



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Now Canada Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNC-MT
Landlord: OPR

Introduction

On May 25, 2022 the Tenant applied for dispute resolution for an order cancelling the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord on May 16, 2022.

On July 8, 2022 the Landlord applied for an order of possession of the rental unit. The Landlord’s Application was joined to that of the Tenant that was already in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 4, 2022. The Landlord attended the telephone conference call hearing; the Tenant did not attend.

Preliminary Matter – Tenant’s attendance

The Tenant’s Application of May 5, 2022 was the first filed in the matter of this tenancy. The Tenant did not attend the hearing, although I left the teleconference hearing open until 9:37am to enable them to call in to this teleconference hearing scheduled for 9:30. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

At the start of the hearing, the Landlord confirmed the Tenant moved out from the rental unit by June 30, 2022. They made this discovery approximately two weeks later when

they entered the rental unit, finding the unit completely empty, with a full refrigerator and freezer.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's application for cancellation of the May 16, 2022 One-Month Notice. This is without leave to reapply on this issue.

Background and Evidence

The Landlord provided a copy of the 10-Day Notice. They issued this to the Tenant on June 10, 2022 for the June 30 move-out date. This was for the June rent amount of \$710.

The Tenant did not amend their Application of May 25 2022 to incorporate this subsequent 10-Day Notice from the Landlord. By s. 90(c), the 10-Day Notice was deemed served to the tenant on June 13, 2022. I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by June 18, 2022, within the five days granted under s. 46(4) of the *Act*. Moreover, the Tenant did not dispute the 10-Day Notice within that five-day period.

Analysis

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice, June 30, 2022. The Landlord in the hearing confirmed the Tenant moved out from the rental unit on or before that date; however, the rent amount is still unpaid.

On my review of the document, that 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

The *Act* allows for a landlord to recover rent in the situation where a tenant's application to cancel a 10-Day Notice is dismissed. The Landlord confirmed that the only rent amount owing from the Tenant was that for June 2022, at \$710.

Based on the evidence from their Application materials, and the Landlord's testimony in the hearing, I grant the Landlord a monetary award for rent amount owing. This is unpaid rent as set out above, in accordance with s. 55(1.1) of the *Act*.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a Landlord. Here, the Landlord has established a claim of \$710. After setting off the remainder of the security deposit held by the Landlord – the amount of \$355 -- there is a balance of \$355. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$355 as compensation for the rent amounts owing.

Conclusion

In the absence of the Tenant, I dismiss their application in its entirety and without leave to re-apply.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order for the recovery of the amounts claimed. This amount is \$355. The Monetary Order must be served on the Tenant. The Monetary Order may be filed in and enforced as an Order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 4, 2022

Residential Tenancy Branch