

DECISION

Introduction

This hearing dealt with two applications pursuant to the Residential Tenancy Act (Act). The Tenant's application 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
- a Monetary Order of \$4,450.00 for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order from arbitrator to determine whether the Residential Tenancy Branch (RTB) has jurisdiction over the tenancy under sections 2 and 4 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

And the Landlords' application for:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act
- A Monetary Order for unpaid rent
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters

As the Tenant confirmed they had received and reviewed the Proceeding Package and documentary evidence from the Landlords, I find the Tenant was served with the required materials.

Landlord JB testified that they did not receive from the Tenant the Proceeding Package or documentary evidence. Instead, the Landlords received from the RTB a courtesy

copy of the Proceeding Package. JB stated that on May 7, 2025, they received the Tenants' documentary evidence from the RTB. JB stated that they were not aware of the details of the Tenant's application for dispute resolution, or their supporting evidence.

Section 59(3) of the Act and RTB Rule of Procedure 3.1 both require that an applicant serve the respondent with these documents within three days of receiving the aforementioned proceeding package from the RTB.

The Tenant did not do this within the required timeframe, or at all. As such, the Landlord has not been provided with proper notice and documentation for the Tenant's application and it would be unfair to proceed on the Tenant's application.

The Tenant's application is dismissed without leave to reapply as follows:

- cancellation of the Landlord's 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 Tenant's application was dismissed due to service issues, and the 10 Day Notice was addressed as part of the Landlords' application.
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act. This issue is moot given the tenancy has ended as noted in this decision. The order for the Landlord to make repairs is dismissed without leave to reapply.
- an order from arbitrator to determine whether the RTB has jurisdiction over the tenancy under sections 2 and 4 of the Act. Upon review of the Tenant's testimony, I find they selected this issue in error. The RTB has jurisdiction over this matter and I proceeded with the hearing. An order to determine jurisdiction is dismissed without leave to reapply.
- I dismiss without leave to reapply the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

I dismiss with leave to reapply the Tenant's application for a monetary order of \$4,450.00. I make no findings on the merits of the application. Leave to reapply is not an extension of any applicable limitation period.

Preliminary Matters – Amendment

At the hearing JB stated that the Tenant did not pay rent of \$2,600.00 due on May 1, 2025. This claim of increased rent remains outstanding.

Rule of Procedure 7.12 states:

7.12 Amending an application at the hearing

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlords are seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the Landlords' claim should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 7.12, I order that the Landlords' application to be amended to include a claim for the unpaid rent due on May 1, 2025 (\$2,600.00).

Preliminary Matters – Amendment of the 10 Day Notice

The 10 Day Notice was not signed. JB testified that they did not sign the 10 Day Notice, however, they listed their full name on the 10 Day Notice, along with Landlord SJ. The Tenant named the Landlords when they filed their application for dispute resolution.

Section 68 of the Act states the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice.

Based on the above the testimony provided, and as per section 68 of the Act, I find the Tenant would have known the information omitted on the 10 Day Notice and the Landlords' printed names were sufficient to meet the requirements of the Act. As such, I amend the 10 Day Notice to include the signature of the Landlords.

Issue(s) 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?

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.

Both parties agreed that this tenancy began on February 13, 2025. The monthly rent of \$2,600.00 is due on the first day of each month. On January 20, 2025, the Tenant paid a security deposit in the amount of \$1,300.00, which the Landlord continues to hold in trust.

JB testified that on April 4, 2025, they served to the Tenant the 10 Day Notice. The Tenant testified that they do not recall the date they received the 10 Day Notice from the

Landlords. The 10 Day Notice was submitted in evidence. The 10 Day Notice dated April 4, 2025, has the effective date of April 14, 2025. The 10 Day Notice indicates failure to pay rent of \$2,610.00 due on April 1, 2025.

Both testified as follows:

- For rent due on March 1, 2025, the Tenant made a partial payment of \$2,590.00. Rent in the amount of \$10.00 was outstanding
- The Tenant did not pay rent of \$2,600.00 due on April 1, 2025
- The Tenant did not pay rent of \$2,600.00 due on May 1, 2025

The Landlord indicated an outstanding strata moving fee of \$200.00.

The Tenant testified that on March 29, 2025, they noticed a bed bug issue at the rental unit and they immediately informed the Landlord of the same. The Tenant testified that the Landlord failed to take action and blamed them for the bed bug issue. The Tenant testified that they decided to relocate to an Airbnb and paid \$2,800.00 for the period of one month. The Tenant stated that they withheld rent due to the above noted issues and related costs. The Tenant stated that the Landlord raised the issue of unpaid rent after they brought up their concerns with bed bugs.

JB testified that the Tenant failed to pay rent and thereafter raised issue with bed bugs. JB testified that the Tenant did not inform them of any prior issue of bed bugs, nor did they provide any evidence to support such an issue.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Under the Act the Tenant may dispute the 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the Tenant had the right under the Act to deduct all or a portion from their rent.

Although the Tenant filed an application for dispute resolution, I dismissed the application as noted above in this decision.

I find the Tenant failed to pay rent and breached section 26 of the Act. Further, although the Tenant provided their reasons to withhold rent, I find they did not provide a lawful reason to withhold rent as per the Act.

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. As per the amendment noted earlier in this decision, I find the 10 Day Notice complies with section 52 of the Act.

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

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 in the amount of \$2,610.00 as per the 10 Day Notice and for \$2,600.00 due on May 1, 2025, for the total amount of \$5,210.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,210.00.

I did not address or award the strata moving fee, as I find it was not unpaid rent as part of the 10 Day Notice.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I grant the Landlord the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenant's application for a monetary order for compensation for loss under the Act is dismissed with leave to reapply, due to service issues noted earlier in this decision. However, I inform the parties that leave to reapply is not an extension of any applicable limitation period. The remainder of the Tenant's application is dismissed without leave to reapply for the reasons noted above in this decision.

I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order on the Tenant**. 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.

I grant the Landlord a Monetary Order in the amount of **\$5,310.00** under the following terms:

Monetary Issue	Granted Amount
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A Monetary Order for unpaid rent under section 55 of the Act	\$5,210.00
To recover the cost of the filing fee	\$100.000
Total Amount	\$5,310.00

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** to be enforceable. Should the Tenant 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 9, 2025

Residential Tenancy Branch