

DECISION

Introduction

This hearing dealt with cross applications including:

The Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord's July 24, 2024, Application for Dispute Resolution under the Residential Tenancy Act (the Act) for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing was attended by the two Tenants and the Landlord's Agent G.S.

Service of Notice and Evidence

The Landlord referred to proof of registered mail individually sent to the Tenants at the rental unit on July 25, 2025, and indicated that this package contained the Landlord's evidence as uploaded to the RTB. I reviewed the tracking associated with both items and find that neither was collected. Regardless, I deem the Tenants served with Notice and Evidence of the Landlord's claim on July 30, 2024, under section 90 of the Act.

I will note that the Tenants argued during the hearing that they cannot collect mail at the residential property, however, they also testified that they received the July 12, 2024,

10-Day Notice to End Tenancy by registered mail as addressed to the rental unit on July 17, 2024.

I therefore find under section 71(2)(b) of the Act that the Landlord properly served the Tenants to the rental unit.

Regarding the Tenants' claim and evidence as heard on August 22, 2024, I confirmed during the hearing that the Tenants' only evidence as uploaded to their application, was a picture of the July 17, 2024, Notice, and two pictures of the July 3, 2024, Decision.

The Tenants provided no evidence or testimony to support how they served their Notice and Evidence on the Landlords. The Tenant M.B. argued that they were allegedly advised by the Arbitrator who produced the July 3, 2024, Decision, that evidence uploaded by the Tenants to that file, could be used again for their new application.

I advised the Tenants that they likely misheard my colleague.

I reviewed the Tenants' application for proof of service of their claim on the Landlord and find that they provided proof of service by Registered Mail on July 26, 2024, which appears to have been collected on July 29, 2024.

I therefore find that the Tenants served the Landlord with Notice and evidence of their claim as described above.

Preliminary Matters

The parties agreed that they participated in a prior hearing on July 2, 2024, regarding a 10-Day Notice to End Tenancy dated May 27, 2024, which was cancelled by the assigned Arbitrator in a July 3, 2024, Decision. This Notice was cancelled due to a question of whether a cash payment of rent was made by the Tenants.

The Tenants continue to argue that the cash payment was made.

The Landlord's Agent testified that the Landlord was represented by a friend in the last hearing, and this friend had no information about a cash payment.

The Landlord requested to amend their current claim for rent owing to \$9,850.00 because an additional months' rent has come due for August since the Landlord made their application for dispute resolution on July 24, 2024.

I allowed this amendment under RTB Rule of Procedure 4.2 because I find that the increase in the amount of the Landlord's claim for compensation could be reasonably expected considering that the Tenants agreed during the hearing that they have made rent payments for the past few months.

Issues to be Decided

- Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?
- Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The residential property is a single-family dwelling with more than one dwelling unit.

The Tenants argued that they rented the full residential property, but the Landlord indicated in their application that the Tenants only rented the upper unit.

The parties agreed that the Landlord collected and is holding a \$1,125 security deposit.

The parties agreed that rent was initially set at \$2,250.00 when the tenancy started on February 1, 2024, but that it was then decreased to \$2,150.00, with the Landlord indicating that this change came into effect May 1, 2024.

The Landlord stated that this was done because the Tenants complained about internet speed and so the Landlords agreed that they could pay \$100.00 less a month.

The Tenants argued without evidence that the rental unit was not livable and argued that the Landlord had not provided a written tenancy agreement which is why they have not paid rent. The Tenants agreed that they did not have an Order from the RTB authorizing them to withhold rent in exchange for repairs needed.

The Landlord referred to proof of payments received by ETransfer from the Tenants during this tenancy to confirm their claim for \$9,850.00 through to August 31, 2024:

Accounting of Unpaid rent					
Rent Due Date	Rent Amount Owning	Date of Payment	Amount Paid	Payment Method	Balance
February 01, 2024	\$ 600.00	February 21, 2024	\$ 600.00	E-TRANSFER	\$ -
March 01, 2024	\$ 2,250.00	March 02, 2024	\$ 2,220.00	E-TRANSFER	\$ 30.00
April 1, 2024	\$ 2,250.00	April 23, 2024	\$ 1,000.00	E-TRANSFER	\$ 1,250.00
May 1, 2024	\$ 2,150.00	-	\$ -		\$ 3,400.00
June 1, 2024	\$ 2,150.00	-	\$ -		\$ 5,550.00
July 1, 2024	\$ 2,150.00	-	\$ -		\$ 7,700.00
		10-day notice served on July 12, 2024 in the amount of \$7700			
TOTAL	\$ 11,550.00		\$ 3,820.00		\$ 7,730.00

\$30 deducted for kitchen sink fix

The Tenants agreed that they have not paid rent for June, July or August but argued that they made a cash payment in addition to the amounts shown in the Landlord's claim.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim as required by RTB Rule of Procedure 6.6.

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the Notice was served to the Tenant on July 17, 2024, because this is the day the Tenants indicated it was received in their application to dispute the Notice on July 22, 2024. I therefore find that the Tenants applied to dispute this Notice within the timeline provided.

I find that the July 12, 2024, Notice is a valid Notice to End Tenancy because it was served in an accepted means under section 88 of the Act, it was properly completed as required by section 52 of the Act, and the Tenants agreed that they did not pay any rent for June, July or August.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

The Tenants agreed during the August 22, 2024, hearing that they did not pay rent for at least June, July or August 2024, and that they accept that this tenancy is ending in response to the 10-Day Notice to End Tenancy dated July 12, 2024.

I facilitated a settlement with the two parties under section 63 of the Act, and the parties agreed that the Landlord will be provided with an Order of Possession for 1:00PM on

August 31, 2024, which will provide the Tenants with more time to vacate than the two-day minimum required by RTB Policy Guideline 54 when significant arrears are owing.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

What is at dispute, is exactly how much money is owed by the Tenants.

I find that the Landlord provided a clear table showing payments charged against payments received, and provided proof of Etransfer receipts regarding payments received from the Tenants to explain their claim for \$9,850.00 because only partial rent was paid in April and no rent was paid in May, June, July or August.

I note there is a question of a \$30 deduction from rent that appears to have been made by the Tenants in March 2024, which is flagged by the Landlord on their summary table but was not addressed by the Landlord during the hearing.

I therefore find that the Landlords current total claim is \$9,850.00 for rent owed.

On the question of the cash payment, I reviewed the analysis provided by my colleague in the July 3, 2024, Decision, where they found a cash payment had been received, based only on the fact that the Landlord was not present at the hearing to dispute this claim.

I find that this is inadequate proof of payment and that the Tenants failed to otherwise provide proof of payment by cash, such as video of cash being provided, and or proof of a cash withdrawal from a bank account.

I therefore find that the Landlord successfully established on the balance of probabilities that they are entitled to a monetary order of \$9,850.00 for rent owing through to August 31, 2024, which is when this tenancy will end.

I provide this order as required by RTB Policy Guideline 3 because the purpose of monetary awards for rent, including awards of rent under 55(1.1) of the Act, is to "put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement" and rent was paid as required.

Is the Landlord Authorized to Retain the Tenant's Security Deposit

I find that the Landlord has been successful in their claim for a monetary order under 55(1.1) of the Act and is entitled to payment of \$9,850.00 from the Tenant for rent owed.

I therefore order under section 38(4)(b) of the Act that the Landlord retain the full value of the Tenants' security deposit as partial compensation of this award.

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

The Landlord was successful in this application and so I approve their application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act.

Are the Tenants' entitled to an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act?

Are the Tenants entitled an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

I addressed these two items during the August 22, 2024, hearing and confirmed that the Tenants did not upload any evidence to this claim in support of these items.

I therefore dismiss the two requests for failure to provide the full particulars of their dispute as required by 59(2)(b) of the Act.

I do not give leave to reapply for either item because this tenancy is ending due to the Tenants' failure to pay rent as required by section 26 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective August 31, 2024, after service of this Order on the Tenant(s)**. Should the Tenant(s) or anyone 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.

I grant the Landlord a Monetary Order in the amount of **\$8,825.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$9,850.00
Landlord's Authorization to recover the filing fee	\$100.00
Authorization to retain full current value of the security deposit	-\$1,125.00
Total Amount	\$8,825.00

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with

this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00.

The Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act is dismissed without leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act, is dismissed without 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 Act.

Dated: August 22, 2024

Residential Tenancy Branch