



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and to recover the filing fee.

The landlord's agent (hereafter "landlord") attended the hearing; the tenants did not attend the telephone conference call hearing.

The landlord gave evidence that they served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 20, 2014. The landlord supplied 1 customer receipt containing the tracking number regarding the female tenant and supplied testimony of the tracking number of the registered mail for the male tenant.

Based upon the landlord's submissions, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord gave evidence that this tenancy began on October 1, 2011, monthly rent began at \$1200, and is currently \$1285, and a security deposit of \$600 was paid by the tenants at the beginning of the tenancy on or about September 4, 2011.

The landlord supplied the notices of rent increase and the written tenancy agreement.

The landlord's monetary claim included a request for unpaid rent for February and March, 2014. The landlord also requested a late fee of \$25 for March and April 2014.

The landlord gave evidence that on February 2, 2014, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the tenants' door, listing unpaid rent of \$1010 as of February 1, 2014. The effective vacancy date listed on the Notice was February 12, 2013.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenants were deemed to have received the Notice on February 5, 2014, and the effective move out date is automatically changed to February 15, 2014, pursuant to section 53 of the Act.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenants had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that since the Notice was issued to the tenants, the tenants have not paid the full rent and owe a rent deficiency of \$815 for February and \$685 for March 2014, leaving a total rent deficiency for those two months in the amount of \$1500.

I have no evidence before me that the tenants applied to dispute the Notice.

### Analysis

Based upon the landlord's undisputed evidence, I find the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent, did not pay all the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenants.

I allow the landlord's request for a late payment of rent fee of \$25 for March, as allowed in the written tenancy agreement supplied by the landlord.

I therefore find that the landlord is entitled to a monetary award of \$1575 comprised of unpaid rent of \$1500 through March 2014, a late fee of \$25, and the \$50 filing fee paid by the landlord for this application.

### Conclusion

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

At the landlord's request, I authorize the landlord to retain the tenants' security deposit of \$600 in partial satisfaction of their monetary award of \$1575.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$975, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

The landlord is at liberty to file an application for unpaid rent for April and for a late payment of rent fee for April 2014.

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* and is being mailed to both the applicant and the respondents.

Dated: April 10, 2014

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Residential Tenancy Branch

