



Dispute Resolution Services

Page: 1

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

Introduction

On February 22, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.A. and A.W. attended the hearing as agents for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

A.A. advised that he served the Notice of Hearing and evidence package to the Tenant by registered mail on March 2, 2022, and the Tenant confirmed receiving this package. Based on this undisputed testimony, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2012, that rent was currently established at \$1,417.96 per month, and that it was due on the first day of each month. A security deposit of \$587.50 and a pet damage deposit of \$587.50 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on February 3, 2022, by being posted to the Tenant's door. The effective end date of the tenancy was noted on the Notice as February 13, 2022. They confirmed that the Tenant had difficulty paying the rent and that he did not have any authority under the *Act* to withhold it. As of the date of the hearing, they agreed that rent in the amount of \$8,140.84 was in arrears.

The parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision and the conditional Monetary Order that accompanies it.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties reached the following full and final settlement agreement during the hearing:

1. The 10 Day Notice to End Tenancy for Unpaid Rent of February 3, 2022 is cancelled and of no force or effect.
2. The Tenant will maintain possession of the rental unit.
3. The Tenant must pay to Landlord the sum of **\$1,417.96** by **June 29, 2022**.
4. If condition three is breached, the Landlord is provided with a conditional Order of Possession effective **two days** after service of this Order on the Tenant.
5. In addition, if condition three is breached, the Landlord is provided with a conditional Monetary Order in the amount of **\$8,140.84**, which represents the total rental arrears including June 2022 rent.
6. Should the Tenant comply with condition three, as of August 1, 2022, the Tenant must pay to the Landlord the sum of **\$1,417.96** for August 2022 rent, plus **\$750.00** that will apply towards the rental arrears. This total payment must be made by **August 1, 2022**.
7. If condition six is breached, the Landlord is provided with a conditional Order of Possession effective **two days** after service of this Order on the Tenant.
8. In addition, if condition six is breached, the Landlord is provided with a conditional Monetary Order in the amount of **\$8,140.84**, which does not include any rental arrears after June 2022 rent.
9. Should the Tenant comply with condition six, for each subsequent month for the next 11 months, the Tenant must pay to the Landlord, on the first of each month, the sum of **\$1,417.96** for rent, plus **\$750.00** that will apply towards the rental arrears.

10. If condition nine is breached, the Landlord is provided with a conditional Order of Possession effective **two days** after service of this Order on the Tenant.
11. In addition, if condition nine is breached, the Landlord is provided with a conditional Monetary Order in the amount of **\$8,140.84**, which does not include any rental arrears after June 2022 rent. Should the Tenant pay a portion of the arrears, only the amount outstanding will be enforceable.
12. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of these disputes.

If any of the conditions for rent payments are breached, the Landlord is provided with a conditional Order of Possession effective **two days** after service of this Order on the Tenant.

If any of the payment conditions are breached, the Landlord is provided with a conditional Monetary Order in the amount of **\$8,140.84**. Should the Tenant pay a portion of the arrears, only the amount outstanding will be enforceable.

Conclusion

The parties reached a full and final settlement agreement in resolution of their disputes. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent of February 3, 2022 to be cancelled and of no force or effect.

If the Tenant breaches any of the conditions of this settlement agreement, the Landlord is provided with a formal copy of a conditional Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

If the Tenant breaches any of the conditions of this settlement agreement, the Landlord is provided with a conditional Monetary Order in the amount of **\$8,140.84** to serve and enforce upon the Tenant, if necessary. The Order must be served on the Tenant by the

Landlord. 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. Only the amount remaining unpaid by the Tenants will be enforceable.

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, 2022

Residential Tenancy Branch