



# 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:** Tenant: CNR  
Landlord: MNR-DR, OPR-DR, FFL

### **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 landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

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

While the landlord’s agent, CA (“landlord”), attended the hearing by way of conference call, the tenant did not. I waited until 11:13 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord’s agent 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. During the hearing, I also confirmed from the online teleconference system that the landlord’s agent and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

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

**Accordingly, in the absence of any submissions in this hearing from the tenant, I order the tenant's entire application dismissed without leave to reapply.**

At the outset of the hearing, the landlord confirmed that the tenant had moved out the week prior, and the landlord no longer required an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had applied for a monetary Order of \$7,525.00 in their initial claim, since they applied another \$12,000.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$7,525.00 to \$19,525.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

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

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2016, with monthly rent currently set at \$4,000.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$2,000.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for Unpaid Rent on July 2, 2021 for failing to pay the outstanding rent. The landlord testified that the tenant failed to pay the outstanding amount, or any of the rent for the months after the service of the 10 Day Notice before moving out on October 22, 2021. The landlord testified that the current outstanding including October 2021 rent is \$19,525.00. The landlord provided a ledger

outlining the outstanding amounts. The landlord is seeking a monetary order for the outstanding rent, plus recovery of the filing fee.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant had moved out without paying the landlord the outstanding rent in the amount of \$19,525.00 for this tenancy. Accordingly, I allow the landlord's monetary claim for this amount.

As the landlord was successful in their application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards.

### **Conclusion**

The tenant's application is dismissed without leave to reapply. As the tenant has moved out, the landlord withdrew their application for an Order of Possession.

I allow the landlord's application to recover the unpaid rent for this tenancy in the amount of \$19,525.00, as well as the filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$2,000.00 in partial satisfaction of the monetary awards. I issue a Monetary Order for the remaining amount of \$17,625.00 in the landlord's favour.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of 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.

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: November 3, 2021

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Residential Tenancy Branch