



# 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, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified she served the Tenant with the Notice of Hearing and their Application on September 29, 2014 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 6, 2014 (as October 4, 2014 falls on a holiday).

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

The Landlord testified as to the terms of the tenancy and provided a copy of the Residential Tenancy Agreement.

The tenancy began April 15, 2014. Monthly rent was payable in the amount of \$1,230.00 on the first of the month. A security deposit in the amount of \$615.00 was paid on March 31, 2014. The Residential Tenancy Agreement provided that a \$15.00 late fee would be applied for rent paid after the 3<sup>rd</sup> day it was due and \$25.00 after the 5<sup>th</sup> day it was due. In addition, the Residential Tenancy Agreement provided that a \$25.00 charge would be applied to payments which were dishonoured or returned N.S.F.

The Tenant failed to pay rent for the month of September 2014. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 8, 2014 by posting to the rental unit door indicating the amount of \$1,230.00 was due as of September 1, 2014 (the "Notice"). Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of September 4, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, September 9, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$3,165.00 comprised of:

\$610.00	outstanding for September 2014 rent (including a \$20.00 credit)
\$25.00	late fee for September 2014;
\$20.00	N.S.F. fee for September 2014;
\$1,230.00	for October 2014; and
<u>\$1,230.00</u>	<u>for November 2014.</u>
\$3,115.00	TOTAL

and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$615.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,550.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as 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: November 12, 2014

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Residential Tenancy Branch

