



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARNARVON ONE INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RR, RP, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), authorization to reduce rent payable and orders for repairs.

One of the tenants and an agent for landlord appeared for the hearing. The parties were affirmed.

I confirmed the tenants served their proceeding package and evidence to the landlord. I heard the landlord sent its evidence to the tenants on January 18, 2023; however, the tenants decided to not pick up the registered mail as they were of the position the landlord was serving them late.

The tenant wanted this case heard; however, the parties provided consistent statements that the tenants have already vacated the rental unit. As such, I found the remedies sought by the tenants under this application to be moot. The tenant indicated he wanted to make a monetary claim against the landlord. The tenant was informed of their right to do so by filing another Application for Dispute Resolution.

The tenant stated that they seeks to recover the filing fee paid for the Application for Dispute Resolution.

An Arbitrator has discretion to order one party to a dispute resolution proceeding to pay or repay the other party the filing fee under section 72(1) of the Act, which provides:

**72** (1)The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's*

*decision*] by one party to a dispute resolution proceeding to another party or to the director

Since an award for recovery of a filing fee is discretionary, I informed the parties I would briefly hear from them concerning the issuance of the 10 Day Notice, which was the first issue identified by the tenants on their Application for Dispute Resolution.

#### Issue(s) to be Decided

Should the landlord be ordered to repay the tenants the filing fee paid for this Application for Dispute Resolution?

#### Background and Evidence

The parties were in agreement that the tenancy started on August 15, 2021 for a fixed term set to expire on July 31, 2022. The monthly rent was set at \$1800.00 payable on the first day of every month under the tenancy agreement. Upon expiry of the fixed term neither party issued a Notice to End Tenancy to the other party. The tenants remained in possession of the rental unit but sought to “renegotiate” according to the tenant.

The tenants wrote a letter to the landlord a letter dated July 25, 2022 suggesting it would be reasonable to reduce rent payable by \$150.00 for each month from May 2022 onwards, with a pro-rated amount of \$110.00 for April 2022. The landlord responded August 1, 2022 that it was not authorizing a rent reduction. The tenants proceeded to make deductions from rent payable, resulting in issuance of the 10 Day Notice on September 11, 2022 that has an effective date of September 24, 2022.

The tenants acknowledged receiving the 10 Day Notice on September 12, 2022 and filed to dispute it that same day. In disputing the 10 Day Notice the tenants submit that they had lost an outdoor amenity but did not receive a rent reduction from the landlord for its loss and when the tenants attempted to negotiate a rent reduction the tenants received the 10 Day Notice.

The tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice and did not vacate the rental unit by the effective date of the 10 Day Notice. Rather, the rental arrears were eventually paid on October 25, 2022 and the tenants vacated the rental unit in November 2022.

During the hearing, the tenant submitted the tenancy ended when the fixed term ended since they did not enter into a new tenancy agreement. The tenancy agreement term was reviewed during the hearing.

The tenant attempted to introduce arguments that the landlord should not have been renting out units in the building and that the tenancy agreement is illegal. The tenant stated that he has initiated a case in Supreme Court concerning that matter but that case has not yet been heard or decided. I declined to hear arguments as to the legality of the landlord's right to rent out units at the property as that matter is before the Supreme Court and it was irrelevant to this proceeding. If the tenant is of the position that there is no valid and enforceable tenancy agreement then I do not have jurisdiction to hear and decide this case under the Act. If the tenant is seeking remedies under the Act, which he is, the tenants cannot choose to have only the rights and benefits conveyed to tenants under the Act and a tenancy agreement but argue there is no tenancy agreement.

#### Analysis

With respect to the tenant's argument that the tenancy ended with the expiry of the fixed term, the tenant is incorrect. Section 44(3) of the Act provides for what happens at the expiry of a fixed term, as follows:

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The term of the tenancy is as follows:

#### **4. LENGTH OF TENANCY:**

This fixed term tenancy starts on: **August 15, 2021**

For a 1-year period ending: **July 31, 2022**

**AT WHICH POINT THE TENANCY MAY CONTINUE ON A MONTH-TO-MONTH BASIS.**

There was no requirement for the tenant to vacate at the end of the fixed term and the parties did not enter into a new fixed term. Therefore, pursuant to section 44(3) of the

Act, the tenancy was set to continue on a monthly to month basis with all other terms remaining the same, including the requirement to pay rent of \$1800.00 on the first day of every month.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, which are: if the tenant has overpaid a security deposit and/or pet damage deposit, overpaid rent in a previous month, authorization for deductions from rent has been given to the tenant by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

In this case, the tenants did not have the landlord's authorization to reduce rent payable or that of an Arbitrator. The circumstances of losing a service or facility in itself, if there was one, is not a basis for a tenant to take it upon themselves to reduce rent payable. Rather, if the landlord does not authorize the rent reduction by way of a Notice of Termination of a Service or Facility or some other means, the tenant's recourse would be to seek authorization from an Arbitrator. A tenant does not have the right to make deductions before receiving authorization.

In light of the above, I find the tenants did not have the legal right to make deductions from rent when they did and issuance of the 10 Day notice was within the landlord's right to do under section 46 of the Act.

Upon receiving a 10 Day Notice, a tenant has five days to pay the outstanding rent to nullify the 10 Day Notice. If the tenant does not pay the outstanding rent within five days, then the tenant must vacate the rental unit by the effective date, unless the tenant had filed to dispute the 10 Day Notice within five days of receiving the 10 Day Notice.

The tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice and did not vacate the rental unit by the stated effective date. As explained above, the tenants did not have a right to take it upon themselves to make deductions from rent payable without prior authorization but by filing their Application for Dispute Resolution to dispute the 10 Day Notice, the tenant's benefited by avoiding payment of the outstanding rent within five days of receiving the 10 Day Notice or vacating the rental unit by the effective date of September 24, 2022. The tenants' application also thwarted the landlord's ability to seek an Order of Possession or Monetary Order under the Direct Request procedure. Given the benefits the tenants received by filing their

Application for Dispute Resolution, I decline to make the landlord pay the tenants the cost of the filing fee.

In light of these circumstances, I dismiss the tenant's request for recovery of the filing fee from the landlord.

### Conclusion

The remedies sought in this application are moot. I make no award for recovery of the filing fee. Accordingly, the tenants' application is dismissed, in its entirety, 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: February 1, 2023

---

Residential Tenancy Branch