



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

**OPR, MNR, MNSD, MNDC, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on October 31, 2013 each tenant was sent copies of the Application for Dispute Resolution, evidence and Notice of Hearing via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service to each tenant.

On October 29, 2013 the landlord had become aware that the tenants had vacated the unit.

The landlord checked the Canada Post web site for tracking information. The tracking information for each tenant was the same; the Notices were available for pick-up on November 2, 2013; on November 4, 2013 the mail was forwarded to the tenant's new address and on November 5, 2013 the mail was placed on hold, at the recipient's request. The tenants have yet to pick up the registered mail.

Section 89 of the Act requires that an application be sent to the address where the tenant resides or the forwarding address provided by the tenant. Section 90 of the Act deems registered mail served on the 5<sup>th</sup> day after mailing.

As the tenants did not provide a forwarding address to the landlord I have considered the Canada Post tracking information which indicated that the tenants had their mail forwarded to their new address. As the mail was sent to an address provided by the tenants to Canada Post I find, pursuant to section 71(2) of the Act that each tenant was sufficiently served with Notice of the hearing and the evidence package on the 5<sup>th</sup> day after mailing.

Neither tenant attended the hearing.

### Preliminary Matters

The tenants have vacated; therefore the landlord withdrew the request for an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid October 2013 rent and loss of November 2013 rent revenue and fees?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2013, rent was \$1,325.00 per month, due on the 1<sup>st</sup> day of each month. A security deposit in the sum of \$662.50 was paid. The signed tenancy agreement supplied as evidence included clause 3.03, late fees in the sum of \$25.00 after the 5<sup>th</sup> day overdue.

A copy of a parking agreement at \$15.00 per month was supplied as evidence. Initially the tenants were to have 2 parking spaces; the tenancy agreement had indicated \$30.00 per month for parking.

The landlord stated that on October 10, 2013 a 10 day notice to end tenancy for unpaid October 2013 rent was posted to the tenant's door. The building manager had to enter the unit on either October 9<sup>th</sup> or 10<sup>th</sup>, as the result of a water leak. At that time it appeared the tenants had already vacated.

The landlord confirmed that no check of the unit was made after the Notice was posted to the door and that on October 29, 2013 the keys were left in the building manager's mail box.

The landlord is claiming:

October 2013 rent	\$1,325.00
November 2013 rent revenue	1,325.00
Late fees October and November	50.00
Parking	5.00
TOTAL	\$2,705.00

The application included a claim of \$15.00 per month for parking for October and November, 2013 totalling \$30.00, but the tenants had \$25.00 credit.

It was not until October 29, 2013 the landlord began advertising the rental unit. A condition inspection report was not scheduled with the tenants, for the effective date of the undisputed Notice ending tenancy.

Analysis

Based on the testimony of the landlord and in the absence of the tenants who were served with Notice of this hearing, I find that the landlord is entitled to compensation for unpaid October rent in the sum of \$1,325.00 and the late October rent fee in the sum of \$25.00. The signed tenancy agreement required the tenants to make these payments

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the tenants received the Notice to End Tenancy on October 13, 2013.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenants are deemed to have received this Notice on October 13, 2013, I find that the earliest effective date of the Notice was October 23, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was October 23, 2013.

There was no evidence before me that the landlord checked to see if the tenants had vacated the unit by the effective date of the undisputed Notice and, in fact, the landlord believes that the tenants appeared to have vacated by the time the Notice was posted to the door. When the tenants did not dispute the Notice they had accepted the tenancy ended and unless they over-held beyond the effective date of the Notice, the landlord had the right to then take possession of the unit. No steps were taken to check on unit in order to establish possession until the keys were found in the mail box on October 29, 2013.

When claiming the loss of rent revenue the landlord must show they attempted to mitigate the loss, by taking possession of the unit as soon as possible and advertising the unit once they knew a vacancy was imminent. The earliest date the landlord could have expected possession was October 23, 2013, but the unit was not checked to confirm whether or not the tenants had vacated and an inspection report had not been scheduled for the effective date.

Therefore, in the absence of evidence that the landlord took adequate steps to mitigate the loss they are claiming for November 2013 rent revenue, I find that the landlord is entitled to compensation for one-half of November rent revenue in the sum of \$662.50; the balance of the claim is dismissed. If the tenants had paid their rent the landlord would not have had to issue the Notice ending tenancy; so they bear some responsibility for the loss of rent revenue. Even if the landlord had established possession on the earliest date, October 23, 2013; I find, on the balance of probabilities, they would have been left with little time to fully mitigate by locating a new occupant for November 1, 2013. However, it is not unreasonable to find that a new occupant could have been located by November 15, 2013.

As the tenancy ended effective October 23, 2013 I find that the claim for a November 2013 late rent payment is dismissed. The loss in November was as rent revenue, not unpaid rent.

Based on the parking agreement signed I find that the tenant's \$25.00 credit covered the \$15.00 parking fee owed for October; leaving a credit owed to the tenants in the sum of \$10.00. I dismiss the claim for November parking as the tenancy ended before November, 2013.

Therefore the landlord is entitled to the following compensation:

	Claimed	Accepted
October 2013 rent	\$1,325.00	\$1,325.00
November 2013 rent revenue	1,325.00	662.50
Late fees October and November	50.00	25.00
Parking	5.00	-10.00 credit
<b>TOTAL</b>	<b>\$2,705.00</b>	<b>\$2,002.50</b>

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$662.50 partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$1,390.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

### Conclusion

The landlord is entitled to compensation for unpaid rent, damage or loss under the Act in the sum of \$2,002.50. The balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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: December 10, 2013

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Residential Tenancy Branch

