



# 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      Landlord: OPR, MNRLS, FFL  
Tenant: CNR, OLC, FFT

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

Preliminary Issue- Tenant's application

Rule 7 of the Rules of Procedure provides as follows:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.

Preliminary Issue- Service of Landlord's Application

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on October 26, 2020. The registered mail receipt and tracking number were entered into evidence. The agent testified that the tenant did not pick the package up from the post office and it was returned to the landlord, who received it on November 17, 2020. The agent testified that the package was then slipped under the door of the subject rental property on November 18, 2020.

I find that the tenant is not entitled to evade service by failing to pick up their registered mail. I find that the tenant was deemed served with the landlord's application for dispute resolution five days after it was mailed, pursuant to sections 89 and 90 of the *Act*. I also accept the agent's testimony that the landlord's application for dispute resolution was slipped under the tenant's door on November 18, 2020. I find that the tenant was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent and fees in the amount of \$2,150.00. Since filing for dispute resolution, the agent testified that the amount of rent and fees owed by the tenant has increased to \$6,300.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent and fees in the amount of \$6,300.00.

#### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and testimony of the agent, not all details of the agent’s submissions and arguments are reproduced here. The relevant and important aspects of the agent’s claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on August 1, 2020 and is currently ongoing. Monthly rent in the amount of \$2,050.00 is payable on the first day of each month. A security deposit of \$1,025.00 was paid by the tenant to

the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that on October 5, 2020 a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenant's door. The 10 Day Notice states that the tenant failed to pay October 2020's rent on October 1, 2020 and that the effective date of the 10 Day Notice is October 15, 2020.

The tenant filed their application to cancel the 10 Day Notice on October 7, 2020.

The agent testified that the tenant has not paid October, November or December 2020's rent and currently owes \$6,150.00 in unpaid rent. The agent testified that the tenant also owes a \$25.00 NSF fee and a \$25.00 late fee for October, November and December 2020, totalling \$150.00. The agent entered into evidence a ledger from July 31, 2020 to October 5, 2020 showing that the tenant owes \$2,050.00 in unpaid rent and a \$25.00 NSF fee and a \$25.00 late fee for October 2020.

### Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,050.00 on the first day of each month. Based on the testimony of the agent and the ledger entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$6,150.00 in unpaid rent from October to December 2020.

Sections 7(1)(c) and (d) of the *Residential Tenancy Regulation* (the "*Regulation*") state that a landlord may charge subject to subsection (2):

- a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 11 of the tenancy agreement states in part:

Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of no more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord.

Pursuant to section 7(1)(c) and (d) of the *Regulation*, I find that the tenant owes the landlord \$150.00 in fees for October – December 2020.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,025.00 in part satisfaction of their monetary claim for unpaid rent against the tenant.

I find that service of the 10 Day Notice was effected on the tenant by October 7, 2020, the date the tenant filed to cancel the 10 Day Notice. I find that the 10 Day Notice complies with section 52 of the *Act*.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

I find that the tenant did not pay the overdue rent within five days of receiving the 10 Day Notice. I therefore uphold the landlord's 10 Day Notice. I find that the landlord is entitled to two-day Order of Possession for nonpayment of rent, in accordance with section 46 and 55 of the *Act*.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the 10 Day Notice complies with section 52 of the *Act* and the tenant's application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
October 2020 rent	\$2,050.00
November 2020 rent	\$2,050.00
December 2020 rent	\$2,050.00
Fees	\$150.00
Filing fee	\$100.00
Less security deposit	-\$1,025.00
<b>TOTAL</b>	<b>\$5,375.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: December 08, 2020

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Residential Tenancy Branch