



Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with crossed Applications for Dispute Resolution under the Residential Tenancy Act (the Act).

The Tenants filed their application on May 12, 2025. The Tenants' application includes these claims:

- I want to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- I want compensation for my monetary loss or other money owed
- I want to reduce rent for repairs, services or facilities agreed upon but not provided
- I want repairs made to the unit, site or property. I have contacted the landlord in writing to make repairs but they have not been completed
- I want the landlord to comply with the Act, regulation and/or the tenancy agreement
- I want to include a request for the landlord to pay me back for the cost of the filing fee

This hearing also dealt with a cross-application filed by the Landlord under the Act on May 12, 2025. The Landlord's application includes these claims:

- I issued a 10 Day Notice to End Tenancy for Unpaid Rent not paid in the required time and I want an order of possession an order of possession
- I issued a 10 Day Notice to End Tenancy and I want a monetary order in addition to an order of possession for rent not paid in the required time
- I want to include a request for the tenant to pay me back for the cost of the filing fee

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) for the Tenants' application and Evidence

The Tenants testified that they applied for an order for substituted service and on May 13, 2025, they were granted authority by an adjudicator with the Residential Tenancy Branch to serve the Landlord with the Proceeding package and evidence by email.

The Tenants testified that they served the Landlord with the Tenants' Proceeding Package by email on May 13, 2025. The Tenant submitted additional evidence on June 3, 2025. The Landlord acknowledged service of the Tenant's Proceeding Package and evidence and confirmed they had sufficient time to review the evidence. Accepting this, I find the Landlord was served with the Tenant's Proceeding Package and evidence in accordance with the Act.

The Landlord confirmed that he did not submit any separate response evidence in respect of the Tenant's application, and that her evidence for both applications was included in the Landlord's Proceeding Package.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) for the Landlord's application and Evidence

The Landlord testified that they served the Landlord's Proceeding Package and evidence on May 14, 2025, by attaching them to the Tenants' door and emailing it to the Tenants. The Landlord served additional evidence on June 4, 2025. The Tenants acknowledged service of the Landlord's Proceeding Package and evidence and indicated that they had sufficient time to review the evidence. Accepting this, I find the Tenants sufficiently served in accordance with the Landlord's application and evidence under section 71(2) of the Act.

The Tenants confirmed that they did not submit any separate response evidence in respect of the Landlord's application, and that her evidence for both applications was included in the Tenant's Proceeding Package.

Preliminary Matter

The Landlord said his legal name is T.F.W. as stated on the Landlord's application. The Tenancy agreement further lists T.F.W. as the Landlord. I therefore amend the Tenant's application to include the legal name of the Landlord pursuant to Rule of Procedure 7.12 and section 64(3)(c) of the Act.

Unrelated disputes

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims must be related to each other, and that if, in the course of the dispute resolution proceeding the arbitrator determines that it is appropriate to do so, the arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I informed the parties at the outset of the hearing that due to the requirements under Rule 2.3 that claims be related to each other, I was only going to hear the most urgent claim, which was whether the 10 Day Notice should be cancelled.

The following issue raised by the Tenants is dismissed with leave to reapply:

- compensation for my monetary loss or other money owed

Leave to reapply is not an extension of any applicable time limit.

In light of my findings below the following issues are dismissed without leave to reapply:

- An order reducing rent for repairs, services or facilities agreed upon but not provided
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order that the landlord comply with the Act, regulation and/or the tenancy agreement

Issues to be Decided:

1. Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Landlord's application from the Tenant?
4. Are the Tenants entitled to recover the filing fee for the Tenants' application from the Landlord?
5. Are the Tenants entitled to the return of the security and 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 tenancy agreement states that this tenancy began on April 1, 2025 for a fixed term ending on October 30, 2025, and that the tenancy will continue on a month-to-month basis afterward. The parties agreed that the Tenants moved into the rental unit on March 15, 2025. The monthly rent at \$5,200.00, due on the first day of the month, with a security deposit in the amount of \$2,600.00 and a pet damage deposit in the amount of \$2,600.00.

The Landlord delivered a 10 Day Notice to the Tenant on May 2, 2025, by posting a copy on the Tenants' door and by emailing a copy to the Tenants. On the Tenants' application, they indicated that they received the notice on May 5, 2025.

The 10 Day Notice has an effective date of May 11, 2025. It states that the Tenant failed to pay rent in the amount of \$7,800.00 (\$5,200.00 + \$2,600.00) due on May 1, 2025.

The Tenants filed an application for dispute resolution on May 12, 2025.

At the hearing, the Landlord said the \$7,800.00 indicated on the 10 Day Notice remain outstanding, and that he did not receive any rent payment for June 2025.

The parties agreed that the Tenants only paid \$2,600.00 for April 2025 rent because the Landlord offered to reduce the rent for the month of April 2025 to \$2,600.00 to compensate the Tenant's negative experience at the rental unit due to the unsatisfactory condition of the rental unit. The Landlord said the offer was made on the basis that the Tenant continues to stay at the rental unit as the Tenants emailed the Landlord on April 18, 2025 stating that they want to move out on April 28, 2025 due to the condition of the rental unit.

The Tenants said they paid for May 2025 rent. The Tenants said they left cash in an envelope and left it in the Landlord's mailbox. The Tenants said they waited for the Landlord for a long time that day, but because they had to attend a Shabbat dinner and it is very important that they start on time, they left it in the mailbox. The Tenants said her sister saw the Landlord go to the mailbox and take the mail out within 10 minutes. The Tenants submitted into evidence a photo of the Tenants holding a white envelope in a mailbox and a bank statement showing a \$5,000.00 withdrawal.

The Landlord said when they checked the mailbox they only found an empty envelope. The Landlord said they immediately tried to contact the Tenant, but the Tenants did not respond. The Landlord submitted into evidence text messages from the Landlord to the Tenants asking about the rent payment.

The Tenants admitted that they did not pay for June 2025 rent.

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(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).

I find that the Tenants received the 10 Day Notice on May 5, 2025, and that the Tenant had until May 10, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the Tenants did not pay the full amount of the arrears indicated on the 10 Day Notice and did not dispute the 10 Day Notice within the permitted timeframe under the Act, and therefore, the Tenants are conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

The Landlord said that they have not received any rental payment for the month of June 2025 and that the unpaid rent stated in the 10 Day Notice remains outstanding. The Landlord testified that they received the Tenant's text message that the rent payment was in their mailbox on May 1, 2025, but the envelope was empty when they checked their mailbox.

Although the Tenants claimed that they paid May 2025 rent by leaving cash in an envelope which they put in the mailbox and submitted into evidence a photo of the envelope that they assert was left in the mailbox on May 1, 2025, I find that the Tenants had not established on a balance of probabilities that the money was actually delivered to the Landlord. I further find the bank statement showing a \$5,000.00 withdrawal does not prove that the Tenant paid May's rent.

I find that the Landlord's text message to the Tenants proves that the Landlord did not receive the rent payment from the Tenants. As such, I find the Landlord has established a claim for unpaid rent in the amount of \$10,400.00 being the rent for May and June 2025.

For the above reasons, the Tenants' application for cancellation of the Landlord's 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 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 Notice complies with section 52 of the Act.

I find the Landlord is not entitled to claim for the remaining balance (\$2,600.00) rent for the month of April 2025. While the Landlord said the offer was made on the condition that the Tenants stay at the rental unit, there is no evidence to suggest the offer was made under this condition. Furthermore, as of the date of the hearing, the Tenants continues to reside at the rental unit.

Based on the testimony of the parties, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 26 of the Act, in the amount of \$10,400.00 being the rent for the month of May 2025 and June 2025.

The Landlord continues to hold the Tenants' security deposit and pet damage deposit of \$5,200.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I allow the Landlord to retain the Tenants' security deposit and pet damage deposit of \$5,200.00, plus interest, in the amount of \$11.36, calculated from March 15, 2025 to June 6, 2025 in partial satisfaction of the monetary award.

I issue the Landlord a Monetary Order for the remainder of the award that remains unsatisfied, as outlined in the conclusion section of my decision.

Are the Tenants entitled to recover the filing fee for the Landlord's application from the Tenant?

As the Tenants were not successful in their application, I find that the Tenants were not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Landlord entitled to recover the filing fee for the Tenants' 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

I grant an Order of Possession to the Landlord **effective by 1:00 p.m. on June 30, 2025, after service of this Order on the Tenant(s)**. 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 **\$5,288.64** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$10,400.00
Less: security deposit and accrued interest (as of June 6, 2025)	-\$2,605.68
Less: pet damage deposit and accrued interest (as of June 6, 2025)	-\$2,605.68
Filing Fee	\$100.00
Total Amount	\$5,288.64

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).

The Tenants' application 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 is dismissed, without leave to reapply.

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