



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORCO APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 10, 2022 (10 Day Notice) and to recover the cost of the filing fee.

The tenant attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated April 26, 2022 (Notice of Hearing), application and documentary evidence was considered. The tenant testified that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on April 29, 2022. The tenant provided a registered mail receipt with tracking number into evidence and confirmed that the name and address matched the name of the landlord and the mailing address for the landlord listed on the 10 Day Notice.

The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was successfully delivered and signed for on May 3, 2022. Therefore, based on the evidence before me, I find the landlord was served as of May 3, 2022. As the landlord did not attend the hearing and according to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.3 and 7.4, the hearing continued without the landlord present. I find the landlord is unopposed to this application by failing to attend although served.

The tenant provided affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the filing fee under the Act?

Background and Evidence

The tenant referred to a Previous Decision dated March 10, 2022 (Previous Decision). The file number of the Previous Decision has been included on the cover page of this decision for ease of reference. In the Previous Decision, the tenant disputed a 1 Month Notice to End Tenancy for Cause (1 Month Notice) and the landlord failed to attend the hearing although served, and the 1 Month Notice was cancelled as a result, and the tenant was granted a one-time rent reduction of \$100.00 in full satisfaction of the filing fee. The tenant applied that \$100.00 rent reduction issued on March 10, 2022 to April 1, 2022 rent and according to the tenant, the landlord unlawfully issued a 10 Day Notice although the tenant had authorization to do so based on the Previous Decision.

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice was dated April 10, 2022, which the tenant indicated was posted to their door. The effective vacancy date listed on the 10 Day Notice was April 20, 2022. The amount listed as owing on the 10 Day Notice was \$100.00 plus a late fee of \$30.00, the latter of which I will address later in this decision as the late fee exceeds the amount permitted by the Act.

The tenant filed to dispute the 10 Day Notice on April 14, 2022, which is within the 5-day timeline provided for under section 46 of the Act. The tenant provided a copy of the Previous Decision in support of their authority to withhold the \$100.00 amount from the rent for April 2022.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(4) of the Act states that within 5 days after receiving a 10 Day Notice the tenant may file an application to dispute the 10 Day Notice, which I find the tenant did on April 14, 2022. In addition, I agree with the tenant that the Previous Decision clearly indicates that the tenant was authorized to deduct \$100.00 from a future month of rent and that the tenant did not owe \$100.00 as claimed

by the landlord on the 10 Day Notice. Therefore, **I find** the 10 Day Notice dated April 10, 2022, **is of no force or effect** as I find that the tenant had authorization to deduct the \$100.00 filing fee from the Previous Decision from April 2022 rent.

Furthermore, I find the landlord breached *Residential Tenancy Regulation* (RTR) section 7(d) which applies and states:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), **an administration fee of not more than \$25** for the return of a tenant's cheque by a financial institution **or for late payment of rent;**
[emphasis added]

As the RTR sets a limit of \$25.00 for a late payment of rent and not the \$30.00 amount listed on the 10 Day Notice by the landlord, I find the landlord is attempting to work outside of the RTR. Furthermore, I find that the **rent was not late** as the tenant was not required to pay the \$100.00 portion as noted above. Therefore, **I ORDER** that the landlord not attempt to charge the tenant a \$30.00 late fee in the future. Failure to abide by my order could result in a claim for compensation by the tenant and a referral to the RTB Compliance and Enforcement Unit (CEU).

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee pursuant to sections 72 and 62(3) of the Act. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Due to two hearings to end this tenancy since March 10, 2022, both of which the landlord failed to attend, which I find to be unreasonable, and both of which the tenant was successful, a copy of this decision has been forwarded to an RTB Manager. The Manager will review this decision, and if they are of the opinion that these circumstances could reasonably lead to an investigation and consideration for administrative penalties, then they will send a copy of this decision along with any other relevant materials to the RTB CEU. This separate unit of the RTB is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances.

After any dispute resolution materials are sent, neither this Arbitrator nor the RTB Manager will play any role in their process and, if the CEU decides to pursue this

matter, they do not provide this Arbitrator or the RTB Manager with any information they may obtain during their process. Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the CEU can review the contents of this decision, they can also consider additional evidence that was not before this Arbitrator during these proceedings. They are not bound by the findings of fact I have made in this decision. Any further communications regarding an investigation or administrative penalties will come directly from the CEU.

Conclusion

The tenant's application is fully successful.

The 10 Day Notice dated April 10, 2022 issued by the landlord is of no force or effect. The tenant has been granted a one-time rent reduction of \$100.00 in full satisfaction of the filing fee. The landlord must not issue a 10 Day Notice in response to lawful deduction of the filing fee by the tenant from a future month's rent.

The landlord has been cautioned and this Decision will be forwarded to an RTB Manager who will determine if a referral should be made to the RTB CEU for further action.

This decision will be emailed to both parties at the email addresses provided by the tenant.

This decision is final and binding on the parties, unless 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: June 15, 2022

Residential Tenancy Branch