

## **DECISION**

### **Introduction**

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

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenants filed their application on April 15, 2025, seeking:

- Cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*.
- Compensation for emergency repairs, pursuant to section 33 of the *Act*.
- An order for repairs.
- An order that the Landlord allow access to the Rental Unit.
- An order for compliance from the Director pursuant to section 62 of the *Act*.
- Authorization to recover the filing fee from the Landlord, pursuant to section 72 of the *Act*.

The Landlord filed their application on April 23, 2025, seeking:

- An order of possession pursuant to sections 46 and 55 of the *Act*.
- A monetary order for unpaid rent pursuant to section 67 of the *Act*.
- Authorization to recover the filing fee from the Tenants, pursuant to section 72 of the *Act*.

The Tenants both attended the hearing. The Landlord was represented by their agents DF, RF and MW. RF testified that MW is the Landlord’s accountant.

### **Service of Records**

The Landlord’s agent, RF, acknowledged receipt of the Tenants’ application, by registered mail (associated tracking number is copied on the cover page of my decision).

The Tenants testified that they are both residing in the Rental Unit.

The Tenants provided the following confusing testimony, in response to RF’s claim that they served the Tenants, with the Landlord’s application and evidence, by Canada Post registered mail, on May 2, 2025.

Tenant GZ testified that they received at least one Canada Post delivery slip, but on the slip, which was provided to them by Canada Post, they could not see their names, because of which they declined to take delivery of the associated package.

GZ testified that they attended a Canada Post facility holding the above package, but at the suggestion of a staff member they decided not to sign for the package.

RF testified that they included the Tenants' names and address on the package, which is why the Tenants received notification from Canada Post in the first place.

The Landlord's agent(s) submitted a Canada Post customer receipt bearing a destination postal code matching the Rental Unit's postal code and a tracking number, which I copied on the cover page of my decision.

The Tenants did not submit any statements from any Canada Post staff members. GZ testified that they were unwilling to sign for the package, because their name was not on Canada Post's delivery slip and/or the package itself.

The Tenants did not submit a picture of Canada Post's delivery slip to substantiate their claim that no names were mentioned on the slip. There is no dispute that the Rental Unit's address was clearly outlined and that the Tenants received notice from Canada Post that a package was waiting for them at a Canada Post facility. In fact, during and after the hearing, I input the associated tracking number into the Canada Post tracking history portal and I could see that on at least two dates, Canada Post provided the Rental Unit's residents with delivery notices, including on May 11, 2025, the date prior to the hearing date.

GZ could not recall when they attended the Canada Post facility holding their package. GZ testified they did not have a copy of the delivery slip(s) before them. The Tenants did not submit pictures of the delivery slip(s). GZ could not provide the name of the agent they spoke with. GZ did not provide any evidence to show whether the associated package had the Landlord's name/address written on it.

I find the following guidance from the Branch's Policy Guideline 12 are relevant to the facts of this case:

[w]here a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find on a balance of probabilities, based on the evidence before me, that the Tenants either refused or deliberately decided not to pick up the Landlord's records, sent to them by registered mail. GZ did not substantiate their bare assertion that they attended a Canada Post facility. They could not provide any relevant details (such as dates and names of individuals they spoke with) and there are no records before me which would substantiate their claims.

In any case, even if GZ's name was not on a Canada Post delivery slip or even on a package (which claim was not proven by the Tenants), the Rental Unit's address was.

I find the Tenants are deemed served with the Landlord's application and evidence, pursuant to section 90 of the *Act*, on May 7, 2025, the fifth day after the Landlord's agent sent the registered package to the Tenants, pursuant to sections 88 and 89 of the *Act*.

I note that in this case, even if I were to find the Landlord failed to serve their application to the Tenants, the hearing would still proceed on the Tenants' own application to dispute the Landlord's eviction notice and the Landlord would have the onus to prove the validity of the eviction notice.

### **Preliminary Matter – Severance**

Rule 2.3 of the Residential Tenancy Branch (the **Branch**) *Rules of Procedure* states that claims made in an application must be related to each other.

Rule 6.2 authorizes me to sever issues that are unrelated to the primary issue before me and dismiss those claims with or without leave to reapply.

In this case the primary issues before me are whether this tenancy must come to an end based on the Tenants' failure to pay rent and whether the director must give an order with respect to the Tenants' access to the Rental Unit. The Landlord issued an eviction notice to the Tenants, pursuant to which they are seeking an end to this tenancy and the Tenants are disputing the validity of the eviction notice.

As I informed the Tenants at the start of the hearing, several of their claims are unrelated to the primary claims, above. Therefore, the Tenants are in breach of Rule 2.3 of the *Rules of Procedure*. Pursuant to Rule 6.2 of the *Rules of Procedure*, I dismissed the following claims with leave to reapply:

- Compensation, in the amount of \$300.00, for the cost of emergency repairs under section 33 of the *Act* (the Tenants claim the cost of cab fees, which, in any event, are not emergency repairs under section 33 of the *Act*).
- Repairs for "holes in the walls".
- Order of compliance from the director, pursuant to section 62 of the *Act*.

While the Tenants' \$300.00 claim for emergency repairs is dismissed, with leave to reapply, the claim, on its face, is clearly not for emergency repairs as *defined* and contemplated under and by section 33 of the *Act*.

For clarity, this hearing went ahead with respect to the following issues:

- The Tenants' dispute of the Landlord's notice for unpaid rent.
- The Tenants' access to the Rental Unit.
- The Tenants' filing fee.

- The issues outlined in the Landlord's application (claims for order of possession of the Rental Unit, an order for unpaid rent and authorization to recover the filing fee from the Tenants).

The Tenants' claim for the filing fee is dismissed, without leave to reapply, because the Tenants never paid a filing fee to the Branch. On the same date they filed their application, the Tenants filed for and received a fee waiver from the Branch. Therefore, even if they are successful in their claim, there is no basis by which this claim could be granted.

## **Background Facts and Evidence**

I have reviewed and considered all oral and documentary evidence before me that met the requirements of the Branch's *Rules of Procedure*, and to which I was referred at the hearing. However, **only the evidence relevant to the issues and findings in the parties' applications are described in this Decision.**

The parties agreed that:

- This tenancy began on July 1, 2021.
- The starting monthly rent in this tenancy was \$1,971.00.
- In 2023, the monthly rent was increased to \$2,010.00.
- In April 2024, the monthly rent was increased to \$2,080.35.
- In April 2025, the monthly rent was increased to \$2,142.75
- The Tenants never paid a security deposit to the Landlord.
- On April 11, 2025, the Tenants received a 10 Day Notice to End Tenancy for Unpaid Rent, signed by RF on April 11, 2025 (the **Notice**).

GZ initially testified that the parties explicitly agreed to modify the agreement and make the Tenants' monthly rent payable on the 15<sup>th</sup> day of every month. GZ then testified that throughout the term of this tenancy the Tenants were routinely late on their rent payments and on various occasions they informed the Landlord's agent(s) that they will pay their rent late or "as soon as I can". GZ testified that based on the foregoing, they believe the parties' agreement was for monthly rent to be paid on the 15<sup>th</sup> day of every month.

DF opposed GZ's testimony that the due date was ever modified.

Both parties submitted identical copies of the Notice. On page two of the Notice I can see that the ground to end the tenancy is unpaid rent, in the amount of \$22,606.45, due on April 1, 2025.

MW testified that since the start of this tenancy, they and other agents of the Landlord have chased the Tenants for rent. MW testified that the Tenants are usually short on rent, or late, or both, and in some months, they pay nothing at all.

MW referred me to a submitted ledger showing the Landlord's rent charges to the Tenants and a record of various payments received from the Tenants, from 2021 to April 2025 (the **Ledger**). The Ledger shows a subtotal of rent owing for each year. At the bottom of the Ledger, I can see the total amount of \$22,606.45 owing.

I asked GZ if they can recall receiving a ledger from MW. GZ initially testified that they recall receiving a ledger from MW "a month ago". GZ testified that they recall thinking that the amount indicated in the ledger is "absurd". I asked GZ whether they can recall the amount indicated in the ledger, and they testified that it was approximately \$22,000.00.

MW testified that, in their attempts to collect rent, they would send GZ updated copies of the Landlord's ledger on a regular basis, and the Tenants never disputed the amounts stated in those copies. MW testified that the Tenants first disputed the amount owing to the Landlord when they were served with the Notice.

MW referred to a submitted copy of an email they sent to GZ, dated March 14, 2025, and testified that they attached a copy of a ledger to this email. I can see MW sent their email to three different email addresses associated with GZ. At the hearing, GZ confirmed one of the email addresses as their current email address. In response to MW's specific testimony that on March 14, 2025, they emailed GZ a copy of a ledger, as well as an account balance (I can see the 2024 and 2025 unpaid rent balance indicated in the body of the email), GZ testified that their email was not working "at that time".

GZ did not testify which of the three emails was not working "at that time". I asked GZ about their earlier testimony that they received a ledger bearing an outstanding rent balance of approximately \$22,000.00, and GZ testified that they received that ledger in January 2025. I note that, based on the amounts indicated in the Ledger, the Tenants' outstanding rent balance in January 2025 was not \$22,000.00.

I asked GZ whether they responded to MW's emails outlining the Tenants' account balances and GZ testified that in January 2025 they did not, but previously they believe they did. GZ could not recall the exact dates of disputes, if any. The Tenants did not submit any records to substantiate their claims.

GZ agreed that the Tenants never paid any rent in April 2025 and May 2025. GZ testified that excluding the foregoing months, they believe their outstanding balance is around \$10,000.00, but they are unsure of the exact amounts.

The Landlord's agent(s) submitted correspondence records (copies of emails) between themselves and GZ, which I reviewed prior to making my decision. I can see that on September 5, 2024, at 9:56 AM, MW sent GZ an email with the following message:

[Hi GW]

We have not yet received rent for September. Attached is updated rent owing to date. It is very cleared [sic] on the spreadsheet detailing all payments received and balance owing for each year.

If you have any questions or where you find error, would be happy to discuss, so you can settle the balance in full sooner.  
Keeping track because rent is not paid on time and in full takes up a lot of my time as well.  
Hope to hear from you soon. Regards, [MW]

In response to the above email, I can see DF, another of the Landlord's agents, who was copied by MW in their email to GZ, sent all the parties the following additional message at 9:59 AM, on September 5, 2024 (three minutes following the above email:

If we don't receive rent by this Friday. We are serving you 10 day notice.  
It takes too much time for us to deal with this. There is no one else in the building that is late on their rent.

Finally, I can see that on September 5, 2024, at 9:20 PM, GZ responded to both MW and DF, with respect to the above two messages, by stating:

Hi [DF], I do apologize that rent has been late however it has been paid the reason why it's been late [*sic*]. The last few months is because of the way my work hours and paydays have transitioned so I'm trying to get back on momentum to have the full rent in the first of every month. Can you give me till October 1? I'll have the rent in for October and September being the last month where it'll be late.

The Tenants testified that they are currently residing in the Rental Unit and that they currently have functioning building fobs.

## **Analysis**

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

The parties agreed that the Notice was served to the Tenants on April 11, 2025.

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 Tenants agreed that they never paid anything to the Landlord in April 2025, but I can see that they disputed the Notice on April 15, 2025, within the five-day statutory time limit set out under section 46 of the *Act*. Therefore, the Landlord's agent(s) bear the onus to prove they had a valid reason to issue the Notice.

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.

The parties were in agreement with respect to the monthly rent in each year of this tenancy. To the extent that it is relevant, I will address whether rent was due on the first day of every month or the 15<sup>th</sup> day of every month, as claimed by GZ. For the reasons

that follow, I find rent was due on the first day of every month, as is set out in the parties' written tenancy agreement.

GZ's explanation that they would email the Landlord's agents and inform them that they will pay their rent "as soon as they can", even if accepted, does not prove that the parties modified the tenancy agreement such that monthly rent would be owed on the 15<sup>th</sup> day of every month. GZ did not substantiate their self-serving testimony, by providing external evidence, to show that the parties reached an explicit agreement with respect to rent being owed to the Landlords on the 15<sup>th</sup> of every month. GZ failed to provide specific details of when the parties reached such an agreement and how their testimony that they will pay rent "as soon as they can" substantiates their claim that the Landlord agreed to receive payment, henceforth, on the 15<sup>th</sup> day of every month. In the Ledger, I can only see one payment on the 15<sup>th</sup> day of a month, from more than 20 payments recorded from the Tenants.

The Tenants were in full agreement with the Landlord's agents that they owe at least \$10,000.00 to the Landlord in unpaid rent, if not more, because they testified that their \$10,000.00 estimate does not include their April 2025, and May 2025 obligations.

While GZ vehemently opposed any suggestion that they owe the amount indicated in the Notice, they could not provide an exact amount for what the Tenants owe to date. This is not a case in which one party claims they paid their rent in a particular month in cash and the other disputes the claim. The parties agreed that rent, when it was paid, was paid by e-transfer. The Landlord's Ledger shows the dates associated with the Tenants' e-transfers and their respective amounts. GZ testified that they did not realize they had to show records associated with their e-transfers to the Landlord, a curious statement considering both parties filed legal disputes in relation to the Tenants' alleged failure to pay rent. In this case, not only have the Tenants not provided any records of payments, they also have not provided any statements wherein they outline the dates of their rent payments, nor did they provide affirmed testimony in relation to payment dates from the start of the tenancy to date.

Most importantly, I can see several emails from MW to the Tenants, wherein MW refers to a spreadsheet. In September 2024, MW asked for the Tenants' opinion if they see any errors in relation to the different years provided in the spreadsheet. GZ responded by providing an explanation for why they paid their rent late. They did not outline any specific disagreements.

At the hearing, GZ agreed that they received an updated spreadsheet from MW either a month prior to the hearing date or in January 2025, wherein the Landlord's agent(s) indicated an approximate-\$22,000.00 debt. GZ did not refer me to any records showing they disputed this figure until they received an eviction notice from the Landlord in April 2025. Even after they filed their application, the Tenants did not refer to their records or to the spreadsheet that GZ said they received in either January 2025 or a month prior to the hearing to establish the actual amount of their arrears.

As I indicated, the standard of proof in this tribunal is the standard of balance of probabilities. The Landlord has the onus to prove the validity of the Notice. I find the Landlord's agents provided sufficient evidence to allow me to make the finding that, on a standard of balance of probabilities, as of the date the Notice was issued, the Tenants owed the Landlord \$22,606.45, for the Tenants' failure to pay \$22,606.45 in rent from the start of this tenancy to April 2025, as indicated in the Ledger.

As outlined under section 26 of the *Act*, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The Tenants did not provide a valid reason for their failure to remit payment, when due. For clarity, GZ's position was that they owe at least \$10,000.00, if not more. GZ did not provide a valid reason for their failure to pay rent. Hardship is not a valid reason to withhold rent.

For the above reasons, the Tenants' application for cancellation of the Landlord's 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*.

I have reviewed the Notice and I find the Notice complies with section 52 of the *Act*, because the Notice:

- Is signed and dated by the Landlord's agent;
- Includes the Rental Unit's address;
- Includes the effective date;
- Includes the grounds for ending the tenancy; and
- is in the approved form.

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

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this case, the Tenants' arrears are extensive and have been ongoing for years. GZ testified that they do not have children or physical disabilities. The Tenants agreed that they did not pay any rent in April 2025, and in May 2025.



The Branch's Policy Guideline 54 states that an application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for seven days after the order is received.

Considering all the above, I find it appropriate to grant an Order of Possession to the Landlord **effective seven (7) days after service** of the attached Order 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 provided my findings respecting the form and content requirements of the Notice, as well as the Tenants' arrears, in contravention of section 26 of the *Act*.

The Landlord filed their application, under section 67 of the *Act*, which states that if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to sections 55(1.1) and 67 of the *Act*, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$22,606.45.

### **Are the Tenants entitled to an order that the Landlord is to allow them, or their guests access to the Rental Unit?**

The Tenants agreed that they reside in the Rental Unit and that their building fobs are fully functioning. GZ testified that in the past their fobs were de-activated.

As the Tenants' fobs are currently active and as the Tenants have full access to the Rental Unit and the common property for the building in which the Rental Unit is in, and as this tenancy is ending, I find no reason to grant the Tenants' application for access. The Tenants have access to the Rental Unit and this portion of the application is therefore moot.

This claim is dismissed, without leave to reapply.

### **Are the parties entitled to their filing fees?**

I addressed the Tenants' claim for the recovery of a filing fee they did not pay, under the "Preliminary Matter – Severance" section of my decision, above. The Tenants' claim for their filing fee was dismissed, without leave to reapply. Had they paid a filing fee, this claim would have been dismissed, without leave to reapply, because they were unsuccessful in their application.

Pursuant to section 72 of the *Act*, I grant the Landlord's application for their \$100.00 filing fee, to be collected from the Tenants, because they were successful in their application.

## Conclusion

The following claims by the Tenants are dismissed, without leave to reapply: their claim to dispute the validity of the Notice, their claim for access to the Rental Unit, and their claim for the filing fee. The balance of the Tenants' application is dismissed, with leave to reapply, as outlined under the "Preliminary Matter – Severance" section of my decision.

The Landlord's application is granted, in full.

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

I grant the Landlord a Monetary Order in the amount of **\$22,706.45** under the following terms:

Monetary Issue	Granted Amount
Unpaid rent from 2021 to April 2025, pursuant to sections 55(1.1) and 67 of the <i>Act</i> .	\$22,606.45
Plus: filing fee, pursuant to section 72 of the <i>Act</i> .	\$100.00
<b>Total Amount</b>	<b>\$22,706.45</b>

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.

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 12, 2025

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Residential Tenancy Branch