

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution made by the Tenants under the *Residential Tenancy Act* (the Act).

The Application made on April 6, 2025, and revised on April 29, 2025 is 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 requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act;

The Application made on April 23, 2025 is for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act;
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act; and

The Tenants L.J. and C.J, accompanied by their advocate, C.L., attended the hearing for the Tenants.

The Landlord Y-L. X., and their agent T.Y. attended the hearing for the Landlord

Service of Notices of Dispute Resolution Proceeding (Proceeding Packages)

The Tenants provided proof of service of both Proceeding Packages by e-mail on April 29, 2025 and May 2, 2025, at the Landlord's e-mail address for service. The Tenants provided a copy of the #RTB-51 Address for Service confirming the Landlord's e-mail address. I find that the Landlord is deemed served on May 1, 2025, and May 5, 2025 the third day after emailing each package in accordance with sections 89, and 90 of the Act and section 43 of the Regulation.

Service of Evidence

The Landlord testified that they did not receive some of the Tenants' evidence, however upon review the Landlord confirmed that the Tenants had e-mailed the evidence to the Landlord. The Landlord had not reviewed the Tenants' evidence prior to this hearing. The Landlord's Agent did not want an adjournment and would prefer to continue with the hearing.

I find that, under sections 88, 90, of the Act, and section 43 of the Regulation, the Landlord is deemed served with the Tenants' evidence by e-mail on May 9, 2025, three days after it was sent to the Landlord's e-mail address for service. I find that it is appropriate to rely on the Tenants' evidence despite that the Landlord had not reviewed all of it before this hearing.

Issues to be Decided

Are the Tenants entitled to more time to dispute the Landlord's 10 Day Notice?
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 a Monetary Order for unpaid rent?

Should the Landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recover their filing fees from the Landlord?

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 August 1, 2022, with a \$1,600.00 security deposit and \$3,200.00 rent due on the first day of the month.

The parties agreed that they had participated in earlier dispute resolution proceedings which resulted in a settlement. That Decision is dated January 8, 2025.

10 Day Notice

The Landlord's Agent testified that they had initially posted a notice to end tenancy for unpaid rent with an error. The Landlord corrected the error and issued the corrected 10 Day Notice to End Tenancy for Unpaid Rent to the Tenants on April 2, 2025 by posting it on their door (the "10 Day Notice".) The 10 Day Notice stated that the Tenants must

vacate the rental unit by April 16, 2025, and alleged that the Tenants failed to pay \$3,200.00 rent as of April 1, 2025.

The Landlord's Agent testified that, in addition to rent for April 2025, the Tenants also did not pay rent for May, 2025.

The Tenants testified that they reduced their rent in February 2025, in accordance with the Decision of January 8, 2025, and then paid the full \$3,200.00 in March 2025.

The Tenants agreed that they did not pay rent to the Landlord on April 1, 2025 and had not paid any rent to the Landlord for April or May 2025. The Tenants testified that they were waiting on a decision of the Residential Tenancy Branch for other claims, in which the Tenants applied for a monetary order. The Tenants explained that they would pay the Landlord the rent if they were not successful in that application. The Tenants testified that they called in to the Residential Tenancy Branch and were told by the information officer that they could withhold rent from the Landlord until their issues with the Landlord were resolved.

One Month Notice

The Landlord also issued a One Month Notice to End Tenancy for cause to the Tenants on April 12, 2025, which states that the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The Landlord testified that the Tenants have sublet part of the rental unit to roommates. The additional people in the rental unit have caused a strain on the electrical system, and the breakers trip frequently.

The Tenants testified that they had some roommates in the past but have not had any additional occupants for a year. When the Tenants did have additional occupants, they obtained the Landlord's permission. The Tenants testified that the electrical system has issued that the Landlord had failed to address, and they are not the cause of the issues.

Analysis

**Are the Tenants entitled to more time to dispute the Landlord's 10 Day Notice?
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 Tenants 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 Tenants 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).

I have reviewed the 10 Day Notice, and it conforms with section 52 of the Act. I find that the 10 Day Notice was posted on the Tenants' door on April 1, 2025, and is deemed to have been received on April 4, 2025. The Tenants had until April 9, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants applied to cancel the 10 Day Notice on April 6, 2025, which is within the time limit. The Tenants updated their application on April 29, 2025, but the claim to dispute the 10 Day Notice remained the same. I find that the application was made on April 6, 2025, within the required timeframe.

I find that the Landlord has the burden to prove that this tenancy should end by way of the 10 Day Notice.

Section 46(3) states that a notice to end tenancy for unpaid rent will have no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

The Tenants acknowledged that they did not pay rent for April, 2025, because they were waiting on the outcome of a decision from the Residential Tenancy Branch dealing with a different application for dispute for a monetary order. The Tenants' application for the monetary order is not before me and had not been decided when this hearing took place.

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

The Act allows a tenant to withhold rent on five occasions:

1. Section 19(2): When a landlord collects a security deposit or pet damage deposit that is above the permitted amount.
2. Section 33(7): When the tenant paid for emergency repairs.
3. Section 43(5): When a landlord imposes a rent increase that is above the amount allowed by law.
4. Section 51(1.1): When the landlord issues a notice to end tenancy under section 49 of the Act.
5. Section 65(1): When an arbitrator orders the tenant to withhold rent.

The Tenants did not provide proof that the Residential Tenancy Branch authorized them to withhold all of the rent from the Landlord. I have reviewed the decision of January 8,

2025, in which the Landlord agreed to give the Tenants a rent reduction of \$1,056.00 per month until certain repairs were completed.

The Tenants did not provide evidence at this hearing about emergency repairs.

Although the Tenants testified that an information officer advised them that they could withhold their rent, the Tenants provided no evidence of this. I have no information to establish what information the “advice” was based upon. The role of an information officer is to provide information, not advice. Information officers are not advocates, and their role is not to dispense advice to landlords and tenants.

On a balance of probabilities based on the evidence and testimonies before me I find that none of the above five circumstances apply to the applications before me. The decision of January 8, 2025 allowed the Tenants to withhold a portion of their rent, but not all of it. The Tenants were waiting on the decision of an Arbitrator that might allow them to withhold rent, but no such order had been made when the Landlord issued the 10 Day Notice.

I find that, on a balance of probabilities based on the evidence and testimonies before me, the Tenants did not have any lawful reason under the Act to withhold their full rent.

I find that the Tenants were obligated to pay rent for April and May 2025 but failed to do so, contrary to s. 26. I find that the Tenants were obligated to pay the arrears of rent after the 10 Day Notice was issued but failed to do so. Given these findings, I uphold the Landlord's 10 Day Notice.

Therefore, the Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the Act is dismissed without leave to reapply.

Section 55(1) of the Act states that, if the Landlord's notice to end tenancy complies with s. 52 of the Act, the director must grant the Landlord an Order of Possession if the Landlord's notice to end tenancy is upheld during the dispute resolution proceedings. I have reviewed the Landlord's notice to end tenancy, and I find it complies with the form and content as set out in s.52. Accordingly, the Landlord is granted an Order of Possession.

Residential Tenancy Branch Policy Guideline 54 states that the Arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I have considered that the Tenants owe the Landlord unpaid rent and have not paid rent in several weeks. I have also considered that The Tenants have a child living with them and finding alternative accommodations is difficult.

In consideration of all the circumstances, I find that an Order of Possession with an effective date of June 30, 2025 is appropriate.

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

Under section 55(1.1), if the Landlord's 10 Day Notice to End Tenancy for Unpaid rent has been upheld, and it complies with section 52, then the arbitrator must grant an order requiring the payment of unpaid rent.

The Decision of January 8, 2025 allowed the Tenants to reduce their rent until repairs were made. The Tenants testified that the electrical issues were not fixed and the breaker kept tripping, even when they did not run anything at the same time as a portable heater.

The Landlord provided evidence from electricians to show that they had addressed the electrical issues. In summary, work was completed in December 2024, and electricians investigated the rental unit on January 19, 2025 and April 8, 2025. The reports from these investigations, in summary, state that the home cannot handle portable heaters, which is causing the breaker to turn off, but the electrical system was otherwise in working order.

On a balance of probabilities based on the evidence and testimonies before me I find that the rate of rent due was \$3,200.00. I base this finding on the fact that the Landlord hired electricians which stated that the issues were fixed. Further, the Tenants paid the regular rate of rent in March, 2025, which signals that their agreement that the repairs had been completed and the agreement for the rent reduction was no longer in effect.

I find that the Landlord is entitled to unpaid rent for the months of April 2025, and May 2025 which, together, is the sum of \$6,400.00.

Should the Landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the Landlord entitled to an Order of Possession?

As I have already found that this tenancy will end as a result of the 10 Day Notice to End Tenancy for Unpaid rent which was issued before the One Month Notice, it is unnecessary to consider if this tenancy will end on any other ground.

This portion of the Tenants' application is dismissed without leave to reapply.

Are the Tenants entitled to recover their filing fees from the Landlord?

As the Tenants' applications were not successful, the Tenants are not entitled to recovery of their filing fees for the cost of these applications.

Conclusion

I grant an Order of Possession to the Landlord **on June 30, 2025, after service 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 **\$6,400.00** for unpaid rent under section 67 of the Act.

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 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: June 6, 2025

Residential Tenancy Branch