commenced at 9:30 a.m. and concluded at 9:40 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference monitoring system that the landlord, his lawyer I were the only ones who had called into this teleconference.

The landlord attended the hearing with his counsel, TC. The landlord testified that he was not served with the tenant's Notice of Dispute Resolution Proceedings and that the only notification he had of the tenants Application for Dispute Resolution was an email received from the Residential Tenancy Branch advising him to upload evidence.

The landlord also testified that the tenant vacated the rental unit on March 2, 2021 and that he withheld unpaid rent from the security deposit he was holding.

Analysis

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenant filed an application for dispute resolution seeking to cancel the Notice to End Tenancy on February 19, 2021 and did not attend the hearing of this application. The landlord, who was in attendance, testified that the tenant had moved out of the rental unit as of March 2, 2021. Based on this undisputed evidence from the landlord, I find that the tenant accepted the validity of the Notice to End Tenancy or otherwise agreed to terminate the tenancy and, the tenant's application seeking to cancel the Notice to End Tenancy is dismissed on this basis. As such, it is not necessary for me to determine on the merits whether the Notice to End tenancy was valid and I make no findings with respect to its validity. As the tenant has already moved out of the rental unit, it is not necessary for an order of possession to be granted. However, for greater certainty, I make an order under section 44(1)(f) that the tenancy ended on March 2, 2021.

Section 55(1.1) of the *Act* states:

If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Based on the landlord's undisputed testimony that he withheld unpaid rent from the balance of the security deposit that he returned to the tenant, I will not make any order under section 55(1.1) for the payment of unpaid rent to the landlord.

Conclusion

Pursuant to section 44(1)(f) that the tenancy ended on March 2, 2021.

The tenant's application to dispute the notice to end tenancy is dismissed without leave to reapply.

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: May 28, 2021

Residential Tenancy Branch