

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, under sections 46 and 55 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on the 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 Tenants' 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 Tenants under section 72 of the Act

Tenant N.J.T. attended the hearing.

Agents H.J. and S.C. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant testified that the Proceeding Package for file 910193417 was served on the Landlord, in person, at their property management office on April 11, 2025. Agents for the Landlord, H.J. and S.C. acknowledged receipt of these documents. Therefore, I find The Landlord was served on April 11, 2025, in accordance with section 89 of the Act.

Agents of the Landlord, H.J. and S.C. testified that they served the Proceeding Package for file 910194226 on the Tenant by registered mail on April 17, 2025. I find that the

Tenant is deemed to have received the Proceeding Package, in accordance with section 90 of the Act, on April 22, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

Service of Evidence

The Tenant acknowledged he did not submit any evidence to the Residential Tenancy Branch.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant by posting it on their door on April 28, 2025 in accordance with section 88(g) of the Act. The Tenant confirmed he received the Landlord's evidence on April 28, 2025.

Preliminary Issue – Adjournment Request

At the commencement of the hearing, the Tenant requested an adjournment. The Tenant stated that he had not submitted any evidence in advance of the hearing and explained that he is withholding rent due to another unresolved dispute. He further testified that he intended to obtain medical evidence but was unable to secure an appointment before the hearing date. The Tenant declined to provide any specific information regarding the nature of the medical issue or the relevance of the anticipated medical documentation to withholding rent.

The Landlord opposed the adjournment and stated that they were prepared to proceed with the hearing.

I considered Rule 7.9 of the Residential Tenancy Branch Rules of Procedure, which outlines the criteria for determining whether to grant an adjournment:

- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Based on these criteria, I make the following findings:

- The adjournment request stems from the Tenant's failure to prepare for the hearing. The Tenant filed this application on April 8, 2025, and has had approximately one month to gather and submit evidence. Therefore, I find the Tenant had ample time to collect and submit evidence in support of his application but failed to do so.
- The Tenant did not present evidence of impairment or incapacity that would prevent participation in the hearing. He declined to provide details regarding the

alleged medical condition, and I find no basis to conclude that he was unable to participate in the hearing.

- The Landlord would suffer prejudice if the matter were delayed, as the 10 Day Notice concerns unpaid rent and may impact their ability to regain possession of the rental unit. The Tenant, by contrast, has not demonstrated that proceeding today would result in procedural unfairness.

For these reasons, I deny the Tenant's request for an adjournment.

Preliminary Issue – Severance of Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. In this case, the Tenant included a claim seeking to suspend or set conditions on the Landlord's right to enter the rental unit, in addition to disputing a 10 Day Notice to End Tenancy for unpaid rent.

At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the 10 Day Notice was the primary issue before me and that the following issue listed on the Tenants' application was not related and would be dismissed with leave to reapply:

- Suspend or set conditions on the landlord's right to enter the rental unit or site

However, considering my findings below, I order that this aspect of the Tenant's application is dismissed without leave to reapply.

Issues to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Is the Tenant entitled to an order granting recovery of the filing fee?

Is the Landlord entitled to an Order of Possession by operation of section 55(1) of the Act?

Is the Landlord entitled to a monetary order for unpaid rent by operation of section 55(1.1) of the Act?

Is the Landlord entitled to retain the security deposit held in partial satisfaction of unpaid rent?

Is the Landlord entitled to recover the filing fee?

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 parties agreed that this tenancy began on February 1, 2025, with a monthly rent of \$1,000.00, due on the first day of each month. A security deposit of \$500.00 was paid at the start of the tenancy. A copy of the Tenancy Agreement was submitted as evidence.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent, dated April 4, 2025, was submitted as evidence. The Notice is signed by the Landlord, lists the rental unit address, and indicates that \$1,000.00 in rent was unpaid for April 1, 2025. The effective date of the Notice is April 14, 2025. The Landlord testified that the Notice was served by attaching a copy to the front door of the rental unit and sending a copy by email on April 4, 2025. The Tenant confirmed at the hearing that he received the Notice on his door on that same date.

At the hearing, the Tenant acknowledged that no rent was paid for April 2025. He testified that he is withholding rent because he has a separate dispute with the Landlord and alleged that the Landlord has broken the lease. He stated that he intended to obtain medical records to support his position but was unable to do so prior to the hearing due to scheduling limitations. The Tenant refused to provide any further testimony or evidence to substantiate these claims.

The Landlord testified the Tenant has also refused to pay rent for May 2025 and the Tenant acknowledged his refusal to also pay rent for May.

Analysis

Should the 10 Day Notice be cancelled?

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 Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was duly received by the Tenant on April 4, 2025, and that the Tenant had until April 9, 2025, to either pay the full amount of the arrears or dispute the Notice. I find that the Tenant failed to dispute the 10 Day Notice on April 8, 2025, within the time permitted.

I move on to consider whether the 10 Day Notice should be enforced and note that the onus is on the Landlord to prove this. The Tenant acknowledged that rent for April 2025 in the amount of \$1,000.00 was not paid. The Tenant further confirmed that he is withholding rent due to a separate dispute with the Landlord and did not present any

legal justification for withholding rent. While the Tenant stated that he intended to obtain medical records to support his claim, he did not provide any such evidence at the hearing, nor did he give sufficient details to establish why rent was not paid that would justify non-payment of rent.

I have accepted the Landlord's testimony and find that the Tenant did not pay the full amount owing within the time permitted or provide a legal justification for withholding rent.

For the above reasons, the Tenant's application for cancellation of the 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.

Looking at the 10 Day Notice, it is signed by an agent of the Landlord, dated, lists the address of the rental unit, includes an effective date of April 14, 2025, and outlines that there are rent arrears of \$1,000.00. I find that the Notice complies with section 52 of the Act.

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

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

As the Tenant's application was not successful, the Tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application. This aspect of the Tenant's application is dismissed without leave to reapply.

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. As before, I find that the Notice complies with section 52 of the Act.

Based on the testimony from the Landlord's agent, I find rent in the amount of \$1,000.00 is outstanding. I find the Landlord's agents have established their claim for unpaid rent in this amount. The Landlord has also sought to increase their monetary claim to reflect the Tenant's failure to pay rent for May as well.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,000.00 (April rent \$1,000.00 + May rent \$1,000.00).

Under section 72(2)(b) of the Act, I allow the Landlord to retain the \$500.00 security deposit, plus interest in the amount of \$1.24, calculated from February 1, 2025, to the date of this decision, in partial satisfaction of the monetary award.

Conclusion

In determining the effective date of this Order of Possession, I have considered the relevant factors outlined in *Residential Tenancy Policy Guideline 54*, which provides guidance on selecting an effective date that balances the interests of both landlords and tenants. The Tenant attended the hearing but did not request additional time to vacate. However, I find that providing until the end of May is reasonable in the circumstances. The Landlord is unlikely to secure a new tenant or re-rent the unit on short notice in May. As a result, the additional time granted does not significantly prejudice the Landlord, while allowing the Tenant sufficient time to vacate the premises.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on May 31, 2025, after service of this Order on the Tenant**. 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 **\$1,498.76** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$2,000.00
Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order under sections 38 and 72 of the Act	-\$500.00
Amount of interest owed on the security deposit from February 1, 2025 to the date of this Order	-\$1.24
Total Amount	\$1,498.76

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).

The Tenant's application is dismissed in its entirety, 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: May 8, 2025

Residential Tenancy Branch