



# Dispute Resolution Services

Page: 1

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 convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence was considered. The agent testified that the Notice of Hearing, Application and documentary evidence was served on the tenant by registered mail to the rental unit address on July 30, 2014, and that the tenant continues to reside in the rental unit. A registered mail tracking number was submitted in evidence. The agent stated that the registered mail package was returned to the landlord on September 3, 2014. Documents served by registered mail are deemed served five days after they are mailed pursuant to section 90 of the *Act*. Based on the above, I accept the landlord's undisputed testimony and documentary evidence that supports that the tenant was deemed served as of August 4, 2014, which is five days after the registered mail package was mailed on July 30, 2014. I note that refusal or neglect on the part of the tenant to accept registered mail does not constitute grounds for a Review Consideration Application.

### Preliminary and Procedural Matters

The agents testified that although the tenant made some payments towards rent well after the deadline to pay the rent described on page two of the 10 Day Notice, and that the Application was filed on July 24, 2014, the landlord wrote in their application that they would also be seeking August, September and October rent, which the agent stated was due to the unknown date of this hearing at the time the Application was filed. I note that the agent confirmed that receipts issued were for “use and occupancy only” and that the tenancy was not reinstated by the landlord at any time.

As a result, the agent requested to amend the landlord’s application to include only September 2014 unpaid rent of \$1,200.00, September 2014 unpaid parking fee of \$45.00, September 2014 late fee of \$25.00, \$5.00 remaining unpaid for August 2014 late fee, plus the \$50.00 filing fee for a total monetary claim of \$1,325.00. I find that the agent’s request to amend their application does not prejudice the respondent tenants as it is reasonable that the tenant would be aware that rent is due pursuant to the tenancy agreement and that the tenancy agreement also describes the parking fees and late fees claimed. Therefore, I grant the agent’s request to amend their claim to \$1,325.00 as described above.

### Issues to be Decided

- Is the landlord entitled an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement between the parties began on January 1, 2012 and reverted to a periodic, month to month tenancy agreement after June 30, 2012. Monthly rent in the amount \$1,200.00 is due on the first day of each month during the tenancy. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold. There is no interest accrued on the tenant’s security deposit.

The landlord applied for dispute resolution on July 24, 2014, after the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) by posting the 10 Day Notice on the tenant’s door on July 8, 2014. The 10 Day Notice is

dated July 8, 2014. The 10 Day Notice submitted in evidence has an effective vacancy date of July 18, 2014. The subsequent payments made by the tenant described above were made on August 8, 2014, according to the agent, leaving a balance owing as described above.

The agent testified that the tenant did not dispute the 10 Day Notice after being served the 10 Day Notice. The agent confirmed that the tenant remains in the rental unit and that the landlord continues to seek an order of possession based on an undisputed 10 Day Notice, the fact the tenant has failed to pay September 2014 rent, the late fee for that month, and still owes a portion of the late fee for August 2014 and did not pay any of the prior amounts for July until August 8, 2014. The landlord submitted a copy of the 10 Day Notice in evidence to support their application.

### Analysis

Based on the documentary evidence and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

**Order of Possession** - I find that the tenant failed to pay the monthly rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which in the matter before me would be July 21, 2014 as the 10 Day Notice was deemed to have been served on July 11, 2014 pursuant to section 90 of the *Act* as the 10 Day Notice was posted to the tenant's door and effective vacancy dates automatically correct under section 53 of the *Act*. Accordingly, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant as the effective vacancy date of the 10 Day Notice, July 21, 2014, has passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

**Monetary claim of landlord** – I accept the undisputed testimony of the agent that the tenant owes the amount of \$1,325.00 as claimed for September 2014 unpaid rent, the late fee for September, the portion of the late fee owing for August and the filing fee. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** the tenant breached section 26 of the *Act* by failing to pay September 2014 rent when it was due on September 1, 2014. As the landlord's application had merit, **I grant** the landlord the recovery of the \$50.00 filing fee. Therefore, **I find** the landlord has met the burden of proof and have supported their monetary claim of **\$1,325.00** as claimed for unpaid rent, unpaid late fees, and the filing fee.

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, which the landlord continues to hold, in the amount of \$600.00, which has accrued \$0.00 in interest since the start of the tenancy. **I ORDER** the landlord to retain the tenant's full security deposit \$600.00, in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$725.00**. This order must be served on tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$1,325.00 as indicated above. The landlord has been ordered to retain the tenant's full security deposit \$600.00, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$725.00. This order must be served on tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: September 26, 2014

---

Residential Tenancy Branch

