



# Dispute Resolution Services

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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, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord and to recover the cost of the filing fee.

The tenant and the landlord's agent (landlord) attended the teleconference hearing and were affirmed. No parties raised any issue with respect to service of the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) or each other's evidence.

Thereafter, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the submissions are reproduced in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

*Preliminary Issue –*

The parties confirmed their email addresses at the hearing.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the Notice and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the tenant showed a tenancy start date of November 1, 2021, and a fixed-term through October 3, 2022, for a monthly rent of \$885 and a security deposit of \$442.50 being paid by the tenant.

An additional term in the tenancy agreement showed the tenant must vacate the rental unit at the end of the fixed-term for the reason listed as, "in case".

The evidence showed the tenant was served a 10 Day Notice by the landlord on July 28, 2022, when it was posted to his door. The Notice was dated July 28, 2022, for an effective move-out date of August 7, 2022.

On the Notice, the landlord wrote that the tenant owed unpaid rent of \$70.

In his application, the tenant wrote the following:

File- \*\*\*\*\* June 15 2022 stated that the tenant was granted a one time rent reduction of \$100 to fully satisfy the filing fee. This was applied to the July rent payment and again I've been served another 10 day notice for following the arbitrators decision. This is unjust harrassment and stress to try to make me move from a rent controlled unit. This harrassment is causing ongoing loss of quiet enjoyment of living in unit #\*\*\* I've been under threat of eviction the entire time of tenancy.

[Reproduced as written except for anonymizing identifying information]

The tenant filed a copy of the previous Decision of another arbitrator, dated June 15, 2022. The June 15, 2022, Decision referenced a previous Decision, in which the tenant was authorized to deduct \$100, and found that due to this, the tenant did not owe the amount listed on a previous 10 Day Notice. Both application numbers for the previous Decisions are listed on the cover page of this Decision.

The tenant filed evidence showing a monthly rent payment, in cheque form, of \$795. The cheque referenced the June 15, 2022 Decision. The tenant said that there was an error in not making the full \$100 deduction and therefore must still be allowed to deduct that amount of \$10.

The landlord submitted that the tenant was asked to provide proof that he was granted an authorization to make a rent reduction, and that he never responded. Because of the tenant's failure to respond, he was served the 10 Day Notice.

The landlord denied receiving the June 15, 2022, previous Decision; however, the RTB digital file on that application shows the Decision was directly emailed to the landlord via his confirmed email address on June 16, 2022.

When questioning the landlord about the amount of unpaid rent listed on the 10 Day Notice, the landlord said he listed \$70 because the tenant had overpaid rent by \$10 for 3 months. The landlord said that the tenant further overpaid another 2 months and apart from the amount listed on the 10 Day Notice, the tenant has a rent credit of \$50. The landlord confirmed that the tenant is now paying the correct amount.

### Analysis

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord has the burden of providing sufficient evidence to terminate the tenancy for the reason given on the Notice.

The Notice was issued pursuant to section 46(1) and I find that the tenant disputed the Notice within the timeframe required under the Act from the date he received the Notice.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

In this case, I find the tenant had legal authorization to deduct \$100 from a monthly rent payment granted in a previous Decision of June 15, 2022. The evidence shows the tenant deducted the amount of \$90, instead of \$100. I therefore that tenant had a legal

right to make the deduction to satisfy the award of the filing fee from the previous Decision.

I find the tenant did not owe the amount of \$70 listed on the Notice.

As a result of the above, I therefore **ORDER** that the 10 Day Notice dated July 28, 2022, is **cancelled**, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As I have granted the tenant's application, I allow him recovery of the filing fee of \$100. I grant the tenant a one-time rent reduction of \$100 in satisfaction of the monetary award. The tenant should advise the landlord when making this deduction and the landlord may not serve the tenant a 10 Day Notice when this deduction is made.

#### Other issues –

During the hearing, the landlord confirmed that for 5 months of the tenancy, the tenant paid an extra \$10 per month in rent, leaving a rent credit of **\$50**. Additionally, the tenant's evidence was that he only deducted \$90 instead of \$100 to satisfy the monetary award of \$100 given in the previous Decision of June 15, 2022, which meant that he was still entitled to a further **\$10** deduction from the monthly rent.

For these reasons, I find the tenant is entitled to a further \$60 for rent overpayment.

Pursuant to section 62(3) of the Act, I order that the tenant is entitled to a further monetary award of \$60. I therefore authorize the tenant to deduct this additional monetary award by way of a one-time rent reduction of \$60 in satisfaction of the monetary award.

In sum, I authorize the tenant to deduct **\$160** by way of a one-time rent reduction. I further **ORDER** the landlord to not serve the tenant a 10 Day Notice when this authorized deduction is being made. This will satisfy the tenant's award of the filing fee of \$100 for this dispute and the accumulated rent overpayment of \$60 as described above.

#### Cautions to the landlord –

#1 –

In reviewing the landlord's written tenancy agreement, the landlord has marked that the tenant was required to vacate the rental unit at the end of the fixed-term, marking a reason, "in case", that is not allowed under sections 13 (2)(f)(iii.1) and 97 the Act or Residential Tenancy Regulation. I therefore order the landlord to comply with the Act.

The landlord is invited to review their own written tenancy agreement, which explains that landlord is only permitted to require the tenant to vacate at the end of a fixed-term under section 13.1 of the Regulation. This section states as follows, in part:

For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

#2 –

The Notice before me was the third Notice issued to the tenant between November 28, 2021 and July 28, 2022. All Notices were cancelled, two by way of the landlord's failure to attend the first two hearings.

Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment can occur with frequent and ongoing interference by the landlord. The repeated issuance of unsupported Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

I therefore inform the landlord that further attempts to end the tenancy for unsupported reasons may constitute harassment which could form a claim by the tenant for compensation for loss of quiet enjoyment and devaluation of the tenancy. Further, this Decision may form a part of the record for consideration by another arbitrator in future dispute resolution matters, should this occur.

### Conclusion

The tenant's application seeking cancellation of the landlord's 10 Day Notice and recovery of the filing fee is granted. The 10 Day Notice dated July 28, 2022, is cancelled and is of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

I have granted the tenant authority to deduct \$160 as a one-time rent reduction as described above.

The landlord has been issued cautions.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 19, 2022

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Residential Tenancy Branch