

DECISION

Introduction

This hearing dealt with the Tenant's 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
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

This hearing dealt with the Landlord's 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant was served in person in accordance with section 89(1) of the Act. The Landlord provided a proof of service document indicating that a witness observed the Tenant being served in this manner on April 14, 2025.

I find that the Landlord was not served in accordance with the Act. The Landlord denied receiving any documentation from the Tenant. The Tenant did not upload any documentation to the residential tenancy branch web portal indicating that service had occurred.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

No evidence was received by the Residential Tenancy Branch from the Tenant. The Landlord confirmed that they did not receive any evidence for consideration.

Preliminary Matters

Attendance

The Tenant did not attend the hearing. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party pursuant to rule of procedure 7.3.

I conducted the dispute resolution hearing in the absence of the Tenant. I decided to proceed with the hearing having already determined the Tenant was served with the notice of dispute resolution hearing. I further find that as an applicant whose hearing was scheduled contemporaneously with the Landlords, the Tenant would have been aware of the hearing date and requirement to attend.

Rent Claim Increase

At the outset of the hearing the Landlord sought to increase their monetary claim to reflect the Tenant's failure to pay rent for May while awaiting for this hearing.

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.

Tenant's Application Dismissed Without Leave to Re-apply

I have already found that the Tenant failed to serve the Landlord with their application. For reasons subsequently provided in this decision with respect to the Landlord's application, I find it is appropriate that the Tenant's application be dismissed without leave to reapply. Specifically, the following issues are dismissed without leave to reapply:

- 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
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

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 began on March 1, 2025, with a monthly rent of \$1,500.00, due on the first day of the month, with a security deposit in the amount of \$750.00.

The Landlord said that although the Tenant prepaid \$300.00 towards April's rent, no subsequent payment was received for the remaining \$1,200.00.

On April 11, 2025, the Landlord applied for dispute resolution, claiming compensation in relation to unpaid rent for the month of April.

At the hearing, the Landlord indicated that the Tenant had also failed to pay rent for May.

Analysis

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(s) do 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).

A 10 Day Notice to End Tenancy for Unpaid Rent was served by email on April 2, 2025. The Landlord provided a copy of the tenancy agreement in support of their claim that the Tenant authorized service in this manner. I deem the Notice to have been served on April 5, 2025, and that the Tenant had until April 10, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the evidence before me, I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on April 15, 2025, the effective date on the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by April 15, 2025.

Therefore, 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.

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

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 Landlord's undisputed evidence, I find that the Landlord has established a claim for unpaid rent owing in the amount of \$1,200.00 for the month of April.

I further find that the Landlord has established a claim for unpaid rent in the amount of \$1,500.00 for the month of May.

Although the Landlord also indicated that the Tenant had failed to arrange to have utilities registered in their name and that the Landlord was owed approximately \$90.00 with respect to this, I note that the Landlord did not indicate this on their 10 Day Notice to and the tenancy. As the Landlord failed to provide proper notice of this aspect of their claim to the Tenant, it is dismissed with leave to reapply.

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 under section 67 of the Act, in the amount of \$2,700.00.

In accordance with section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$750.00 in satisfaction of the monetary award.

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

As the Landlord was 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.

Conclusion

The Tenant's request 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 is dismissed without leave to reapply.

The Tenant's request for an order to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order 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 **\$2,050.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,700.00
<i>Security Deposit</i>	-\$750.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,050.00

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. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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 7, 2025

Residential Tenancy Branch