



# 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, damage or loss 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 I waited until 9:44 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that the 10 Day Notice to End Tenancy was posted on the tenant's door on June 8, 2016. The landlord also testified that the landlord's Application for Dispute Resolution with Notice of Hearing was sent to the tenant at the rental unit via registered mail on June 27, 2016. The landlord testified that the tenant still resides in the rental unit however the registered mail package was returned. In accordance with sections 88, 89 and 90 of the Act as well as the deeming provisions of Policy Guideline No. 12, I find that the tenant was deemed served with the 10 Day Notice on June 11, 2016 and with the landlord's Application for Dispute Resolution on July 2, 2016.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary order for unpaid rent, damage or loss as a result of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on May 4, 2012. The landlord testified that she believes the tenant still resides in the rental unit. The monthly rental amount of \$985.00 has been increased to \$1034.00. The rental amount of \$1034.00 is payable on the first of each month. The landlord submitted a copy of the residential tenancy agreement for this hearing. The landlord testified that she continues to hold a \$492.50 security deposit paid by the tenant at the outset of the tenancy.

The landlord has applied for an Order of Possession for unpaid rent for the month of June 2016. The landlord testified that the tenant did not pay rent of \$1034.00 due on June 1, 2016. The landlord testified that the tenant paid \$1060.00 on July 7, 2016 to pay the landlord for June rent and the \$25.00 late fee. The landlord testified that the tenant has not paid any further amount in order to pay the landlord for July or August 2016 rent. The landlord provided a ledger indicating the tenant's payment history and outstanding balance.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the \$1034.00 rent after receiving the 10 Day Notice on June 11, 2016. After the expiration of that 10 Day period, the landlord applied for an Order of Possession.

The landlord is also seeking a monetary award of \$2216.00 reflecting 2 late payment fees of \$25.00 each and 2 months' rent at \$1034.00 each. The correct recovery amount for the landlord's should be \$2118.00. The landlord's also sought to retain the tenant's security deposit towards any monetary award and recover the \$100.00 filing fee.

### Analysis

The tenant failed to pay the June rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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. In this case, this required the tenant to vacate the premises by June 21, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in the amount of \$2068.00. I accept the landlord's undisputed testimony supported by documentary

evidence that the tenant has not paid the current rental amount of \$1034.00 for the months of July 2016 and August 2016. The landlord provided sworn testimony that the tenant continues to reside in the rental unit. The landlord provided evidence of the rental increase by the forms supplied prior to those increases. Therefore, I find that the landlord should recover July and August 2016 rent at \$1034.00 per month.

The landlord also applied for \$50.00 in fees for late payment of rent for July 2016 and August 2016. The landlord provided a copy of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to a \$25.00 late fee for each of July 2016 and August 2016 totalling \$50.00.

I will allow the landlord to retain the tenant's \$492.50 security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable over the time of this tenancy.

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

Is the landlord entitled to a monetary order for unpaid rent, damage or loss as a result of this tenancy? Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for July and August 2016	\$2068.00
Late Payment Fee for July and August	50.00
Less Security Deposit	-492.50
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award</b>	<b>\$1725.50</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: August 09, 2016

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Residential Tenancy Branch