

## **DECISION**

### **Introduction**

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
- An Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act

This hearing also dealt with the Tenants' 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) under sections 46 and 55 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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 requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant L.G. was served, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlord provided a copy of the tenancy agreement, outgoing e-mail showing the documents were included as an attachment to confirm this service.

I find that Tenant P.B. was served, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlord provided a copy of the tenancy agreement, outgoing e-mail showing the documents were included as an attachment to confirm this service.

I find that the Landlord was served, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Tenants provided a copy of the tenancy agreement, outgoing e-mail showing the documents were included as an attachment to confirm this service.

## **Service of Evidence**

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

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

## **Preliminary Matters**

The following issue was withdrawn at the outset of the hearing:

- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Tenants advised they no longer want this issue dealt with. In accordance with section 64 (3)(c) of the *Act*, I have permitted the application to be amended, and this issue is withdrawn.

## **Issues to be Decided**

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

Is the Landlord entitled to an Order of Possession based on One Month Notice?

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an order for the Landlord to make repairs?

## **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 December 6, 2024, with a monthly rent of \$1,700.00, due on the first day of the month but changed to due on the

20<sup>th</sup> and 29<sup>th</sup> of every month as of February 1, 2025, with a security deposit in the amount of \$850.00.

The Landlord filed an application seeking an Order of Possession based on a 10 Day Notice of Unpaid Rent and One Month Notice of Cause.

The Tenants' filed a cross application seeking to dispute the 10 Day Notice, monetary compensation, reduction of rent for repairs, and repairs.

The parties confirmed the 10 Day Notice for Unpaid rent was served by email on May 4, 2025, for \$740.00 of unpaid rent (the 10 Day Notice) and the One Month Notice was served by email March 28, 2025, for repeated late payment of rent (the One Month Notice). The Tenants confirmed receiving both notices and advised they only disputed the 10 Day Notice because they did not realize they had to dispute both.

### **10 Day Notice**

The Landlord's position is that the Tenants did not pay \$740.00 towards April 2025 rent. The Landlord's agent J.M. (the Landlord's Agent) advised that rent was not paid for May 2025, and the Tenants owe \$2,440.00 in unpaid rent.

The Tenants did not dispute that they owe rent for April 2025 to May 2025 but argued they did not pay rent because they had medical and travel expenses to pay for that resulted from the Tenants living in the rental unit where the soil is contaminated with led.

### **One Month Notice**

The Landlord's position is that the Tenants were late paying rent 5 out of the 6 months rent was due. The Landlord advised rent was late December 2024, and January 2025. The Landlord advised they agreed to change the payment rent was due to the 20<sup>th</sup> and 29<sup>th</sup> of the month starting February 1, 2025; however, the Tenants were late paying rent for February 2025 and March 2025. Copies of the Landlord's bank statements were provided to show the e-transfer history of rent.

The Tenants' position is that rent was late because the Tenants had to put the money towards the medical expenses that resulted from living in the rental unit where the soil is contaminated. The Tenants also argued the Landlord got some of the late payments wrong, but the Tenants could not recall which late payments were incorrect.

### **Compensation, Reduction of Rent and Repairs**

The Tenants are seeking \$10,000.00 for compensation, and \$10,000.00 for a reduction of rent because the Tenants argued Tenant L.G. has become sick due to the led in the soil of the yard. The Tenants advised they did not provide receipts but the \$10,000.00 in compensation is for medical bills and loss of life and the \$10,000.00 reduction in rent

covers any rent paid by the Tenants. The Tenants argued the Landlord mentioned there was lead in the yard but did not explain the dangers. The Tenants advised they provided medical documentation and Tenant L.G. argued while the medical documents do not establish that the medical issues with Tenant L.G. are from lead poisoning that the lead is the only possible cause. The Tenants argued all the problems started when the Tenants moved into the rental unit.

The Landlord's position is that the Tenants were notified of the lead in the yard during the viewing and during the move-in inspection. The Landlord's Agent advised the municipal program stated everything was fine and just the soil should not be ingested. The Landlord's Agent argued any medical problems were pre-existing as Tenant L.G. had advised the Landlord of a medical problem during the viewing of the rental unit.

The Tenants are asking for the lead in the yard to be remediated, for the counter in the kitchen to be fixed and for the black mold in the bathroom to be addressed. The Tenants argued the Landlord was aware of these problems since they moved in.

The Landlord's position is that the counter tops are just cosmetic, the Landlord requested evidence of the mold, and the Tenants never responded. The Landlord's Agent also argued they applied for remediation of the soil through a municipal program and the offer letter was sent to the rental unit, but the Tenants never notified the Landlord about the mail. The Landlord advised they have a meeting scheduled with the remediation program to determine if the Landlord's property can still be put on the schedule for remediation. The Landlord provided email communication with the multiple program regarding steps taken for the remediation.

## **Analysis**

### **Should the Landlord's 10 Day 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 Residential Tenancy Branch. If the tenant does 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).

I find that the 10 Day Notice was duly served to the Tenants on May 4, 2025, and that the Tenants filed their dispute within the period required.

The Tenants confirmed they did not pay rent for April 2025 and argued it was because of the expense they had to pay to deal with lead poisoning from living in the rental unit. Under section 26(1) of the Act a tenant must pay rent when it is due, whether or not, the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has

a right under the Act to deduct all or a portion of rent. Based on the testimony and evidence of both sides , I find that regardless of the issue with the led in the soil the Tenants were required to pay rent, and the Tenants have failed to establish they had a legal reason under the Act to withhold rent.

For the above reasons, the Tenants' 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.

I find that 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 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 find that the 10 Day Notice complies with section 52 of the Act.

Based on the testimony of both parties, I find that the Tenants did not pay \$740.00 towards April 2025 rent and then continued to occupy the rental unit and did not pay rent for May 2025. Therefore, I find the Landlord is entitled to recover the unpaid rent listed on the 10 Day Notice and the unpaid rent for May 2025.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,440.00.

### **Is the Landlord entitled to an Order of Possession for a One Month Notice for Cause?**

Given that I have ended the tenancy based on the 10 Day Notice, I find that this issue is moot.

**Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

I find that the Tenants have failed to provide sufficient medical evidence that any damage was the result of the Landlord's failure to comply. While the Tenants provided medical documents, those documents do not establish the cause of the Tenants' health problems. The Tenants argued the only possible cause is the lead in the soil; however, there is no documentation to support this. As such, I find that the Tenants have failed to show that any loss or damage was the result of the Landlord's failure to comply. Additionally, the Tenant did not provide any evidence to prove the value of the damage or loss.

For the above reasons, the Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

**Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?**

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

Based on the testimony and evidence of both parties, I find that the Tenants have failed to establish that repairs were agreed upon but not provided. The Tenants did not provide sufficient evidence to establish the crack in the countertop or the mold in the bathroom was agreed to be repaired or requires a repair. Furthermore, the Landlord provided an email communication with the municipal program to outline the steps taken to address the lead in the soil. I find that the communication supports that the Landlord has taken steps to address the lead through the municipal program. As such, I find that the Tenants are not entitled to a rent reduction.

**Are the Tenants entitled to an order for the Landlord to make repairs to the rental unit?**

Given that I have ended this tenancy under the 10 Day Notice, I find that this issue is moot.

## Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on June 15, 2025, after service of this Order on 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 **\$2,440.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	\$2,440.00
<b>Total Amount</b>	<b>\$2,440.00</b>

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

The Tenants' application is dismissed in its entirety.

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: June 2, 2025

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Residential Tenancy Branch