

DECISION

Introduction

This hearing dealt with the Tenant's 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlords 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 (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As both parties made their own applications regarding the same notice, attended the hearing and were prepared to proceed, I find that it is not necessary to determine the service of the Proceeding Packages.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

The Tenancy began on May 1, 2025, as per the Tenancy Agreement the monthly rent is \$2175.00. A security deposit in the amount of \$1087.50 was paid to the Landlord.

It is not disputed that the Tenant's rent payments are paid by preauthorized debit and that the May 1, 2025, payment was reversed due to banking issues. The Landlord advised that the bank notified them of this on May 5, 2025.

On May 5, 2025, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), which indicated that rent in the amount of \$2175.00 was outstanding for the month of May. The Notice was attached to the Tenant's door, and they report receiving it on May 8, 2025.

On May 13, 2025, the Tenant applied to dispute the Notice. On May 14, 2025, the Landlord applied for an Order of Possession and Monetary Order in relation to the Notice.

On May 15, 2025, the Tenant paid the Landlord \$1000.00, a receipt indicating that payment was accepted for use and occupancy only was provided to the Tenant. On June 6, 2025, the remainder of May 2025's rent was paid in full.

It is undisputed that at the time of the hearing the Tenant owed rent for June 2025, in the amount of \$2175.00.

Analysis

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a. pay the overdue rent, in which case the notice has no effect, or
 - b. dispute the notice by making an application for dispute resolution.
- (5) 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
 - a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b. must vacate the rental unit to which the notice relates by that date.

I find the tenant was served with the 10 Day Notice on May 8, 2025, in accordance with sections 89 and 90 of the Act. The Tenant filed an application to dispute the Notice on May 13, 2025. The Landlord does not take issue with the timeliness of the Tenant's Application for Dispute Resolution.

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

In this case, the tenant has acknowledged that rent for May was not paid in full until June 6, 2025. As stated in section 26, a tenant must pay rent when it is due under the tenancy agreement. The only exception is if a tenant has a predetermined right to deduct all or a portion of it. The tenant has not provided any evidence of any such right.

As the tenant has not paid the outstanding rent within 5 days of receiving the Notice as required by section 46(4) of the Act, I uphold the landlord's 10 Day Notice to End Tenancy issued on May 8, 2025. The Tenant's application to dismiss the Notice is dismissed, without leave to reapply.

Section 55 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

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Notice complies with section 52 of the Residential Tenancy Act. As stated above, I have upheld the Landlord's Notice. Therefore, I find the Landlord is entitled to an Order of Possession based on a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, in accordance with sections 46 and 55 of the Act.

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

At the onset of the hearing the Landlord advised that although rent for May 2025 had been paid, rent for June 2025, in the amount of \$2175.00, remained outstanding.

In accordance with the Residential Tenancy Rule of Procedure 7.12 (Amending an application at the hearing), an application can be amended at the hearing 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. 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.

In considering rule of procedure 7.12, and the fact that rent owing for June 2025 could be reasonably anticipated, I find it appropriate to amend the Landlord's application to include the current outstanding rent.

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.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for June 2025.

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 compensation for unpaid rent under section 67 of the Act, in the amount of \$2175.00.

Is the Landlord entitled to recover the filing fee for this 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.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant's application was unsuccessful, I find that they are not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenant's application is dismissed in full, without leave to reapply.

I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order on the Tenant(s)**. Should the Tenant(s) 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 **\$1187.50** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2175.00
authorization to retain all or a portion of the tenant's security deposit and pet deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$1087.50
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1187.50

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

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