DECISION

Introduction

The hearing dealt with cross applications from the parties. In this decision the terms "Tenants", "Landlord", and "Rental Unit" are defined terms; definitions are provided on the cover page of my decision.

The Tenants filed their May 12, 2025, 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 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 for the Landlord to make repairs to the rental unit under sections 32 and 62 of the *Act*.
- An order for the Landlord to provide services or facilities required by law under section 27 of the *Act*.
- An order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the *Act*.
- Authorization to change the locks to the rental unit under section 70(2) of the *Act*.
- An order requiring the Landlord to comply with the *Act*, regulation or tenancy agreement under section 62 of the *Act*.

The Landlord filed their May 12, 2025, Application for Dispute Resolution under the *Act* for:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, signed by the Landlord on May 2, 2025 (the **Notice**), pursuant to sections 46 and 55 of the *Act*.
- A Monetary Order for unpaid rent and/or utilities under section 67 of the *Act*.

Landlord ZG attended the hearing alongside their interpreter/agent FD. Tenant SBM attended the hearing alongside their mother/agent SB.

Service of Records

Tenant SBM testified that they served their application to the Landlord, on May 16, 2025, by email. SBM testified that they and the Landlord's agent, with the first initial of "P", correspond by email and have, in the past, exchanged records by email for the

purposes of the *Act*. SBM testified that they do not have an agreement with the Landlord in writing with respect to the exchange of records for the purposes of the *Act*.

The Landlord acknowledged receipt of the Tenants' application and nothing else. SBM submitted a screenshot of their May 16, 2025, email to the Landlord. In the screenshot provided, I can only see the application as an attachment. Pursuant to the Landlord's acknowledgment of receipt of the Tenants' application, by email, I find, for the purposes of the *Act*, pursuant to section 71(2)(c) of the *Act*, the Tenants sufficiently served the Landlord with their application, on May 16, 2025.

During the hearing, SBM and SB notified me that, on the date of the hearing, they submitted several records for my review. During the hearing I identified several documents uploaded to the Residential Tenancy Branch (the **Branch**) website on the same date as the hearing. SBM was unable to provide any evidence (oral or otherwise) of service of these records to the Landlord, notwithstanding my direct question. SBM did not oppose my statement that "I cannot refer to documents that have not been served to the other side". The Landlord testified that they never received any records other than the application.

Based on all the above, I find the Tenants failed to establish that they served their documentary evidence to the Landlord in accordance with the Branch's *Rules of Procedure*. Consequently, in making my decision, I have not relied on the Tenants' records, served to the Branch mere hours prior to the scheduled hearing.

SBM acknowledged receipt of the Landlord's Proceeding Package (application and evidence), by registered mail, sent to them on May 16, 2025. SBM agreed that they received the Landlord's records on May 20, 2025. The Landlord submitted associated Canada Post Customer Receipts. I find the Landlord served SBM with their application and evidence, by registered mail, on May 20, 2025, in accordance with sections 88 and 89(1) of the *Act*.

Tenant SE did not attend the hearing. SBM testified that SE's personal possessions are at the Rental Unit, and they have access to the Rental Unit. The Landlord submitted Canada Post Customer Receipts bearing a destination postal code, civic address, and tracking number. I find SE is deemed served with the Landlord's application and documentary evidence, in accordance with section 90 of the *Act*, on May 21, 2025, the fifth day after the Landlord mailed their Proceeding Package to SE, by Canada Post registered mail, in accordance with sections 88 and 89(1) of the *Act*.

Preliminary Matters

- *Severance*

Rules 2.3 and 6.2 of the Branch's *Rules of Procedure* authorize me to sever issues that are unrelated to the primary issue before me. In this case the primary issue in the Tenants' application is the validity of the Landlord's Notice.

In their application, the Tenants are also seeking a monetary order for compensation against the Landlord, repairs to the Rental Unit, an order of compliance from the director against the Landlord, provision of a “safety door”, suspension/limitation of the Landlord’s right to enter the Rental Unit, and authorization for lock change.

As I explained to the parties at the start of the hearing, the above claims are unrelated to the primary issue of the validity of the Landlord’s Notice for unpaid rent and utilities. I further explained to the parties that I will be severing the Tenants’ unrelated claims with leave to reapply due to time constraints and because the claims are unrelated to the main issue of the Notice.

For clarity, with respect to the Tenants’ application, the hearing went ahead only regarding the following issue: whether the Notice should be cancelled under sections 46 and 55 of the *Act*. Tenant SBM acknowledged that they understand they have the right to file a separate claim with respect to their severed claim.

- *Landlord’s amendment request*

During the hearing, the Landlord sought to include a monetary claim, in the amount of $3,500.00, to reflect the Tenants’ failure to pay $3,500.00 in monthly rent in June 2025, the additional month of unpaid rent while waiting for this hearing.

Rule 7.12 of the Branch’s *Rules of Procedure* states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. Tenant SBM did not object to the amendment request.

Rule 7.12 further states that if an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to Rule 7.12 and section 64(3)(a) of the *Act* I allow the amendment as this was clearly rent that the Tenants would have known about and resulted since the Landlord submitted their application.

Background 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties agreed that:

- This tenancy began on November 25, 2023.
- The monthly rent is $3,500.00, due on the first day of every month.

- The Landlord is holding a $1,750.00 security deposit and a $1,750.00 pet deposit, in trust for the Tenants (hereinafter referred to collectively as the **Deposits**).
- The Tenants paid $1,000.00 of the Deposits on November 24, 2023, and the balance on November 26, 2023.
- Under the parties' tenancy agreement, the Tenants are to pay "2/3 of the total utilities", and the term "total utilities" constitutes "BC Hydro, natural gas, water bill, internet, garbage, and propane".
- At the time the Notice was served to the Tenants, the Tenants had an outstanding rent balance, in the amount of $5,600.00 for the months of April 2025 and May 2025.
- On May 29, 2025, SBM, by way of e-transfer, paid $3,000.00 to the Landlord, which reduced the rent arrear for the months of April 2025 and May 2025, from $5,600.00, to $2,600.00.
- At the time of the hearing, June 2025 rent, in the amount of $3,500.00, remained outstanding.

SBM agreed with the Landlord that the Notice was attached to the Rental Unit's door, but they testified that they discovered the Notice on either May 4, 2025, or on May 5, 2025. The Landlord testified that they attached the Notice, to the Rental Unit's door, on May 2, 2025.

The Landlord submitted a copy of the Notice as evidence. On page two of the Notice, the Landlord selected two grounds for why this tenancy must end: unpaid rent, in the amount of $5,600.00, due on May 2, 2025, and unpaid utilities in the amount of $4,528.84.

The Landlord did not submit any utility invoices, bills or payment records into evidence. With respect to their utility claim, the Landlord testified that:

- The $4,528.84 claim is for all utility charges up to March 30, 2025.
- The Tenants made two utility payments to the Landlord in "May and August" of previous years of this tenancy, which the Landlord factored into their claim.
- The Landlord made all utility bills available to the Tenants "in the past".
- On March 20, 2025, they attended the Rental Unit to speak with SBM in person and during the meeting they demanded payment from SBM.
- SBM agreed to pay $4,528.84 during the above meeting.

In response, SBM testified that:

- They have received incomplete bills and invoices.
- In March 2025, they received a handwritten note from the Landlord with calculations, in "half Mandarin half English" (the **Landlord's Ledger**).
- The Landlord's Ledger includes inflated charges for several different utilities, including garbage charges in the amount of $96.00, when garbage bills provided to the Tenant are in the amount of $14.00.

- They do not have all the bills and invoices that correspond to the Landlord's Ledger and they do not agree with the claimed amount.
- Based on their math, they only owe $2,392.44.

The Landlord testified that on April 2, 2025, they attended the Rental Unit with a ledger or the Landlord's Ledger, wherein they had calculations in the amount of $7,628.89, 2/3 of which would be $4,528.84. In response, SBM testified that the Landlord "showed up" with a written sheet of paper demanding payment.

The Landlord submitted black and white copies of text message correspondence records between them and SBM. On page "8-2" of the Landlord's text message record, I identified a text message which includes a picture, as attachment. The picture is not clear, but I was able to identify what appeared as calculations, writing in Chinese characters, and the subtotal "4528.84". I asked SBM if this is the sheet of paper that they testified the Landlord attended the Rental Unit with, in March 2025, or in April 2025, or both (defined above as the Landlord's Ledger), and they testified that it is.

SB testified that the Landlord has a history of serving the Tenants with quarterly bills/written calculations, whereon the Landlord is demanding payment for items that were previously paid.

In their application, the Landlord is seeking an order of possession based on the Notice, and a monetary award "[t]o collect the Unpaid Rent and Utilities From Tenats [*sic*]".

Analysis

Issues 1 through 3:

(1) Should the Landlord's Notice be Cancelled?
(2) Did the Tenants file their application in time?
(3) 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 Branch.

SBM testified that they received the Notice on either May 4, 2025, or on May 5, 2025. In their application, which was filed on May 12, 2025, the Tenants stated that they received the Landlord's Notice on May 4, 2025. It is more likely than not that the Tenants discovered the Notice on May 4, 2025. However, whether the Notice was received on May 4, 2025, or on May 5, 2025, the Tenants filed their application on May 12, 2025, late, because the application was filed after the expiry of the five-day statutory timeframe from both May 4, 2025, and May 5, 2025.

The Tenants did not apply for an extension of the statutory timeframe, but I have considered the directors authority under section 66(1) of the *Act* to extend the time limit to dispute the Notice, for an "exceptional circumstance". As stated under Policy Guideline 36, "The word 'exceptional' means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit." Therefore, a reason without any force of persuasion is merely an excuse. A party seeking an extension for a "reason" must have some persuasive evidence to support the truthfulness of what is said.

SBM testified that they are dealing with health problems, car issues, and several other life challenges that made it difficult to respond in time. These "reasons" lacked particulars and backing by external evidence. For example, there is no evidence before me that SBM was in a hospital during the relevant timeframe. SBM did not provide such testimony, nor any records, to substantiate their statements during the hearing.

Further, as stated under section 66 of the *Act*, an arbitrator has no jurisdiction to extend the time within which a tenant may pay overdue rent unless one of the following has occurred: (1) the landlord specifically consents to the extension of time being considered and granted or (2) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an arbitrator's order.

The Landlord neither consented to an extension of time, nor was evidence provided by the Tenants that the withholding of rent was due to a belief that deduction was allowed for emergency repairs or under an arbitrator's order.

For the above reasons, I decline to extend the time limit to challenge the Notice under section 66 of the *Act*.

However, in case I am wrong, I provide the following alternative analysis. 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*.

SBM agreed that, at the time the Notice was served to the Tenants, the Tenants owed $5,600.00 to the Landlord in unpaid rent. SBM agreed that, to date, they have only made a partial payment towards the $5,600.00 arrear and that $2,600.00 of the $5,600.00 amount, for the months of April 2025, and May 2025, remains outstanding.

The Tenants did not provide evidence of any valid reasons under the *Act* to explain the withholding of rent. Financial hardship is not a valid reason under the *Act*, nor do I, as an arbitrator, have discretion to consider financial hardship as a valid reason to withhold rent.

For the above reasons, I find the Notice was given for a valid reason (unpaid rent without a valid reason); therefore, even if the correct analysis is to extend the time limit

under section 66 of the *Act* to provide the Tenants an opportunity to challenge the validity of the Notice, I would dismiss their application and uphold the Notice.

Eviction notices must abide by the form and content requirements of section 52 of the *Act*. I have reviewed the Notice, and I find the Notice is compliant. The Notice was signed and dated by the Landlord, it is in the approved form, it includes the Rental Unit's address, the ground for ending the tenancy and the effective date of the Notice.

For the above reasons, I find that the Notice is valid. I dismiss the Tenants' application to cancel the Notice, under sections 46 and 55 of the *Act*, without leave to reapply. 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*.

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

Policy Guideline 54 states that an arbitrator may consider various factors when determining the effective date of an order of possession, including the length of the tenancy, evidence provided showing that the tenant has pets or children, and any other evidence provided by the tenant showing that it would be unreasonable to vacate the property in seven days.

Orders of possession have generally been set for seven days after the order is served to the tenant, but as explained above, the arbitrator has discretion to consider various factors. At the hearing, the Landlord requested a seven-day order. In denying the Landlord's request, I have considered the following testimonies provided by SBM:

- SBM has children and a dog.
- SBM made a $3,000.00 payment to the Landlord one week prior to the hearing date (the Landlord agreed with this claim) and they testified that they will be making a further payment to the Landlord on the day of the hearing.
- They will undergo surgery within one to two weeks from the hearing date, they are suffering from pneumonia, and they are recovering from a recent accident.

At the hearing, the Tenant's voice was raspy, giving credence to their claim that they are suffering from a health issue. I found the Tenant forthcoming, non-argumentative, and credible. I accept their evidence that, in the circumstances, it is unreasonable to vacate the property in seven days. Therefore, I grant the Landlord an Order of Possession, effective at 1:00 PM on June 30, 2025.

Is the Landlord entitled to a Monetary Order for unpaid rent and/or utilities?

At the hearing, the parties agreed that the Tenants owe the Landlord the following amounts for unpaid rent:

- $2,600.00 for April 2025 and May 2025; and
- $3,500.00 for June 2025.

SBM did not cite a valid reason for their failure to pay rent, and I cannot identify a valid reason either. I find the Tenants contravened section 26 of the *Act* by failing to pay rent to the Landlord, without a valid reason. I find that the Landlord has established a claim for unpaid rent owing in the amount requested: $6,100.00.

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. Therefore, I find the Landlord is entitled to a monetary award for unpaid rent under section 67 of the *Act*, in the amount of $6,100.00.

However, I find the Landlord failed to establish a claim for unpaid utilities, in the amount of $4,528.84.

The difficulty in this case is that the parties agreed that the Tenants owe utilities to the Landlord. However, the amount of the arrear is in dispute. The Landlord did not provide copies of their utility bills and invoices to establish the amount claimed. The Tenants also failed to provide sufficient details to show why their calculations are correct.

I note that the Landlord, as the claimant, bears the strict burden to prove their claim, not the Tenants.

Dismissing the Landlord's claim, without leave to reapply would create an injustice as the parties were both in agreement that the Tenants owe the Landlord compensation. Alternatively, it is plausible in this case that the amount of the utility arrears is $2,392.44, because that is how much SBM testified they owe to the Landlord. However, it is unclear which period this amount is for and making an order with such extreme gaps in the evidentiary record would create downstream issues for both parties. Put simply, both parties provided evidence of different amounts without a clear understanding of the period these amounts would cover.

For the above reasons, I dismiss the Landlord's claim for compensation for unpaid utilities, with leave to reapply.

Neither party applied for the return of their filing fee. Consequently, I make no orders regarding costs.

Pursuant to section 72 of the *Act*, in partial satisfaction of the $6,100.00 award to the Landlord for unpaid rent, I authorize the Landlord to retain the Tenants' Deposits, plus interest, in the amount of $116.27, calculated as follows:

- $33.30 of interest calculated on the Tenants' $1,000.00 payment to the Landlord on November 24, 2023, to the date of this decision on June 6, 2025.

- $82.97 of interest calculated on the Tenants' $2,500.00 payment to the Landlord on November 26, 2023, to the date of this decision on June 6, 2025.

Conclusion

The Tenants' application to dispute the Notice is dismissed, without leave to reapply. The balance of the Tenants' application is dismissed with leave to reapply, for reasons outlined under the "Preliminary Matters" section of my decision.

The Landlord's application is partially granted.

I grant the Landlord an Order of Possession **effective by 1:00 PM on June 30, 2025, after service of the attached Order to the Tenants**. Should the Tenants or anyone on the premises fail to comply with the Order, the 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 **$2,483.73** under the following terms:

Monetary Issue	**Granted Amount**
Monetary award for unpaid rent under sections 55 and 67 of the *Act*, for unpaid rent up to June 5, 2025.	$6,100.00
Less: security deposit, pet deposit, and accrued interest, under section 72 of the *Act*.	-$3,616.27
Total Amount	**$2,483.73**

The Landlord's application for compensation for utility charges is dismissed, with 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