DECISION

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (Application) under the *Residential Tenancy Act* (the Act) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued under section 46 of the Act;
- an extension under section 66 of the Act to the time limit set out under section 46(4) of the Act; and
- an order under section 62(3) of the Act for the landlord to comply with the Act, regulation, or tenancy agreement.

This hearing also dealt with the landlord's Application under the Act for:

- an Order of Possession in relation to the 10 Day Notice under sections 46 and 55 of the Act;
- a Monetary Order for unpaid rent and utilities under sections 7, 26, and 67 of the Act;
- authorization to retain all or a portion of the tenant's security and pet damage deposit towards the amounts owed; and
- authorization to recover the filing fee for this Application from the tenants under section 72(1) of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The parties acknowledged service of each other's Proceeding Packages and evidence. No service concerns were raised. I therefore found the parties sufficiently served with the Proceeding Packages and the documentary evidence before me for the purposes of the Act and Residential Tenancy Branch Rules of Procedure (Rules). The hearing of both Applications proceeded as scheduled and I accepted the documentary evidence before me for consideration.

Preliminary Matters

In their Application the tenants sought remedies under multiple unrelated sections of the Act. Rules 2.3 and 6.2 of the Rules state that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the tenants applied to cancel a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end and the payment of rent and utilities. As the other claim is not sufficiently related to validity or enforceability of the 10 Day Notice, or the matter oof unpaid rent and utilities, I exercised my discretion to dismiss that claim with leave to reapply.

Issues to be Decided

Are the tenants entitled to an extension under section 66 of the Act to the time limit set out under section 46(4) of the Act?

Are the tenants entitled to cancellation of the 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover unpaid rent and utilities?

Is the landlord entitled to recovery of their filing fee?

Is the landlord entitled to withhold the security deposit and the pet damage deposit?

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.

The landlord stated that the tenants did not pay their rent and utilities as required, and therefore they were served with a 10 Day Notice. The landlord stated that the 10 Day Notice was personally served on the tenants on April 9, 2025. At the hearing, the tenants acknowledged receipt on that date.

A copy of the 10 Day Notice was submitted for my consideration. It is on the Residential Tenancy Branch (Branch) form, is signed and dated April 9, 2025, has an effective date of April 20, 2025, and states that as of April 1, 2025, the tenants owe $1,800.00 in outstanding rent. $1,750.00 for April and $50.00 for March. It also states that the tenants owe $2,822.00 in outstanding utilities for which a demand letter was issued on January 4, 2025.

The tenants argued that the postal code is incorrect, which should invalidate the 10 Day Notice. I verified that the postal code on the 10 Day Notice matches the postal code listed for the rental unit in the tenancy agreement. However, the parties agreed that it is not correct.

The tenants agreed that they did not pay the full amounts shown on the 10 Day Notice. However, they did pay $1,300.00 of the $1,800.00 owed. The parties agreed that the

tenants currently owe $2,250.00 in outstanding rent. $500.00 related to the 10 Day Notice, plus the $1,750.00 in rent now owed for May.

The tenants did not file their Application seeking cancellation of the 10 Day Notice until April 17, 2025, which is more than 5 days after the date it was received. The tenants sought an extension under section 66 of the Act to the five-day time limit for disputing the 10 Day Notice set out under section 46(4) of the Act. As a result, I asked them what exceptional circumstance prevented them from filing on time. The tenant K.A. stated that they did not know what to do, were not communicating well with the co-tenant P.W. as they were hard to get a hold of, and they were sick. They stated that when they spoke to Service BC, they were told they had time to file. No evidence was submitted to corroborate the illness or the date of the conversation with Service BC.

I asked the tenant P.W. if something exceptional prevented them from disputing the 10 Day Notice on time as they had also received the 10 Day Notice on April 9, 2025, and they stated no.

In addition to the outstanding rent owed, the landlord sought recovery of $2,822.00 they believe to be owed for outstanding utilities. However, they disagreed about what utilities were owed under the tenancy agreement and whether there were any amounts outstanding. The landlord stated that the tenants were required to pay 40% of the water and hydro bills for the property, and the occupants of the upper unit were required to pay the remaining 60%. The landlord pointed to the tenancy agreement in support of this. The tenants denied this, stating that the landlord had altered the tenancy agreement after the fact to include water. However, they agreed to owing hydro. Although the tenancy agreement states their portion is 45%, the parties agreed at the hearing that this amount was verbally amended to 40%.

Further to the above, the tenants stated that they have never paid any amounts to the landlord for water, and that the landlord advised them over three years ago that they do not owe for water. They called a witness, G.W. who provided affirmed testimony that they were present during this conversation and that the landlord advised the tenants that they did not have to pay for water but not to tell the occupants of the upper unit. The landlord acknowledged that a conversation about the payment of water occurred, but stated that they only forgave the past-due amount owed at that time, as there had been a mistake and they had not billed the tenants for their water usage for some time. However, they denied altering the agreement such that no amounts were due for water usage in the future.

The landlord sought recovery of the amounts owed for outstanding rent and utilities, as well as enforcement of the 10 day Notice. The tenants sought cancellation of the 10 Day Notice and denied owing the amounts sought for water.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party with the burden of proof is responsible for providing evidence over and above their testimony to prove their claim on a balance of probabilities.

Are the tenants entitled to an extension under section 66 of the Act to the time limit set out under section 46(4) of the Act?

Section 46(4) of the Act states that within 5 days after receiving a 10 Day Notice, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 66(1) of the Act states that the director may extend a time limit established by this Act only in exceptional circumstances.

I accept the affirmed testimony of the parties that the 10 Day Notice before me was personally served on the tenants on April 9, 2025. As a result, I find that the tenants had until April 14, 2025, to either pay the total amounts owed as set out on the 10 day Notice, or file an Application with the Branch seeking cancellation of the 10 Day Notice. They did neither.

Although the tenant K.A. stated that they were prevented from filing on time due to their own confusion, illness, and information provided to them by Service BC, they submitted nothing to corroborate this testimony. Further to this, the co-tenant P.W. acknowledged that nothing exceptional prevented them from filing the Application on time.

As a result, I decline to grant the tenants an extension under section 66(1) of the Act. Although section 66(2) of the Act also allows for an extension for the payment of overdue rent, I am not satisfied that the circumstances prescribed for doing so apply here. There is no evidence before me that the landlord agreed to such an extension or that the tenants withheld rent because they believed that the deduction was allowed for emergency repairs or under an order of the director.

Based on the above, I therefore dismiss the tenants' request for an extension under section 66 of the Act without leave to reapply.

Are the tenants entitled to cancellation of the 10 Day Notice? If not, is the landlord entitled to an Order of Possession?

Section 46(4) of the Act states that within 5 days after receiving a 10 Day Notice, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) of the Act states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

As set out above, I am satisfied that the tenants were served with and received the 10 Day Notice on April 9, 2025. I am also satisfied that they did not pay the amounts owed in full, or dispute the 10 Day Notice by April 14, 2025, their deadline for doing so under section 46(4) of the Act. As a result, and as I have already dismissed their claim for an extension under section 66 of the Act, I therefore find that conclusive presumption under section 46(5) of the Act applies. The tenants' Application for cancellation of the 10 Day Notice is dismissed without leave to reapply.

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act states that to be effective, a notice to end a tenancy issued by a landlord must:

- be in writing;
- be signed and dated by the landlord;
- give the address of the rental unit;
- state the effective date of the notice;
- state the grounds for ending the tenancy; and
- be in the approved form.

Section 68(1) of the Act states that if a notice to end a tenancy does not comply with section 52 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.

Although I accept that the postal code on the 10 Day Notice is incorrect, I amend the 10 Day Notice under section 68(1) to include the correct postal code, as this is a minor technicality and the tenants clearly knew that the 10 Day Notice related to them and their rental unit, as the rest of the address was correct and they disputed the 10 Day Notice. Having done so, I find that it now complies with section 52 of the Act.

As a result of the above, I therefore grant the landlord an Order of Possession. As the effective date of the 10 Day Notice, April 20, 2025, has passed, and as the tenants agreed that they could be out of the rental unit by the end of May 2025, I therefore grant the landlord an Order of Possession effective 7 (seven) days after service on the

tenants, if they have not already vacated, pursuant to sections 55(1) and 68(2)(a) of the Act.

Is the landlord entitled to recover unpaid rent and utilities?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

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.

There are only five situations when a tenant may reduce or withhold rent without the landlord's consent:

- they already have an arbitrator's decision allowing the rent to be reduced or withheld;
- the landlord illegally increases the rent, in which case the illegal rent increase amount may be withheld;
- the landlord has overcharged for a security or pet damage deposit, in which case the tenant may deduct the amount overpaid from their rent;
- the landlord refuses the tenant's written request for reimbursement of emergency repairs completed and invoiced in accordance with section 33 of the Act; or
- the tenant was served with a notice to end tenancy by the landlord that includes related compensation by way of a rent reduction, such as a Two Month Notice to End Tenancy for Landlord's Use of Property.

As there is no evidence before me that any of the above applied, I find that they did not. As a result, and as the tenants did not have the landlord's permission to reduce or withhold rent, I find that they were required to pay rent on time and in full as set out in their tenancy agreement. If the tenants wished to seek a rent reduction by filing an Application with the Branch, they were entitled to do so. However, they were not entitled to simply withhold or reduce rent of their own accord. Based on the above, and as the parties agreed that $2,250.00 in rent was outstanding at the time of the hearing, I therefore grant the landlord recovery of this amount.

The parties also disputed what utility amounts were owed, if any. I am satisfied based on the tenancy agreement and the testimony of the parties, that the tenants owe 40% of the hydro bill for the property and that the occupants of the upper unit owe 60%. Although the tenancy agreement states that they owe 45% of this bill, the parties agreed at the hearing that they had amended their agreement to the 40%, which is permissible under the Act. While the tenants argued that this split was still not fair, and therefore they should not owe 40%, this is the amount that was agreed to, and there is no evidence that further amendments to this amount were mutually agreed to by the

parties. I therefore find that they are bound by this agreement, regardless of their belief about its fairness.

The landlord stated that the tenants have failed to pay the amounts owed for the last two hydro bills. Copies of these bills were submitted. Although the landlord sought recovery of $460.00 for the bill dated January 28, 2025, and $937.66 for the bill dated March 26, 2025, I do not agree with their calculations. These bills include past-due amounts, and late fees, which I find are not the responsibility of the tenants, as the bills are not in their names and they therefore do not control when these bills are paid. They also have 30 days under the Act to pay the landlord for their portion of the bills after a proper demand for payment is received. This timeline may not align with the bill due date set by the service provider.

Without late fees and past due balances, the bill dated January 28, 2025, is $1,125.77. This is for a billing period between November 26, 2025 – January 24, 2025. Without late fees and past due balances, the bill dated March 28, 2025, is $1,177.70. This is for a billing period between January 25, 2025 – March 26, 2025. As the tenants owe 40% of these bills, I therefore find that they owe $450.30 for the first bill and $471.08 for the second one and I award the landlord recovery of these amounts.

While the tenancy agreement states that the tenants also owe for water, the tenants disagreed, stating that the landlord altered the tenancy agreement. Although the landlord denied this, the tenants also called a witness who provided affirmed testimony that I find to be credible, that they were present during a conversation with the landlord wherein the landlord advised the tenants that they do not have to pay for water and not to tell the occupants of the upper unit.

The landlord argued that this conversation was only in relation to past-due water bills, that they had inadvertently failed to advise the tenants about. However, the tenants and the witness stated that there was no mention that it applied only to past water bills. I prefer the evidence of the tenants to that of the landlord in this regard, as they called a witness in support of their claim. As a result, I find that the landlord has failed to satisfy me that any amounts are owed by the tenants for water. I therefore dismiss their claim for recovery of unpaid water bills without 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. I therefore grant the landlord $3,171.38 in unpaid rent and utilities.

Is the landlord entitled to recovery of their filing fee?

Recovery of the filing fee is at my discretion. As the landlord was successful in their Application, I grant them recovery of the $100.00 filing fee paid for this Application from the tenants under section 72(1) of the Act.

Is the landlord entitled to retain all or a portion of the security deposit or pet damage deposit?

Section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the tenancy had not ended at the time of the hearing, I find that section 38(1) of the Act had not yet been triggered.

I am satisfied that the landlord currently holds $1,840.17 in trust for the tenants. This includes the $875.00 paid as a security deposit on March 13, 2020, the $875.00 paid as a pet damage deposit on March 28, 2020, plus $45.08 in interest accrued on the security deposit and $45.09 in interest accrued on the pet damage deposit. Interest has been calculated up to the date of this decision.

Section 72(2)(b) of the Act states that if the director orders a tenant to pay any amount to a landlord as part of a dispute resolution proceeding, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I have already found above that the landlord is entitled to $3,271.38 in compensation from the tenants for unpaid rent, unpaid utilities, and recovery of the filing fee. Under section 72(2)(b) of the Act, I therefore allow the landlord to retain the $1,840.17 currently held in trust for the tenants, in partial satisfaction of the amount owed. Pursuant to section 67 of the Act, the landlord is granted a Monetary Order in the amount of $1,431.21 for the remaining balance owed.

Conclusion

The tenants’ claims for cancellation of the 10 Day Notice and an extension under section 66 of the Act are dismissed, without leave to reapply.

The tenants’ claim for an order under section 62(3) of the Act for the landlord to comply with the Act, regulation, or tenancy agreement is dismissed with leave to reapply.

Pursuant to sections 55(1) and 68(2)(a) of the Act, I grant an Order of Possession to the landlord **effective seven (7) days after service of this Order on the tenants**. The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order by the landlord as soon as possible. Should the tenants or anyone on the premises fail to comply with this Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **$1,431.21** under the following terms:

Monetary Issue	**Granted Amount**
unpaid rent and utilities	$3,171.38
recovery of the filing fee	$100.00
less the security and pet damage deposits and interest retained	-$1,840.17.
Total Amount	**$1,431.21**

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** by the landlord as soon as possible. Should the tenants fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than $35,000.00.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: June 12, 2025

Residential Tenancy Branch