



# 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 MND MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for damages to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The agent testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on February 26, 2016. A tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the online registered mail tracking website the tenant signed for an accepted the registered mail package on March 2, 2016. The agent stated that the package contained the Application, Notice of Hearing and the documentary evidence. Based on the above, I find that the tenant was sufficiently served on March 2, 2016 with the Notice of Hearing, Application and documentary evidence, which is the date the tenant signed for and accepted the registered mail package.

### Preliminary and Procedural Matter

At the outset of the hearing, the agent requested to withdraw the landlord's request for an order of possession as the tenant had vacated the rental unit on April 4, 2016 since the landlord filed their Application. As a result, I have not considered the landlord's original request for an order of possession.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement and parking agreement was submitted in evidence. A fixed term tenancy began on June 22, 2014 and reverted to a month to month tenancy after six months. The tenant's monthly rent was \$1,095.00. The tenant paid a security deposit of \$547.50 at the start of the tenancy, which the landlord continues to hold.

The landlord's write in their details of dispute on their Application that they are claiming for February and March 2016 rent of \$1,095.00 per month, plus parking of \$25.00 per month and a late fee of \$25.00 per month. In addition, the agent testified that after the tenant vacated the rental unit on April 4, 2016, the landlord was able to secure new renters for April 15, 2016. The new renters are paying \$1,140.00 per month, so for April 2016, the new renters paid the landlord \$570.00. As a result, the landlord stated that they are seeking a loss of rent from the tenant in the amount of \$525.00 as \$1,095.00 less \$570.00 equals \$525.00. In total, the landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid February 2016 rent	\$1,095.00
2. Unpaid parking for February 2016	\$25.00
3. February 2016 late fee	\$25.00
4. Unpaid March 2016 rent	\$1,095.00
5. Unpaid parking for March 2016	\$25.00
6. March 2016 late fee	\$25.00
7. Lost portion of April 2016 rent	\$525.00
8. Unpaid parking for April 2016	\$25.00

9. April 2016 late fee	\$25.00
<b>TOTAL</b>	<b>\$2,865.00</b>

The agent testified that the tenant failed to pay February and March 2016 rent, parking fees for both months, and that the landlord is seeking the \$25.00 late fees for both months also. In addition, the agent stated that for April 2016, although they were able to minimize their loss pursuant to section 7 of the *Act*, by re-renting the rental unit, the landlord did suffer a monetary loss of \$525.00 as described above, and that the landlord is seeking the unpaid parking fee of \$25.00 and the late fee of \$25.00 for April 2016.

The landlords submitted a copy of the parking agreement, tenancy agreement and registered mail receipts in support of their claim. I note that the tenancy agreement includes late fees under term 3.03 and the parking agreement does indicate \$25.00 per month and was signed by the tenant.

#### Analysis

Based on the undisputed documentary evidence and testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the amount of **\$2,965.00** which includes the recovery of the cost of the filing fee in the amount of **\$100.00** as the landlord's application is successful. I have considered the undisputed testimony of the landlord and that the application was unopposed by the tenant. The landlord continues to hold the tenant's security deposit of \$547.50 which has not accrued any interest to date.

**I authorize** the landlord to retain the tenant's full security deposit of \$547.50 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$2,417.50**.

Conclusion

The landlord's application is successful.

The landlord has been authorized to retain the tenant's full security deposit of \$547.50 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$2,417.50. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless 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: April 19, 2016

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Residential Tenancy Branch