



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 16, 2013, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing.

Based on the written submissions of the landlord and pursuant to section 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on April 22, 2013.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding served to the tenant;
- A copy of the Residential Tenancy Agreement (the Agreement), which was signed by the landlord and the tenant, indicating a monthly rent of \$1,300.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) handed to the tenant on April 2, 2013 with a stated effective vacancy date of April 8, 2013, for \$560.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by handing the 10 Day Notice to the tenant at 5:45 p.m. on April 2, 2013. The landlord's Proof of Service document included a signature from the tenant attesting to the tenant's receipt of the 10 Day Notice at that time and date. In accordance with section 88 and 90 of the *Act*, the tenant was served with this 10 Day Notice on April 2, 2013.

The Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 12, 2013.

Therefore, I find that the landlord is entitled to an Order of Possession.

In considering the landlord's application for a monetary award of \$560.00, I find that the landlord has not provided sufficient evidence to demonstrate that the monthly rent has been increased to \$1,350.00 from the \$1,300.00 identified in the Agreement entered into written evidence by the landlord. As the landlord has not provided copies of legally issued notices of rent increases, I find that the landlord's application for a monetary award is limited to the difference between the \$1,300.00 monthly rent stated on the Agreement and the \$790.00 partial payment that the landlord received from the tenant for April 2013. For these reasons, I issue a monetary Order in the landlord's favour in the amount of \$510.00 (i.e., \$1,300.00 - \$790.00 = \$510.00) for unpaid rent owing for April 2013.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$510.00 for rent owed for April 2013. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 22, 2013

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Residential Tenancy Branch

