



# 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, MNRL-S, FFL (Landlord)  
CNR, MT (Tenant)

### **Introduction**

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application January 24, 2020 (the "Tenant's Application"). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 05, 2020. The Tenant sought more time to file the dispute.

The Tenant filed an amendment February 04, 2020 to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 02, 2020.

The Tenant filed an amendment March 02, 2020 to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 02, 2020.

The Landlord filed the application February 24, 2020 (the "Landlord's Application"). The Landlord applied for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 02, 2020. The Landlord also sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant did not appear at the hearing which lasted 22 minutes. I explained the hearing process to the Agent. The Agent provided affirmed testimony.

The Agent advised at the outset that he believes the Tenant vacated the rental unit March 27, 2020; however, the Tenant had not returned keys and no move-out

inspection had been done. The Agent continued to seek an Order of Possession for the rental unit in the circumstances.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

The Agent testified that the hearing package and evidence were sent to the rental unit by registered mail. The Agent pointed to the customer receipt in evidence with Tracking Number 1 on it. The receipt shows the package was sent March 06, 2020. I looked Tracking Number 1 up on the Canada Post website which shows notice cards were left March 09, 2020 and March 16, 2020.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant is deemed to have received the package March 11, 2020 pursuant to section 90(a) of the *Act*. I find the Tenant was served in sufficient time to prepare for, and appear at, the hearing.

I also note that the Tenant would have been aware of the hearing as the Tenant's Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

The Agent testified that the Landlord should have been aware of the Tenant's Application.

Rule 7.3 of the Rules of Procedure (the "Rules") states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear at the hearing to present evidence or provide a basis for the Tenant's Application, the Tenant's Application is dismissed without leave to re-apply.

The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2015 and was for a fixed term ending March 31, 2016. The tenancy then became a month-to-month tenancy. Rent is due on or before the first day of each month. The Tenant paid a security deposit of \$687.50. The agreement includes term 10 setting out a \$35.00 fee for late payment of rent. The agreement is signed by the Tenant and for the Landlord.

The Agent testified that rent for January to March of 2020 was \$1,562.00. The Agent testified that the Landlord only charges \$25.00 for late fees and not \$35.00 as stated in the agreement.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 02, 2020 is not signed.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 02, 2020 (the "10 Day Notice") states that the Tenant failed to pay \$1,562.00 in rent due March 01, 2020. It also has a notation of \$4,736.00 in the outstanding rent section. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by an agent for the Landlord. It has an effective date of March 15, 2020.

The Tenant submitted a Proof of Service for the 10 Day Notice and the Agent confirmed it is accurate. It states that the 10 Day Notice was posted to the door of the rental unit March 02, 2020. It is signed by a witness and the person who served the 10 Day Notice.

The Tenant disputed the 10 Day Notice March 02, 2020.

The Agent testified that the Tenant did not pay rent for January, February or March. The Agent sought to recover this rent as well as late fees for these three months. The

Agent testified that the Tenant did not have authority under the *Act* to withhold rent for January, February or March.

The Agent sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted the following evidence:

- A rent ledger showing the Tenant owed \$4,736.00 in rent and late fees as of March 01, 2020
- A Notice of Rent Increase showing rent from April 01, 2019 was \$1,562.00 and rent as of April 01, 2020 would be \$1,602.00

### Analysis

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 02, 2020 is not signed, does not comply with section 52 of the *Act* and I have not considered it.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

...

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession when a tenant disputes a notice to end tenancy and the application is dismissed or the notice is upheld. The notice must comply with section 52 of the *Act*.

Based on the undisputed testimony of the Agent, written tenancy agreement and Notice of Rent Increase, I am satisfied the Tenant was obligated to pay \$1,562.00 in rent on or before the first day of each month for January to March. Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent for January to March. There is no evidence before me that the Tenant did. I find the Tenant was required to pay \$1,562.00 in rent for each of January, February and March under section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent and the rent ledger, I am satisfied the Tenant did not pay rent for January, February or March. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the 10 Day Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Agent and Proof of Service, I am satisfied the Tenant was served with the 10 Day Notice in accordance with section 88(g) of the *Act*. I am satisfied the Tenant received the 10 Day Notice March 02, 2020 as the Tenant disputed the 10 Day Notice March 02, 2020 and included a copy of the 10 Day Notice with the amendment.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the 10 Day Notice on March 02, 2020 to pay the outstanding rent or dispute the 10 Day Notice under section 46(4) of the *Act*.

Based on the undisputed testimony of the Agent and the rent ledger, I am satisfied the Tenant did not pay any rent for January, February or March as of the date of the hearing.

The Tenant did dispute the 10 Day Notice in time. However, the Tenant did not appear at the hearing to provide a basis for the dispute and therefore the Tenant's dispute is dismissed without leave to re-apply.

Given I have dismissed the Tenant's dispute of the 10 Day Notice, and found the 10 Day Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective two days after service on the Tenant.

I have found the Tenant did not pay rent for January, February or March. I have found the Tenant did not have authority under the *Act* to withhold rent for these months. Therefore, the Tenant owes the Landlord \$4,686.00 in rent.

I note that the Landlord sought unpaid rent for April; however, I cannot award the Landlord unpaid rent for a future month. This request is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Section 7 of the *Residential Tenancy Regulation* allows a landlord to charge a fee up to \$25.00 for late payment of rent if this is provided for in the tenancy agreement.

The tenancy agreement does provide for a late fee in term 10. The term states the fee is \$35.00; however, the Agent testified that the Landlord only charges \$25.00. This is supported by the rent ledger.

I am satisfied the Landlord is entitled to collect late fees for January, February and March given this is provided for in the tenancy agreement and given the Tenant did not pay rent by the first day of each month as required. The Landlord is entitled to collect \$75.00 in late fees.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to monetary compensation in the amount of \$4,861.00. The Landlord can keep the \$687.50 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$4,173.50.

### Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$4,861.00. The Landlord can keep the \$687.50 security deposit. I issue the Landlord a Monetary Order for the remaining \$4,173.50. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 30, 2020

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Residential Tenancy Branch