



# 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, MND, 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, for damage to the rental unit, and 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 landlords' agents (the landlord) attended the hearing by conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on January 27, 2016 and has provided in his direct testimony the Canada Post Customer Receipt Tracking Number. The landlord also stated that the package was picked up by the tenant on January 29, 2016 after reviewing the Canada Post online tracking logs. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act and is deemed served 5 days later with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

During the hearing the landlord clarified that a late payment of rent was made by the tenant on February 15, 2015 of \$3,515.00 for which a receipt was given to the tenant giving notification of use and occupancy only and that the landlord was still seeking to end the tenancy. The landlord also clarified that as of the date of this hearing the tenant was only in arrears for \$1,770.00 consisting of:

\$1,655.00	Unpaid March Rent
\$90.00	Unpaid March Parking Fee(s) X2 @ \$45.00
\$25.00	March Late Rent Fee

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy ending on November 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 5, 2015. The monthly rent is \$1,655.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$827.50 was paid on November 5, 2015.

The landlord provided undisputed affirmed evidence that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 8, 2016 by posting it to the rental unit door on January 8, 2016 with a witness. The landlord has provided a completed proof of service statement confirming service in this manner with a witness. The 10 Day Notice stated that the tenant failed to pay of \$1,655.00 that was due on January 1, 2016. There is also a handwritten notation,

*Rent \$1,655.00 + Pkg. \$45.00 + Pkg. \$45.00 + Late Charge \$25.00 = Balance  
Owing = \$1,770.00.*

The landlord clarified that as per section 1.01 of the signed tenancy agreement the tenant is responsible for monthly rent of \$1,655.00, \$90.00 per month for parking. The landlord also stated that section 3.03 of the tenancy agreement allows for a late charge of \$25.00 for rent paid after the 5<sup>th</sup> day of the month in which the rent is due.

The landlord provided undisputed affirmed testimony that the landlord accepted a late rent payment of rent of \$3,515.00 on February 15, 2016 for which a receipt was issued to the tenant for “use and occupancy only”. The landlord stated that the tenant was still in arrears for March Rent and Parking and as such was still seeking an end to the tenancy.

The landlord stated that as of the date of the hearing, the landlord was seeking a monetary claim of \$1,770.00 consisting of:

\$1,655.00	Unpaid March Rent
\$90.00	Unpaid March Parking Fee(s) X2 @ \$45.00
\$25.00	March Late Rent Fee

### Analysis

I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served with the 10 Day Notice dated January 8, 2016 by the landlord posting it to the rental unit door with a witness as confirmed by the landlord's completed proof of service document dated January 8, 2016. Although the landlord accepted rent on February 15, 2016 after the effective end of tenancy date of the 10 Day Notice, the landlord issued a receipt the same date for “use and occupancy only”. The tenant has not filed an application for dispute within the allowed 10 day period following service of the 10 Day Notice on January 8, 2016 nor has the tenant filed an application for dispute following the receipt of the landlord for “use and occupancy only” on February 15, 2016. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears and late payment charge totaling \$1,770.00. I find that the landlord has proven his entitlement to the rent arrears and late payment charge. The landlord is entitled to a monetary order for the unpaid rent and late rent charge.

The landlord applied to keep the tenant's \$827.50 security deposit. I allow the landlord to retain the 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 \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,042.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid March Rent	\$1,655.00
Unpaid March Parking	90.00
March Late Rent Charge	25.00
Offset Security Deposit	-827.50
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$1,042.50</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: March 09, 2016

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Residential Tenancy Branch

