

DECISION

Introduction

The terms “Rental Unit”, “Landlord” and “Tenants” are all defined on the cover page of my decision.

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to two applications from the Tenants, both filed on April 8, 2025.

In both applications, the Tenants are disputing the validity of the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent, signed by the Landlord on April 4, 2025 (the **Notice**), and in both applications the Tenants are seeking the return of their \$100.00 filing fee from the Landlord.

All four applicants attended the hearing. The respondent attended the hearing, alongside their interpreter and witness, hereinafter referred to as A.

Service of Records

The Landlord acknowledged receipt of the Tenants’ two applications, sent to them by Canada Post registered mail, but they testified that they did not receive any other records from the Tenants. The Tenants opposed the Landlord’s testimony and testified that they served their documentary evidence to the Landlord by including the records in the same envelopes that contained their applications.

Based on the above, I find the Tenants proved they served their applications to the Landlord, in accordance with the Residential Tenancy Branch *Rules of Procedure* and section 89 of the *Act*, but they failed to prove they served their documentary evidence to the Landlord. The Landlord testified, multiple times, that they received nothing except for the two applications and the Tenants were unable to refer to any records which would tip the balance in their favour (for example, pictures of documents placed by envelopes or a video of what was placed in the two Canada Post envelopes).

During the hearing, I reviewed the Tenants’ records, and I find that the associated records were available to the Tenants when they filed their two applications. In any case, I do not find the bulk of the records necessary/relevant. The Tenants submitted two screenshots of WhatsApp correspondence between them and the Landlord, to

show that a meeting was set up on April 2, 2025, between the parties, for the exchange of funds in person. At the hearing, there was no dispute that the meeting went scheduled, what the meeting's purpose was, and whether the meeting went ahead. The Tenants submitted an e-transfer record in relation to an \$1,100.00 payment. At the hearing, there was no dispute about the \$1,100.00 payment on April 1, 2025.

The Tenants acknowledged receipt of the Landlord's documentary evidence. The parties agreed that the Landlord's records were attached to the Rental Unit's door. I find the Landlord served their documentary evidence to the Tenants in accordance with section 88 of the *Act*.

Background Facts and Evidence

I have reviewed all admitted evidence, including the parties' testimonies, **but I will refer only to what I find relevant to my decision.**

Each party submitted a copy of a signed tenancy agreement. Both agreements are for the same Rental Unit, for the same rental period, and for the same rental amount. In both agreements I can see the Landlord's name as the sole landlord. In one tenancy agreement, AS and SS are listed as tenants (the **ASSS Agreement**) and in the other tenancy agreement HK and PP are listed as tenants (the **HKPP Agreement**). AS, SS and the Landlord signed the ASSS Agreement on December 5, 2024, and PP and the Landlord signed the HKPP Agreement on November 12, 2024.

At the hearing, the parties agreed that AS, SS, HK, and PP are all tenants.

SS testified that they and their spouse, HK discovered an advertisement for the Rental Unit on Facebook Marketplace, and they contacted its listing agent, who was the Landlord's third-party agent. SS testified the advertisement was for the entire unit, but they asked the agent for different terms, which was initially denied. SS testified that they were later contacted by the Landlord's agent, and the agent informed them that they had found AS and PP, which could rent a portion of the Rental Unit with SS and HK.

AS, SS, HK, and PP agreed that on November 12, 2024, all parties, except for the Landlord and AS attended a meeting with the Landlord's agent and they agreed to rent the Rental Unit for \$2,400.00 per month, payable on the first day of every month.

AS testified that on November 12, 2024, the Landlord's agent agreed that AS and their spouse, PP, can pay \$1,100.00 of the \$2,400.00 monthly rent, and the other two tenants can pay the remainder. The Landlord opposed this testimony.

SS testified that almost immediately after the parties agreed to rent the Rental Unit for \$2,400.00 per month, the Tenants contacted the Landlord's agent and requested that their monthly rent be reduced to \$2,350.00, and the Landlord's agent agreed.

The parties (including the Landlord), all agreed that the Tenants have never paid \$2,400.00 to the Landlord, and the most the Tenants ever paid to the Landlord in one month was \$2,350.00.

The Landlord reiterated that the monthly rent has always been \$2,400.00, and the only reason why they did not issue the Tenants with a 10 Day Notice to End Tenancy for Unpaid rent previously was that they were "okay" with a \$50.00 shortfall.

The parties agreed that the Notice was served to the Tenants on April 4, 2025. On page two of the Notice, the ground for why this tenancy must end is listed as failure to pay rent in the amount of "\$2,400.00, due on April 1, 2025".

The Landlord testified that the Tenants paid them \$1,100.00 on April 1, 2025, and on the date the Notice was signed, the Tenants owed them \$1,300.00.

The parties agreed that on April 1, 2025, the Landlord's spouse and the Tenants scheduled a meeting at the Rental Unit, for April 2, 2025, for the Tenants to pay the remainder of the unpaid rent to the Landlord.

The Landlord's witness, A, and the tenant SS agreed that on April 2, 2025, SS, A, and the Landlord's spouse all met, with no one else present, to discuss the tenancy, the unpaid rent and a mould issue (the **Meeting**). The Landlord submitted a partial translated transcript of an audio recording, purportedly recorded by the Landlord's spouse, on April 2, 2025, during the Meeting. The Landlord did not submit the Meeting recording, or the full transcript. The parties agreed that the Meeting was over 10 minutes.

SS agreed that the Meeting transcript accurately reflects a portion of the discussions between the three Meeting participants. During the hearing, I reviewed the Meeting transcript with the parties. I informed SS that I can see the following: "And as soon as you fix it, you can take the rent from us". SS testified that they were using the \$1,250.00 unpaid rent amount as leverage for a mould issue, but they testified that as the Meeting transcript proves, they ended up paying the unpaid rent amount to the Landlord during the Meeting. A opposed SS' testimony and testified that SS never paid any cash to them or the Landlord's spouse during the Meeting.

In the Meeting transcript, I can see the following record of the discussion between the Meeting participants:

- SS: "And as soon as you fix it, you can take the rent from us"
- Landlord's spouse: "No we have come to take the rent now"
- SS: "When it is done, you..."
- Landlord's spouse: "No, then why did you call us here?"
- SS: "Just had to talk to you. I told you now".
- Landlord's spouse: "You are not going to give the rent?"
- SS: "we have given the rent."
- Landlord's spouse: "when?"
- SS: "we gave it now."
- Landlord's spouse: "No, you did not give me the rent."
- SS: "we gave the rent, you can see the rest."
- Landlord's spouse: "what is going on? You called us like this and then saying you gave the rent."

While I have not copied the balance of the partial transcript in my decision, I have reviewed the entire transcript and considered the entirety of the transcript in making my decision.

The Landlord testified that most of the Meeting discussion was not about rent, which is why they only provided a partial transcript. HK, testified that on April 1, 2025, they withdrew \$1,250.00 from their bank account, as their unserved submitted records would show.

SS testified that they did not request any cash receipts from the Landlord's spouse.

The parties agreed that the Tenants paid a \$1,000.00 security deposit to the Landlord on November 12, 2024.

Analysis

Should the Landlord's 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 Branch.

The parties agreed that the Notice was served to the Tenants on April 4, 2025. The two applications were filed within five days of the Notice being served to the Tenants (on April 8, 2025). I find the Landlord has the burden of proof in this case to establish that the Notice was given for a valid reason. The standard of proof in this tribunal is on a balance of probabilities, meaning it is more likely than not that the facts occurred as claimed.

I must first give meaning to the chaotic nature of the parties' relationship. Based on the evidence before me, I find the four applicants across the two applications before me are co-tenants, notwithstanding the fact that the parties signed two separate tenancy agreements (the ASSS Agreement and the HKPP Agreement). I make this finding for the following reasons:

- Both agreements are for the same Rental Unit.
- Both agreements are for the same rental period.
- Both agreements include the same global rent amount, not separate rent amounts.
- Each agreement includes a member of each of the two couples listed as a tenant (for example, in the ASSS Agreement, AS is listed as one of the tenants, along with SS, notwithstanding the fact that AS and SS are not spouses and each lived in a portion of the Rental Unit with HK and PP, who are in turn both named as tenants in the HKPP Agreement).
- The parties agreed that on November 12, 2024, at least three of the Tenants were present alongside the Landlord's agent to discuss the terms of this tenancy.

I further find, immediately after the start of this tenancy, before the Tenants paid December 2024's rent, the Tenants and the Landlord's agent agreed to verbally amend the tenancy's monthly rent from \$2,400.00, to \$2,350.00. In making this finding, I have accepted SS' testimony at the hearing that one or more of the Tenants contacted the Landlord's agent and the Landlord's agent agreed that the Tenants may pay \$2,350.00 henceforth. The Landlord opposed SS' testimony that monthly rent was changed to \$2,350.00, but they failed to provide a satisfactory explanation for why they did not issue the Tenants a 10-Day Notice for the shortfalls each month. While acquiescence is not acceptance, a reasonable person in the Landlord's circumstance would follow up with their tenants if they suddenly began receiving less than the contractual amount. For that reason alone, I find the Landlord's testimony insufficient and implausible.

However, in making the above finding that rent was changed to \$2,350.00, with the Landlord's or their agent's knowledge and acceptance, I have also considered the stated ground to end the tenancy, as stated in the Notice itself. In the Notice, the Landlord stated that the Tenants failed to pay their whole rent in the month of April 2025, but they did not include a claim for unpaid rent for the preceding months of this tenancy. Once again, a reasonable individual would, in the Landlord's circumstance, include a claim for each of the \$50.00 shortfalls at the time of issuing the Notice.

For both above reasons, I find, in April 2025, when the Notice was issued, the monthly rent in this tenancy was \$2,350.00, not \$2,400.00.

The Tenants agreed that on April 1, 2025, they had only paid \$1,100.00, not \$2,350.00. SS agreed that they were holding their portion of the monthly rent as leverage against the Landlord in relation to a mould grievance.

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*.

SS agreed that the partial Meeting Transcript accurately reflects a portion of the Meeting-participants' discourse on April 2, 2025. After reviewing the Meeting transcript, which I partially copied in the previous section of my decision, I find SS' testimony that they handed the Landlord's spouse \$1,250.00 during the Meeting implausible. This testimony was opposed by A. However, far more important to my decision is the Meeting transcript itself. I can see in the Meeting transcript that SS informs the Landlord's spouse that they are holding their portion of the monthly rent as leverage, pending the "fix" demanded by SS. When the Landlord's spouse makes further enquiries about the reason for the Meeting, if SS never intended to pay their rent, SS replies by stating "just had to talk to you. I told you now." When the Landlord's spouse again asks for the remaining rent, SS states "we have given the rent." The Landlord's spouse then makes repeated enquiries about the "meaning" of SS' behaviour and SS repeats that they have paid the rent.

SS agreed that the partial transcript does not include gaps. I find it is implausible that the parties would exchange \$1,250.00 in cash, without stating a word, considering the partial Meeting transcript does not include any gaps, as testified to by SS himself at the hearing. SS is inviting me to make the finding that they are, in one second, refusing to pay \$1,250.00 in rent until the Landlord and their spouse fix the Rental Unit, and in the next second handing the Landlord \$1,250.00 without the parties exchanging any words. When I read the Landlord's spouse responses, I find them to be reasonable responses from a shocked and confused individual, befitting of the context and nature of a finding that A is inviting me to make. However, when I read the responses provided by SS after they start repeating that they have paid the rent, I do not find it to befitting the finding that SS invited me to make at the hearing. The shift in the conversation between the parties appears sudden and the Landlord's spouse appears appropriately shocked. In response to the Landlord's spouses' statements that they have not received any cash from SS, SS provides short and robotic sentences without explanations befitting such discourse.

Further, in their application, SS and their spouse state the following: "on 1st April we had conversation with landlord that he will agree to receive rent on cash, when she was her on 2nd April came inside house, we discussed briefly about the mold issue again and handed her 1250 in cash which she later refused to get."

The above was not the evidence provided by SS at the hearing. During the hearing the Tenants never provided any testimony that the Landlord's spouse refused to accept cash. In any case, the submitted Meeting transcript is evidence to the contrary. I can see that the Landlord's spouse is repeatedly requesting payment.

SS referred to a bank record showing that their spouse withdrew \$1,250.00 from their bank account the day prior. Even if I were to accept this as fact, it would not follow that on April 2, 2025, SS handed \$1,250.00 in cash to the Landlord's spouse.

Based on all the above, I find it more likely than not that the Tenants failed to pay April 2025 rent in whole and that the shortfall is in the amount of \$1,250.00, the amount SS testified they withheld to gain leverage against the Landlord's refusal to make repairs to the Rental Unit.

I do not find outstanding repairs to be a valid reason to withhold rent under the *Act*.

Eviction notices must abide by the form and content requirements of section 52 of the *Act*. I have reviewed the Notice, and I find the Notice is compliant. The Notice was signed and dated by the Landlord, it is in the approved form, it includes the Rental Unit's address, the ground for ending the tenancy and the effective date of the Notice.

For the above reasons, I find that the Notice is valid. I dismiss the Tenants' applications to cancel the Notice, under sections 46 and 55 of the *Act*, without leave to reapply.

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 have already found that the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an Order of Possession. The Tenants did not provide any evidence for why an extended possession date is warranted. This tenancy began mere months prior to the hearing date. The Landlord testified that the Tenants also failed to pay their full rent in May 2025. I Order this tenancy will end seven days after the attached Order of Possession is served to the Tenants.

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 have already found the Notice compliant with section 52 of the *Act*. I have also found the Tenants failed to pay \$1,250.00 in rent, in the month of April 2025.

I award the Landlord \$1,250.00 under section 55(1.1) of the *Act*.

Pursuant to section 72 of the *Act*, I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$1,000.00, and accrued interest, in the amount of \$6.94, calculated from November 12, 2024 (the date the parties agreed the deposit was paid to the Landlord), to May 5, 2025 (the date of this decision), in partial satisfaction of my award, above.

After the above set off, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$243.06.

Conclusion

The Tenants' applications are dismissed in their entirety, without leave to reapply.

I grant an Order of Possession to the Landlord **effective seven (7) days after service of the attached Order to the Tenants**. Should the Tenants 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. Costs of enforcing Order(s) of Possession may be recoverable against the Tenants (including the cost of hiring a bailiff).

I grant the Landlord a Monetary Order in the amount of **\$243.06** under the following terms:

Monetary Issue	Granted Amount
Monetary award for unpaid rent under section 55 of the <i>Act</i> , for unpaid rent in the month of April 2025.	\$1,250.00
Less: security deposit and accrued interest, under section 72 of the <i>Act</i> .	-\$1,006.94
Total Amount	\$243.06

The Landlord is provided with the attached Monetary Order in the above terms and the Tenants must be served with the Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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 5, 2025

Residential Tenancy Branch