



# 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, MNDC, MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. Another agent of the landlord company also attended as an observer, who did not take part in the proceedings.

The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on October 28, 2015 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant. No one for the tenant attended the hearing, and upon hearing the landlord's agent and upon reviewing the Canada Post documentation, I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees and parking charges?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this fixed-term tenancy began on August 1, 2015 and expires on July 31, 2016 thereafter reverting to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,365.00 per month, in addition to \$15.00 per month for parking are payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$682.50 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant failed to pay rent when it was due for October, 2015 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit on October 7, 2015. A copy has been provided and it is dated October 7, 2015 and contains an effective date of vacancy of October 17, 2015 for \$1,365.00 of unpaid rent that was due on October 1, 2015. A copy of a signed Proof of Service document has also been provided.

The tenant has not paid any rent since the issuance of the notice and is now in arrears the sum of \$4,095.00 for October, November and December, 2015, as well as arrears for parking at a rate of \$15.00 for each of those months. The landlord claims those amounts as against the tenant as well as late payment of rent fees of \$25.00 for each of those 3 months. The landlord also seeks an Order of Possession and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit. In this case, I am satisfied that the tenant was served with the notice on October 7, 2015, which is deemed to have been served 3 days after posting it to the door of the rental unit, or October 10, 2015. The tenant did not pay the rent in full or dispute the notice within 5 days of that, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession on 2 days notice to the tenant.

I also accept the landlord's testimony that the tenant has not paid any rent since the issuance of the notice and the landlord is owed rent for October, November and December, 2015 totalling \$4,095.00.

With respect to late fees and parking fees, I have reviewed the tenancy agreement, and I find that the fees are lawful and were agreed to by the tenant at the commencement of the tenancy, and I find that the landlord is owed \$45.00 for parking and \$75.00 for late fees.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$682.50 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$3,582.50.

#### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I order the landlord to keep the \$682.50 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,582.50.

These orders are final and binding and may be enforced.

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: December 09, 2015

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Residential Tenancy Branch

