



# 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-PP, MNRL-S, FFL

### Introduction

This hearing dealt with the Application by the Landlord filed under the Residential Tenancy Act (the “Act”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on March 2, 2021, for a monetary order for unpaid rent, for permission to retain the security deposit and to recover the filing fee paid for these proceedings. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to keep the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The testimony of both parties confirmed that the tenancy began on December 1, 2018, as a one-year fixed term tenancy that rolled into a month-to-month tenancy and the end

of the initial fixed term. Rent in the amount of \$1,875.00 plus a \$65.00 parking fee was due each month. The signed tenancy agreement also records that the Tenant paid the Landlord a \$937.50 security deposit at the beginning of the tenancy.

The Landlord testified that they served a 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant on March 2, 2021, by posting the Notice to the front door of the rental unit, listing an outstanding rent amount of \$11,950.00 and listing an effective date of March 13, 2021. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord submitted a copy of the Notice into documentary evidence.

The Tenant testified that they moved out of the rental unit, in accordance with the Landlord's notice, on March 16, 2021. The Landlord agreed that the Tenant had moved out of the rental unit and that they no longer require an order of possession.

The Landlord testified that there is \$11,950.00 in outstanding rent due for this tenancy; the Landlord requested a monetary order for the outstanding rent. The Landlord submitted a tenancy ledger into documentary evidence.

This Arbitrator asked the Landlord to testify to the breakdown of the unpaid rent periods included in their claim for this tenancy. The Landlord testified that "the ledger speaks for itself." The Landlord was advised that evidence does not speak for itself, evidence is not self-explanatory, but it is there to support their testimony and arguments provided during a hearing.

The Landlord testified that they have had previous hearings with the Residential Tenancy Branch (RTB) and that they had never been required to testify to specific rental periods and amounts due before. The Landlord was referred to sections 7.17 [Presentation of evidence] and 7.23 [Questions by the arbitrator] of the RTB Rules of Procedure and advised that this Arbitrator has the discretion to test the evidence presented by a claimant during a hearing and that it is reasonable to expect an application to be able to speak to the details, including dates and amounts included in their claim. Again, this Arbitrator asked the Landlord to provide testimony on the breakdown of the unpaid rent periods included in their claim for this tenancy.

The Landlord testified that the breakdown of rent due for this tenancy consisted of \$1,940.00 in rent for April 2020, \$1,940.00 in rent for May 2020, \$690.00 in rent for June 2020, \$685.00 in rent for July 2020, \$1,025.00 in rent for August 2020, \$465.00 in rent for September 2020, \$1050.00 in rent for October 2020, \$1,940.00 in rent for November 2020, \$440.00 in rent for December 2020, \$1,940.00 in rent for January 2021, \$1,940.00 in rent for February 2021 and \$1,940.00 in rent for March 2021.

It was noted by this Arbitrator that the amounts due, as testified to by the Landlord, totalled \$15,997.00 but that the Landlord was only applying for \$11,950.00. The Landlord was asked to account for the difference. Again, the Landlord became upset with this Arbitrator for questioning their testimony and evidence.

The Landlord was provided additional time during this hearing to review their evidence and prepare their testimony to address this question.

The Tenant testified that they agree that they have outstanding rent due for this tenancy but that they are concerned that their last two rent payments had not been credited correctly to their rent account with the Landlord. The Tenant testified that they are in agreement that the Landlord is entitled to a monetary award for unpaid rent but that they want to be sure they are only being charged for the correct amounts.

After approximately five minutes of review time, the Landlord testified that the breakdown of rent due for this tenancy consisting of \$115.00 in rent for March 2020, \$1,940.00 in rent for April 2020, \$1,940.00 in rent for May 2020, \$690.00 in rent for June 2020, \$685.00 in rent for July 2020, \$1,025.00 in rent for August 2020, \$1,940.00 in rent for September 2020, \$465.00 in rent for October 2020, \$1,050.00 in rent for November 2020, \$440.00 in rent for December 2020, less a \$35.00 overpayment in rent received in January 2021.

It was noted by this Arbitrator that the amounts due, as testified to by the Landlord, totalled \$10,255.00, again different than what was applied for in the Landlord's application.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Throughout the hearing, the Landlord was unprepared to provide clear verbal testimony regarding their monetary claim. When asked to testify to the details of the history of outstanding rent payment amounts and dates, the Landlord offered an inconsistent and varied account of the rent amounts and periods due for this tenancy.

The Landlord was provided with ample time during these proceedings to search through paperwork and confirm information. However, the Landlord remained unable to accurately testify amounts due for this tenancy that corresponded to the Landlord's application and documentary evidence.

Overall, I find that the Landlord was unprepared to speak to the particulars of their application, and that the Landlord's testimony was unclear and unreliable. In the presence of unreliable testimony, I am unable to accurately determine the amount of rent outstanding for this tenancy, and therefore I am unable to award the Landlord their claimed amount.

However, as the Tenant has agreed, during these proceedings, that some rent remains outstanding for this, I find it appropriate to dismiss with leave to reapply the Landlord's claim for a monetary order for unpaid rent.

### Conclusion

I dismiss the Landlord's claim with leave to reapply.

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: June 2, 2021

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Residential Tenancy Branch