

DECISION

Introduction

This hearing dealt with cross Applications including:

The Tenant's February 5, 2025, 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's February 9, 2025, 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 recover the filing fee for this application from the Tenant under section 72 of the Act

The March 3, 2025, teleconference hearing was attended by the Tenant and the Landlord. Both parties had the opportunity to provide sworn testimony, refer to evidence, and ask questions.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

This was a cross application so both parties were obligated to serve Notice of their respective disputes on the other in advance of the Hearing.

The Tenant did not provide proof of service on the Landlord.

The Landlord provided proof of service by Registered Mail on February 10, 2025, to the Tenant, and review of tracking confirms that this package was collected on February 14, 2025, which is acknowledged by the Tenant.

Both parties are looking to dispute a 10-Day Notice dated January 27, 2025, and so I proceeded to hear the merits of all claims from both parties.

Service of Evidence

The Tenant stated that they did not produce or provide evidence because they do not have internet at the residential property, and they have to attend to a Service BC Office to engage with the RTB, which is a significant distance from the residential property.

The Landlord testified that copies of their evidence, including relevant bank records and communications, were all served on the Tenant, by both registered mail and by posting the documents to the door. The Landlord also provided proof of posting this package to the door.

Because the Landlord is seeking an Order of Possession with their application, I find that they served copies of their evidence as required by section 89 of the Act to the Tenant's door (deemed served on February 13, as required by section 90 of the Act), and on February 14, by registered mail because this was the day that the registered mail was received.

The Tenant denied receiving copies of documentary evidence from the Landlord, however, the Landlord repeatedly testified that copies of all documents provided to the RTB as evidence were included in the package sent to the Tenant.

I therefore find that I can refer to the Landlord's evidence in my Decision making because I am satisfied that they served copies of all evidence on the Tenant as required by the Act and RTB Rules of Procedure.

Preliminary Matters

At the outset of the hearing the Landlord sought to increase their monetary claim from \$10,000.00 to \$15,000.00 to reflect the Tenant's failure to pay \$5,000.00 in monthly rent for March 2025, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

I also used my discretion under RTB Rule of Procedure 7.7. to record the named Tenant in this Dispute under their full name as written on the RTB-1 Tenancy agreement that was signed by both parties on November 15, 2024.

The Tenant asked for an adjournment so that they could get a lawyer, claiming that RTB Proceedings are too confusing.

I declined this request because I find that the Tenant made an application on February 5, 2025, regarding a 10-Day Notice issued under section 46 of the Act for Non-Payment of rent and therefore had more than enough time to produce evidence related to payment of rent that they agreed was \$5,000.00 a month according to this tenancy agreement.

I therefore rejected the Tenant's request for an adjournment in accordance with RTB Rule of Procedure 7.9 because I found that the Tenant's failure to produce evidence was their fault alone and that based on my experience with them in the hearing, they were sufficiently capable of actively participating in the teleconference hearing that occurred before me.

Issues to be Decided

- Is the Tenant entitled to an Order to permit them to assign or sublet the residential property?
- Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
 - Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Tenant entitled to permission to sublet the residential property?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?
- Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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 4,000 square foot, 7-bedroom house that the Landlord has owned since fall 2024.

The parties agreed that they signed a fixed term tenancy agreement on November 11, 2024, that set rent at \$5,000.00 a month and required a \$2,500.00 security deposit.

The Tenant agreed that they viewed this property prior to signing the tenancy agreement.

The parties also agreed that the Tenant had a second individual who was supposed to be on the tenancy agreement with the Tenant. However, the Tenant testified that they do not know where they placed their copy of the tenancy agreement signed by both parties within the residential property.

The Landlord stated that the Tenant was supposed to return a copy of the tenancy agreement signed by both Tenants, by the Tenant never did. They also stated that this second individual vacated the residential property after 20 days and so this is why the Landlord only named the Tenant in this dispute, on the 10-day Notice that was issued.

The Tenant stated that they do not trust the Landlord and that they would have rented a two-bedroom apartment had they know the Landlord would not let them have roommates to afford the multi-bedroom residential property.

The parties agreed that the Tenant provided a series of post- dated cheques that were to pay for rent for the duration of this tenancy.

The Landlord stated that they were paid for December 2024 but have not received rent (\$5,000) for January, February or March 2025, even though the Tenant continues to reside in the residential property which means the Landlord is owed \$15,000.00 total.

The Tenant stated that they looked at their bank info and argued that the money for rent is in the account.

The Landlord referred to a January 31, 2025, email from the Tenant where the Tenant acknowledges that rent for January 2025 was not paid, a portion of which is shown below:

After further review of the January 2025 Statement of Account(s) from my credit union, you are correct: the rent was not paid on 01 Jan 2025.

The Landlord also referred to evidence from their bank confirming that the \$5,000.00 cheques for January and February 2025 were returned NSF. The Landlord testified that they received a Notice from the Tenant's bank informing that payment did not go through because the Tenant placed a stop-payment order on the cheques.

The Landlord stated that the 10-Day Notice issued on an RTB-30 and dated January 27, 2025, was served to the Tenant's door on the day it was issued. The Tenant wrote in their application that the Notice was received on January 27, 2025.

The Notice shows that \$5,000.00 was owed when it was issued.

The Landlord requested a two-day order of possession because they testified that they do not believe the Tenant will vacate, even if they said they would on a particular day, and so the Landlord just wants to start the enforcement process as soon as possible.

The Tenant declared that they will apply to the RTB and Supreme Court for review of this file because they thought the hearing would have ended differently, in the Tenant's favour and the Tenant also requested that any monetary order issued by the RTB be issued in the name of both him and this other individual.

Lastly, the Tenant requested permission to sublet the residential property, arguing that the Landlord provided permission to sublet on the signed tenancy agreement, but has since revoked their consent to sublet.

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.

The Landlord is responsible for establishing on the balance of probabilities that they generated and served a valid Notice to End Tenancy on the Tenant,

Is the Tenant entitled to an Order to permit them to assign or sublet the residential property?

I find that this request is inconsistent with the guidance provided in RTB Policy Guideline 19 because the Tenant stated that they would not have rented this large residential property if they knew they were not allowed to have roommates, and that they would have rented a two-bedroom place instead.

As seen in RTB Policy Guideline 27, the RTB does not have jurisdiction over roommate claims.

I therefore dismiss this portion of the Tenant's claim and do not give leave to reapply.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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), on the effective date of the Notice.

I find that the 10 Day Notice was served to the Tenant's door on January 27, 2025, because that was the day the Tenant wrote on their application that the Notice was received.

This meant that the Tenant had until February 2, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the evidence before me, I find that the Tenant failed to pay any rent within five days of receiving the 10 Day Notice.

I acknowledge under section 66 of the Act that the Tenant made a late application to dispute the Notice on February 5, 2025, and so I provide my analysis of the validity of the 10-Day Notice dated January 27, 2025, according to the three-part test outlined:

- 1) Compliance with section 52 of the Act
 - a. I find that the Landlord issued the Notice on a template RTB 30 document and so I use my discretion under section 68 of the Act to amend the Notice and add in the missing Effective Date of February 10, 2025, because I find that a tenant served with a 10-Day Notice can reasonably expect under 68(1) that they are to vacate the residential property after 10 Days, especially if they fail to pay rent as instructed in the bolded text at the top of the Notice.
 - b. With this amendment, I find the Notice satisfies section 52 of the Act.
 - c. I make this amendment because the parties agreed that the Tenant produced a series of post-dated cheques for rent and the Landlord provided evidence that the Tenant has put a “stop-payment order” on these cheques which means that Landlord has experienced a significant financial loss (+\$10,000) related to this tenancy thus far because rent has not been paid since December 2024.

BRITISH COLUMBIA

10 Day Notice to End Tenancy For Unpaid Rent or Utilities
Residential Tenancy Act, s.46 (1) Manufactured Home Park Tenancy Act, s.39 (1)
#RTB-30

Tenant: This is a legal notice that could lead to you being evicted from your home

HOW TO DISPUTE THIS NOTICE
You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

☐ This Notice applies to the Manufactured Home Park Tenancy Act, Section 39

☒ This Notice applies to the Residential Tenancy Act, Section 46

To the Tenant: (use Schedule of Parties form #RTB-26 to list additional tenants)
first and middle name _____ last name _____

- 2) Service as required by section 88
 - a. I find that Service to the door is permitted by 88(g)
- 3) Grounds for the Notice
 - a. The Landlord provided evidence of cancelled cheques for January and February 2025, as well as an email from the Tenant confirming failure to pay rent for January 2025 which confirms the Landlord had grounds to issue this Notice under section 46 of the Act and that Tenant failed to cancel the Notice by paying all arrears within 5 days of receiving it.

With all three parts of the test for validity satisfied, I find that the Landlord is entitled to 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.

I make this order effective two (2) days after service in accordance with RTB Policy Guideline 54 because I find that the Landlord is owed a substantial amount of money and the tenancy has been short term, operating only since December 2024, which means that I find the Tenant failed to justify why and how they required additional time to vacate the residential property they have been overholding since February 10, 2025.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for \$10,00.00 for rent owed January (\$5,000) and February (\$5,000).

I award only half rent for March 2025, of \$2,500.00 because based on timelines for service related to the Order of Possession, I find that the Tenant will likely retain possession of the rental unit until at least March 15, 2025, once the RTB review process is pursued and completed after this Two-Day Notice of Possession is served.

I therefore provide the Landlord with a \$12,500.00 Monetary Order for unpaid rent under section 67 of the Act.

$$\$10,00.00 + \$2,500.00 = \$12,500.00$$

Regarding the Tenant's claim that any award for rent should be in the name of the second individual who the Tenant named on their dispute resolution application, I find that the Tenant failed to convince me in accordance with RTB Rule of Procedure 7.15 that this second individual is also responsible for rent monies paid because the Tenant failed to provide evidence of a tenancy agreement in the name of both themselves and this second individual.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Under section 38 and 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$2,500.00, plus interest, in partial satisfaction of the \$12,500.00 monetary award for rent.

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

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days 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 **\$10,100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$12,500.00
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	-\$2,500.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$10,100.00

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. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: March 3, 2025

Residential Tenancy Branch