



# 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 convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the/tenants, was done in accordance with section 89 of the *Act*; served by registered mail on July 30, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this fixed term tenancy started on February 25, 2014 and reverted to a month to month tenancy on September 01, 2014. Rent for this unit is \$1,260.00 per month plus \$45.00 for parking. Rent and parking are due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of \$630.00 on February 24, 2014.

The landlord testified that the tenants failed to pay the rent on July 01, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on July 08, 2014. This was posted on the tenants` door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 18, 2014. The tenants did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenants have failed to pay rent for August and September, 2014 of \$2,520.00. The total amount of unpaid rent is now \$3,780.00.

The landlord testified that the tenants abandoned the unit on or about September 05, 2014. The landlord therefore seeks to recover the balance of rent for September as a loss of revenue as the landlord has been unable to re-rent the unit for the remainder of September.

The landlord seeks to recover \$45.00 per month for parking as this was also unpaid for July, August and September.

The landlord testified that the tenancy agreement provides for a fee of \$25.00 being charged for late fees for any period after the first five days that rent is late. The landlord seeks to recover late fees of \$50.00 for July, August, 2014.

The landlord has applied to retain the tenants' security deposit of \$630.00 in partial payment of the rent arrears. .

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied that there is outstanding rent for July and August, 2014 of \$2,520.00. I further find that it is likely that the tenants did not vacate the rental unit until around September 05, 2014. I find the landlord is entitled to rent for five days in September as the tenants have overheld at the unit past the effective date of the Notice and the remainder of September as a loss of revenue as the landlords have been unable to re-rent the unit for the remainder of September. Consequently, it is my decision that the landlord is entitled to recover unpaid rent and loss of revenue to the amount of **\$3,780.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords claim to recover parking fees for three months, I find the landlord is entitled to recover parking fees for July and August, 2014 of **\$90.00**. As the tenants abandoned the unit on or about September 05, 2014 I find the landlord is entitled to recover a portion of the parking fee for September of **\$7.50**.

With regard to the landlord's claim to recover \$50.00 for late fees for July and August, 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for a fee to be charged for late fees of not more than \$25.00. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$50.00** in late fees for July and August, 2014.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants security deposit of **\$630.00** in partial payment of the rent arrears.

As the landlord has been largely successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,780.00
Parking fees	\$97.50
Late fees	\$50.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$630.00)
<b>Total amount due to the landlord</b>	<b>\$3,347.50</b>

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,347.50** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondents and is enforceable through the Provincial Court as an Order of that Court.

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: September 29, 2014

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Residential Tenancy Branch

