



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, FF, CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain 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, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

### **Issue(s) to be Decided**

Is the tenant entitled to have the 10 Day Notice to End Tenancy set aside? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

### **Background and Evidence**

The landlords gave the following testimony. This tenancy began on March 1, 2014, with monthly rent set at \$1503.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$700.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice personally to the tenant on July 7, 2017 indicating an effective move-out date of July 18, 2017. A copy of the 10 Day Notice was included in the landlord's evidence. The landlords testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant.

The landlords testified that the tenant owes \$4509.00 in rent for the months of July 2017 through to September 2017 along with \$75.00 in late fees as per the tenancy agreement. The landlords seek the following:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for July 2017	\$1503.00
Unpaid Rent for August 2017	1503..00
Unpaid Rent for September 2017	1503.00
Recovery of Filing Fee	100.00
Late Fees	75.00
Less Security Deposit	-700.00
<b>Total Monetary Order Requested</b>	<b>\$3984.00</b>

The tenant gave the following testimony. The tenant testified that she has been awaiting disability benefits. The tenant testified that she has exhausted all her savings, used up all her credit and pawned her jewellery in attempts to pay the rent. The tenant testified that she will try to pay the landlords as much as she can as quick as she can. The tenant testified that she does not dispute the amount owing but would like to stay.

### **Analysis**

The tenant failed to pay their rent in full within five days of having received the 10 Day Notice. Although the tenant has made an application pursuant to section 46(4) of the *Act* within five days receiving the 10 Day Notice, they have not provided sufficient evidence to have the notice set aside. I find that the landlord has provided sufficient evidence to support their claim.

In this case, this required the tenants to vacate the premises by July 18, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed evidence provided by the landlord, I am satisfied that the tenant continues to owe the landlord unpaid rent, late fees and the recovery of the filing fee for this application for a total amount of \$4684.00. The landlord is also entitled to retain the security deposit.

The tenant has not been successful in her application.

### **Conclusion**

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$3984.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, late fees, the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for July 2017	\$1503.00
Unpaid Rent for August 2017	1503..00
Unpaid Rent for September 2017	1503.00

Recovery of Filing Fee	100.00
Late Fees	75.00
Less Security Deposit	-700.00
<b>Total Monetary Order Requested</b>	<b>\$3984.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application is dismissed.

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: September 27, 2017

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Residential Tenancy Branch