



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated February 4, 2022 (the "10 Day Notice") pursuant to section 46 of the Act.

The Landlord's agent PB attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agent PB and I were the only ones who had called into the hearing.

I advised PB that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibits unauthorized recordings of dispute resolution hearings. PB confirmed that he was not recording this dispute resolution hearing.

PB confirmed receipt of the Tenant's notice of dispute resolution proceeding package and evidence on behalf of the Landlord.

Preliminary Matter – Dismissal of Tenant's Application

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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 reapply.

As the Tenant did not attend the hearing, and in the absence of any submissions or substantive evidence, I order that the Tenant's application be dismissed without leave to reapply.

Preliminary Matter – Tenancy Has Ended

PB testified the Tenant left the rental unit on April 23, 2022. PB confirmed the rental unit is currently vacant. Since the Tenant is no longer in possession of the rental unit, I find the Landlord is not seeking for an Order of Possession to be granted at this time.

Issue to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

PB testified the tenancy commenced prior to the Landlord's acquisition of the rental property on December 6, 2021. PB stated there was no written tenancy agreement between the parties. According to PB, the tenancy was on a month-to-month basis, with rent of \$1,000.00 due on the 7th day of each month. PB testified the Tenant paid a security deposit of \$250.00, which was returned to the Tenant on April 23, 2022.

A copy of the 10 Day Notice is included in the Tenant's application materials. PB confirmed the 10 Day Notice was issued because Tenant did not pay rent in full for January 2022. PB testified that the 10 Day Notice was given to the Tenant in person on February 4, 2022 by one of the Landlord's staff members, KF, and was witnessed by another staff member BS.

PB testified the Tenant owes \$250.00 in unpaid rent up to and including the month of April 2022. PB confirmed the Tenant paid rent for January, February, and March 2022 sometime after the 10 Day Notice was issued. PB stated the Landlord received a

\$950.00 cheque for rent on March 17, 2022, but did not have the details on when the other rent payments were received.

The Landlord relied on PB's oral evidence for this application.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

In this case, I accept PB's undisputed testimony and find that the Tenant was served with a copy of the 10 Day Notice in person on February 4, 2022, in accordance with section 88(a) of the Act. Pursuant to section 46(4) of the Act, the Tenant had until February 9, 2022 to pay the overdue rent or dispute the 10 Day Notice by making an application for dispute resolution. Records from the Residential Tenancy Branch indicate that the Tenant submitted this application for dispute resolution on February 9, 2022. Accordingly, I find the Tenant made this application within the time period required by section 46(4) of the Act.

However, as stated above, the Tenant's application is dismissed because the Tenant did not attend the hearing.

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant

vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA [...].

In this case, I find the tenancy ended on April 23, 2022 when the Tenant vacated the rental unit. I accept PB's undisputed testimony that the Tenant owes \$250.00 in rent as of that date.

Therefore, I find the Landlord is entitled to a monetary award in the amount of \$250.00 for unpaid rent pursuant to section 55(1.1) of the Act.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, the Landlord is granted a Monetary Order for unpaid rent in the amount of \$250.00. The Landlord must serve the Order on the Tenant as soon as possible. Should the Tenant fail to comply, the Order may be filed in the Small Claims Division of the Provincial Court and be enforced as an Order of that Court.

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 10, 2022

Residential Tenancy Branch