



DECISION

Introduction

This hearing dealt with cross applications including:

The Tenant's March 15, 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

The Landlord's March 17, 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 Tenant attended the April 11, 2025, teleconference hearing.

The Landlord was represented by the Managing Broker of the Property Management firm retained to manage this 21-unit apartment building.

Both parties had the opportunity to provide sworn testimony and refer to evidence.

Service of Notice and Evidence

The Landlord served the Tenant with Notice and Evidence of this dispute by Registered Mail on March 20, 2024, and provided proof of service with tracking. I reviewed this information to confirm that the package was delivered on March 24, 2025, which the Tenant confirmed.

The Tenant also confirmed that the package contained copies of the Landlord's evidence as uploaded by the RTB.

The Landlord's representative stated that they have not received Notice of the Tenant's Dispute. The Tenant stated that they were pretty sure they informed the Landlord's other representative of this dispute.

I confirmed for the parties that I would still essentially be hearing both applications, despite the Tenant's failure to serve Notice of their claim as required by the Act and Rules of Procedure because both parties are asking me to consider the validity of the 10-Day Notice dated March 5, 2025.

Preliminary Matters

I used my discretion under RTB Rule of Procedure 7.7 to add the Landlord's Property Management Firm as a party to this dispute.

Issues to be Decided

- 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 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.

Evidence was provided showing that this tenancy recently began on February 1, 2025, with the collection of a \$475.00 security deposit. The parties agreed that there had been some confusion about the monthly rate of rent when this tenancy started, and that it was set at the lower rate of \$900.00 per month and not \$950.00 as originally anticipated.

The Landlord provided evidence of the Tenant's account ledger dated March 17, 2025, which shows that the Tenant owed \$1,001.00, and the parties agreed that:

- The Tenant paid March Rent on March 19, 2025
- The Tenant has not paid rent for April 2025

The Tenant stated that:

- They agree rent is due on the first of the month.
- They have rent, but they did not want to pay for the full month if they were going to be evicted.
- There was a delay getting money from the Ministry because of a typo, which they had to resolve.

The Landlord stated that they want an Order of Possession because rent has been paid late since this tenancy started.

The Tenant agreed that they provided their email address on the written tenancy agreement as an address for service, and the Landlord provided a screen shot of the software they use to track communications with tenants, including this Tenant.

The Landlord issued a 10-Day Notice on an RTB-30 dated March 5, 2025, with a stated move-out date of March 18, 2025, and \$850.00 shown as owed on March 1, 2025.

The Landlord provided proof of the email to the Tenant on March 5, 2025, sending this email to the Tenant, as well as proof of completed RTB-34 Proof of Service document, confirming service of this Notice by email.

The Tenant stated that they applied to the RTB as soon as they accessed their email on March 15, 2025, and saw the email. The Tenant said that they did not have minutes on their phone and could not check their email.

The Landlord confirmed that they are seeking an Order of Possession against the Tenant who continued to occupy the rental unit and that they are owed \$951.00 through to the end of April because of the monthly \$25.00 late fees that were charged to the Tenant.

The Tenant disputed a cleaning fee on their account and asked that it be removed.

The Landlord stated that the cleaning fee was the result of guest peeing on the floor.

Analysis

As seen in RTB Rule of Procedure 6.6 the Landlord is responsible for establishing on the balance of probabilities that they issued a valid Notice to End Tenancy.

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 does 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 10 Day Notice served to the Tenant on March 5, 2025, by email in accordance with section 43 of the Regulations because the Tenant provided their email as an address for service, was deemed served on the Tenant, three (3) days later on March 8, 2025, as required by section 44 of the Regulations.

This meant that the Tenant had until March 12, 2025, to pay all arrears.

I am unable to consider the Tenant's request for additional time under the Act to dispute this Notice, and or pay arrears, because:

- the parties agreed that email was an accepted means of communication,
- the Landlord provided proof of service, and
- the Tenant agreed that rent was due on the first of the month.

I therefore find that the Landlord issued a valid 10 Day Notice because the Tenant's arrears were not paid until March 19, 2025.

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 7-days after service in accordance with standard direction provided in RTB Policy Guideline 54.

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 is entitled to a monetary order for rent owed for April 2025 because the parties agreed that it has not been paid.

I reviewed the account ledger provided by the Landlord as evidence and created the table below to summarize charges for rent and late fees against payments made by the Tenant:

| | Charged | Paid |
|-----------------|----------------|----------------------|
| February | \$900.00 | \$25.00 |
| | \$25.00 | \$25.00 |
| | | \$950.00 |
| March | \$900.00 | \$950.00 |
| | \$25.00 | |
| April | \$900.00 | |
| | \$25.00 | |
| Total | \$2,775.00 | \$1,950.00 |
| | | Owed \$825.00 |

I decline to award the Landlord with the disputed cleaning fee because it is not considered rent, or late fees which can be considered as award for rent under the Act.

For clarity, I award the Landlord with rent for the full month for April 2025 because this tenancy started recently, the Tenant has consistently paid rent late, rent has not been paid for April, and RTB Policy Guideline 3 confirms that the purpose of awards for rent, are to make the Landlord whole.

I order under section 72 of the Act that the Landlord can retain the full value of the Tenant's security deposit as partial satisfy of the monetary award for rent owed.

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

As the Landlord was partially 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 by retaining \$100.00 from the Tenant's \$325.00 security deposit.

Conclusion

I grant an Order of Possession to the Landlord **effective seven days after it is served 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 **\$450.00** under the following terms:

| Monetary Issue | Granted Amount |
|---|-----------------|
| a Monetary Order for unpaid rent under section 67 of the Act | \$825.00 |
| authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act | -\$475.00 |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | \$100.00 |
| Total Amount | \$450.00 |

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.

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: April 11, 2025

Residential Tenancy Branch