Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

The Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") on March 14, 2025, seeking:

- cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") indicated served to them on March 9, 2025
- recovery of costs of emergency repairs they made during the tenancy
- the Landlord's compliance with the Act/tenancy agreement.

On March 18, 2025, the Landlord filed an Application seeking:

- an order of possession in line with the 10-Day Notice
- compensation for rent amounts owing
- recovery of the Application filing fee.

The Landlord's Application was crossed to that of the Tenant already in place, for the same scheduled hearing time. The Landlord and the Tenant both attended the scheduled hearing on April 10 and May 13.

Preliminary Matter – Review Hearing Decision

By Review Hearing Decision dated May 28, 2025, I set aside the previous April 22, 2025 decision by application of s. 82(3) of the *Act*, with reasons therein.

Preliminary Matter – unrelated issues

The Residential Tenancy Branch Rules of Procedure grant an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues:

> . . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply

The matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether the tenancy is ending, based on the 10-Day Notice that the Landlord issued.

In line with this, I dismiss the following issues, with leave to reapply:

- recovery of costs of emergency repairs they made during the tenancy
- the Landlord's compliance with the Act/tenancy agreement.

Preliminary Matter – withdrawn issue

On the Landlord's March 19 Application, they asked for compensation for rent amounts owing, as of the date of that Application.

In the hearing, as set out below, the Landlord presented that they received the rent amount in question, after they completed this Application. The Landlord in the hearing confirmed that no subsequent rent amounts were outstanding or unpaid by the Tenant.

The Act s. 64(3) permits me to amend an application for dispute resolution. By this authority, I withdraw the issue of unpaid rent to the Landlord.

Tenant's service of Notice of Dispute Resolution Proceedings and evidence to the Landlord

The Tenant in the April 10 hearing described sending the Notice of Dispute Resolution Proceedings to the Landlord via registered mail on March 17, 2025. The Tenant provided a tracking information sheet from Canada Post to show this: delivery on March 17, and "delivered to your concierge or building manager" on March 18.

In the hearing the Landlord stated they did not receive the copy of the Notice of Dispute Resolution Proceedings via registered mail for this hearing. The Landlord had their own information regarding their Application, with the hearing information enabling them to enter the scheduled hearing.

The Landlord had further communication on March 27 from the Tenant, wherein the Tenant stated they would serve the hearing information to the Landlord in person, though this did not happen. The Landlord also described the handling of mail in their workplace – using the address they provided to the Tenant on the 10-Day Notice – is left with a receptionist who then forwards it to the addressee.

The Landlord stated they did not receive any evidence from the Tenant. The Tenant in the hearing could not state with certainty that they provided evidence to the Landlord for this Application.

I find the Tenant served the Landlord correctly, as required, on March 17 via registered mail. The Tenant cannot be faulted for a mail-receiving system at the Landlord's workplace that appears flawed. Conclusively, I find the Tenant served the Landlord as required on March 17.

In addition, the Residential Tenancy Branch communication to the Landlord about the Landlord's own separate Application, on March 18 via email, notes: "Your tenant(s) filed an application for dispute resolution and therefore we have scheduled your applications to be heard together." I find the Tenant completed service as required; moreover, the Residential Tenancy Branch advised the Landlord about the Tenant's Application separately, to explain why the Landlord's document-only application was scheduled as a live hearing.

I find the Tenant did not serve evidence to the Landlord. I find the evidence the Tenant provided – involving their work credentials – is of marginal importance in this hearing concerning rent payments leading to the 10-Day Notice. I give this evidence that the Tenant provided to the Residential Tenancy Branch no consideration in this hearing.

Additionally, the Tenant attended the hearing based on the Landlord's Application for Review Consideration on May 13. The Tenant alluded to evidence that they had about a cost outlay by them for work at the rental unit. I reconvened the hearing twice after May 13, providing the Tenant full opportunity to provide additional evidence; however, they did not do so.

Landlord's Service of Notice of Dispute Resolution Proceedings and evidence to the Tenant

In the hearing, the Tenant also stated that they did not receive a Notice of Dispute Resolution Proceedings from the Landlord. The Tenant noted the discrepancy between their numbered street, and that of a similar address (i.e., ####A), for which the post office makes frequent errors in delivery.

I find every residential street address uses a postal code for this purpose. As well, eventually the registered mail made its way to the Tenant in any event.

The Tenant stated that they eventually retrieved the registered mail from the post office. This is shown in the registered mail tracking record using the number the Landlord provided in their evidence. The Tenant retrieved the registered mail on April 11, after the Landlord delivered the documents on March 20, and the post office leaving a notice card on March 23.

I find the Tenant not credible on their statement that they received nothing for this hearing notifying them of the Landlord's Application. The record of delivery plainly shows otherwise.

I find the Landlord served evidence to the Tenant for this hearing. I give the Landlord's evidence full consideration where necessary and relevant to the issues herein.

In the Review Consideration process, I ordered the Landlord to serve their evidence to the Tenant. This evidence concerned the Tenant's prior communication to the Landlord about repair. As set out in the Review Hearing Decision of May 28, I found the Landlord completed service of this review consideration evidence to the Tenant as ordered; moreover, this was in the Tenant's possession, with completed registered mail delivery, on May 14.

Issues to be Decided

- Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?
- Is the Landlord eligible for recovery of the Application filing fee?

Background and Evidence

- *Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

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

The agreement between the parties, as provided in the copy submitted bv the Landlord into evidence, shows the tenancy starting on November 1, 2018. This was an updated agreement made in 2018, after the tenancy started previously in 2016 as recalled by the Tenant in the hearing.

The Tenant initially paid $1,400 in rent; over the course of the tenancy this increased to $1,448.27 per month, as shown in the ledger the Landlord provided in the evidence. The tenancy agreement is clear that rent payment is on the 1st of each month.

The tenancy agreement shows the Tenant paid a security deposit of $675.

In the evidence, the Landlord provided a ledger for the latter part of 2024, and into March 2025:

- November 2024: etransfer of $1,448.27 on November 2
- December 2024: etransfer of $248.27 on November 27, and $1,200 on December 1
- January 2025: etransfer of $1,448.27 on January 2
- February 2025: etransfer of $1,448.27 on February 7

The Landlord served the 10-Day Notice to the Tenant via registered mail on March 4, 2025. To show this, the Landlord provided a copy of the registered mail tracking number on their receipt from the post office. This shows the delivery date of Marh 9, 2025.

The 10-Day Notice, signed by the Landlord on March 4, 2024, sets out that the Tenant did not pay the rent amount of $1,448.27 on March 1, 2025. The Landlord provided the tenancy-end date of March 19, 2025.

The Tenant completed this Application at the Residential Tenancy Branch to challenge this 10-Day Notice on March 13, 2025. This was within the 5-day timeframe of the delivery of the 10-Day Notice via registered mail.

The Tenant then paid the March 2025 rent on March 19, as stated by the Landlord in the hearing. For April, the Tenant paid $1,400 on March 26, and the remaining $48.27 on April 1.

In the Landlord's email evidence is their message from the Tenant on March 19, 2025, in which the Tenant states they will be sending the rent on this date. In the hearing, the Tenant stated they recalled this message to the Landlord.

The Tenant in the hearing set out that they performed extra work at the rental unit in order to maintain its structural integrity. The Landlord acknowledged the need for work; however, they recalled differently on their knowledge about the need for a contractor. The Tenant notified the owner – not the Landlord's agent who appeared in the hearing – that they would deduct rent amounts from March 2025 rent for this work performed. The Tenant acknowledged that they did not provide invoices that they had prepared for this hearing, those which they previously provided to the owner for this work performed.

The Landlord in the hearing stated they did not know that money was being deducted from March rent for this reason; however, they did underline that in their conversation with the owner, the owner was clear that they wanted to end this tenancy for the reason of late rent payment in March 2025. They had no communication from the owner about rent being reduced in March 2025 for the reason of repairs, and noted they received no evidence of the charges/agreement. They admitted that, if the Tenant was withholding rent for repairs undertaken, then it was confusing why the Tenant would later just pay the rent on March 19.

In the review consideration post-hearing stage, as set out in my Review Hearing Decision, the Landlord/owner presented that their previous communication with the Tenant was in July 2023. The Landlord who attended the May 20 and May 27 hearings narrated their exact message to the Tenant on this date, under affirmed oath. The Landlord's account, dated April 23 in the Landlord's evidence, contains this same message they sent to the Tenant on July 25, 2023.

The Landlord in the subsequent hearings also presented the following points:

- the fact that the Tenant paid rent in full on March 19 undermines the Tenant's position that they had acceptance/authorization from the Landlord to reduce rent for repairs made at the rental unit property (the Landlord provided the Tenant's email of March 19, to show the Tenant paid rent on this date)

- the work involved, as claimed by the Tenant, necessitated a building permit, as well as an engineer's assessment, which would involve the Landlord/owner of the property – to replace rotting wood in the foundation is a big job, and the Landlord doesn't believe this work was ever completed

- the Tenant stated they had invoices for the work completed; however, they never presented these to the Landlord and did not have these in place for the hearing

- the Landlord was aware of the Tenant's obligations concerning a family member's wedding, and this likely interfered with the Tenant's payment of March 2025 rent.

Additionally, in the hearing the Landlord presented that the Tenant was consistently late with payment of rent, describing this from the Tenant ledger.

- *Is the Landlord eligible for recovery of the Application filing fee?*

The Landlord paid the $100 Application filing fee on March 18, 2025.

Analysis

- *Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The *Act* s. 26 strictly requires a tenant to pay rent when it is due under the tenancy agreement, whether or not a landlord complies with the legislation and/or tenancy agreement, unless a tenant has some authorization under the *Act* to deduct all/part of the rent.

The *Act* s. 46 provides that, upon receipt of a 10-Day Notice, a tenant must within 5 days pay the full amount of rent owing, or dispute by filing an application at the Residential Tenancy Branch. If a tenant does not pay arrears or dispute, they are conclusively presumed (as per s. 46(5)) to have accepted that the tenancy will end.

In this tenancy, the Landlord served the 10-Day Notice to the Tenant via registered mail on March 4. I deem service via this method complete to the Tenant on March 9, as per s. 90 of the *Act*. This is also the tracking information delivery date of the 10-Day Notice to the Tenant. The Tenant applied for this hearing on March 13, 2025; therefore, I find the conclusive presumption part of s. 46 does not apply in this scenario.

I find the Tenant paid rent owing on March 19 – this is shown in the evidence the Landlord provided for this hearing. The Landlord categorically stated they had no communication with the Tenant about repairs, a rent reduction for those repairs. The Landlord presented that they had no direct communication with the Tenant since July 25, 2023, when they referred the Tenant to their agent who maintained contact with the Tenant ever since.

I also find the Landlord credible on their point that such structural work at the property could not begin without a permit in place, and this also referred to an engineer's assessment. These could not be undertaken without the Landlord/owner's express authority and knowledge. This process was not in place, and not referred to.

Finally, I accept the Landlord's point that the Tenant did not present expense tallies or other invoice material for this hearing. This significantly undermines the Tenant's submission in this hearing. I afforded the Tenant sufficient opportunity, in the Review Consideration stage, to provide this material; however, the Tenant did not present this. I also provided the Tenant an opportunity attend a scheduled hearing to respond to these points raised by the Landlord; however, the Tenant did not attend the subsequent available hearing times.

From this evidence, and the Landlord's testimony, I conclude the Tenant unilaterally withheld payment of rent for March 2025. The Landlord confirmed this runs counter to the tenancy agreement; I find the Tenant significantly breached s. 26 of the *Act* in this way.

An end-of-tenancy notice, as such, much conform to the requirements of s. 52 regarding form and content. I fin the 10-Day Notice the Landlord signed on March 4, 2024 complies with the requirements of form and content.

I find the Tenant unilaterally withheld the amount of March 2025 rent; however, they paid this to the Landlord on March 19, then staggered their April 2025 rent payments. The Landlord pursued the matter in early March by serving the 10-Day Notice.

For this reason, I find the 10-Day Notice is valid. I find the Landlord correctly served the 10-Day Notice for unpaid rent, and the non-payment of rent carried over to March 19. The Tenant was not in a position to withhold rent because of some work they claimed for repayment, or due to filing a dispute resolution process. I find the Tenant not credible on their statement that they had approval for rent reduction or non-payment. I conclude the Tenant had no right to withhold payment in any circumstance.

For these reasons, I find the 10-Day Notice is valid. In conclusion, I dismiss the Tenant's Application to cancel the 10-Day Notice.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed and the document conforms with the requirement under s. 52 regarding form and content, the Director/delegated authority must grant to a landlord an order of possession. By this authority, I grant an Order of Possession to the Landlord.

- *Is the Landlord eligible for recovery of the Application filing fee?*

The Landlord was successful in their Application; therefore, I grant compensation to them for the Application filing fee.

By s. 72(2)(a) of the *Act*, I order the Landlord to retain the $100 from the Tenant's security deposit of $675. The remainder of the Tenant's security deposit will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

Conclusion

I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, **effective by 1:00 PM on June 27, 2025, after the Landlord serves this Order of Possession on the Tenant.** Should the Tenant or anyone on the premises fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

As set out above, I grant recovery of the Application filing fee to the Landlord.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 29, 2025

Residential Tenancy Branch