



# 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, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the hearing lasted approximately 19 minutes in length. The landlord's representative ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated August 7, 2014 ("10 Day Notice"), was posted to the door where the tenant was residing, on August 7, 2014 at 12:30 p.m. The landlord has attached a proof of service with a witness signature, in her Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on August 10, 2014, the third day after its posting.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package ("Application") on August 28, 2014 via registered mail. She provided Canada Post receipts and tracking numbers as proof of service, with her application. The landlord confirmed that she tracked the package online at the Canada Post Website during the Hearing and the package was picked up by the tenant on

August 29, 2014 at 1:27 p.m., with proof of the tenant's signature. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on September 2, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

In her Application, the landlord provided a copy of the tenancy agreement, which was for a fixed term of one year, beginning on July 1, 2011. The landlord confirmed that the tenancy continued after the fixed term on a month-to-month basis. Monthly rent was payable in the amount of \$1,435.00 on the first day of each month. The tenancy agreement was signed by both the tenant and landlord on July 8, 2014.

A document attached to the Application, dated July 8, 2011, and signed by both parties on that date, included a rental incentive of the last month's rent free. The landlord testified that this rental incentive was applied to the tenancy in June 2012. A Notice of Rent Increase, dated March 27, 2012, notes that the new rent of \$1,485.00 took effect on July 1, 2012.

The landlord posted the 10 Day Notice on the tenant's door on August 7, 2014. She applied for an Order of Possession for non-payment of full rent, parking and late charges from July and August 2014. The landlord testified that the tenant made partial payments of \$200.00 and \$650.00 both on August 18, 2014, and a further payment of \$400.00 on August 19, 2014, to the landlord. The landlord confirmed that receipts were issued for the above payments, indicating that these payments were received for "use and occupancy only" on the receipts. The landlord confirmed that no further payments have been made by the tenant. The landlord confirmed her testimony by referencing an occupant ledger of August 27, 2014, which formed part of her Application package.

The landlord's application requested outstanding charges owing by the tenant from August 2014, totalling \$400.00. At the hearing, the landlord clarified the portion of her Application where she indicated that she was seeking to include unpaid rent and late charges from September and October 2014. She testified that she sought \$1,485.00 in unpaid rent for each of September and October 2014, \$15.00 in unpaid parking for each of September and October 2014, and \$25.00 in late charges for each of September and October 2014.

The landlord testified that the tenant continues to reside in the unit in question. She clarified that although there were two tenants (CM and RM) and an additional occupant (AD) listed on the original tenancy agreement, and only two tenants (CM and AD) listed on the Notice of Rent Increase, that, to her knowledge, only the tenant named in this Application (CM) is currently residing on the premises.

The landlord sought to retain all or a portion of the tenant's security deposit of \$717.50, which was paid for this tenancy on July 1, 2011, and which the landlord continues to hold, as per the landlord's evidence.

The landlord also applied to recover the filing fee of \$50.00 for her application from the tenant.

### Analysis

The tenant failed to pay the full rent for August 2014 within five days of being deemed to have received the 10 Day Notice. Although partial payments were made by the tenant on August 18 and 19, 2014, totalling \$1,250.00, no payments were made by August 15, 2014, which was the deadline after which the tenant was deemed to have received the 10 Day Notice. Further, the partial payments made in August 2014 were accepted for "use and occupancy only," which did not reinstate the tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on August 20, 2014, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 20, 2014. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord applied for the imposition of late charges of \$25.00 per month for September and October 2014, charges that have been applied in accordance with the

tenancy agreement. I allow each of the landlord's charges for these late fees, totalling \$50.00.

The landlord seeks unpaid parking charges of \$15.00 per month for September and October 2014. The landlord attached a copy of a parking agreement with her Application, which is signed by both the tenant and landlord, for rental of a parking space at the amount of \$15.00 per month. I allow each of the landlord's charges for these parking fees, totalling \$30.00.

The landlord seeks unpaid rent, parking and late charges for July 2014, which were carried over into August 2014. As partial payments were made by the tenant in August 2014, these payments were applied to satisfy the unpaid July amounts first. The landlord's occupant ledger notes that \$1,525.00 was charged for rent, parking and a late fee for July 2014. Payments totalling \$1,400.00 were made by the tenant on July 18 and 25, 2014. I find that the outstanding amount owed by the tenant from July 2014, and carried over into August 2014, is in the amount of \$125.00 for unpaid rent, parking, and a late charge. The tenant had notice of these unpaid amounts by way of the 10 Day Notice and the landlord's Application.

The landlord testified that she continues to hold the tenant's security deposit of \$717.50. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,782.50 against the tenant as follows:

Item	Amount
July Rent, Late Fee and Parking (\$1,485.00 + \$25.00 + \$15.00 = \$1,525.00)	\$1,525.00
Less Partial Payment on July 18, 2014	-1,000.00
Less Partial Payment on July 25, 2014	-400.00
August 2014 Rent, Late Fee and Parking (\$1,485.00 + \$25.00 + \$15.00 = \$1,525.00)	1,525.00
Less Partial Payment on August 18, 2014	-200.00
Less Partial Payment on August 18, 2014	-650.00
Less Partial Payment on August 19, 2014	-400.00
September 2014 Rent, Late Fee and Parking (\$1,485.00 + \$25.00 + \$15.00 = \$1,525.00)	1,525.00
October 2014 Rent, Late Fee and Parking (\$1,485.00 + \$25.00 + \$15.00 = \$1,525.00)	1,525.00
Less Security Deposit	-717.50
Recovery of Filing Fee for this application	50.00
<b>Total of Above Items</b>	<b>\$2,782.50</b>

The landlord is provided with a monetary order in the amount of \$2,782.50 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 27, 2014

---

Residential Tenancy Branch

