

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

This hearing also dealt with the Landlord's crossed Application for Dispute Resolution under the *Residential Tenancy Act* (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

The Tenant V.D., Tenant M.D., Tenant S.D., attended the hearing for the Tenants.

The Landlord R.S., Landlord's Counsel G.D., Landlord's Articled Student S.P. attended the hearing for the Landlord.

Service of the Tenants' Notice of Dispute Resolution Proceeding and Evidence

The Landlord's Articled Student testified that they did not receive the Tenants' Notice of Dispute Resolution Proceeding and the Tenants' evidence.

The Tenant V.D. testified that they served the Landlord with the Notice of Dispute Resolution Proceeding and Evidence on August 5, 2025. V.D. acknowledged that they did not upload proof of service to the Residential Tenancy Branch.

Rule 3.5 states that the applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with Notice of Dispute Resolution Proceeding and all other associated documents. If the applicant fails to demonstrate, the director may adjourn, dismiss with or without leave.

In this case, I find that the Tenants have not sufficiently demonstrated that they served the Landlord with their Notice of Dispute Resolution Proceeding and evidence. Although Rule 3.5 permits me to dismiss the Tenants' application for lack of service, to me it was clear both parties are present and prepared to make submissions on the central issues in the application, specifically whether the Landlord's 10 Day Notice ought to be cancelled.

The Tenant's evidence contained a copy of the 10 Day Notice, and a dozen pictures of the rental unit. Under Rule 3.17, I exclude the Tenants' evidence from my consideration due to the lack of proper service.

Service of the Landlord's Notice of Dispute Resolution Proceeding

The Tenant V.D. testified that all three Tenants received a copy of the Landlord's Notice of Dispute Resolution Proceeding.

Service of the Evidence on the Landlord's Application

The Tenant V.D. testified that the Tenants received the Landlord's evidence. The Landlord's Articled Student S.P. submitted that the evidence was posted to the door of the rental unit on July 19, 2025, and also emailed to the Tenants on the same day.

Preliminary Matters

The Tenants' application initially only listed the Tenant V.D. and Tenant M.D. on the list of applicants and tenants. The Landlord's application listed Tenant V.D., Tenant M.D. and Tenant S.D. The Landlord's evidence submitted for their application included a copy of the written tenancy agreement, where it clearly states the presence of a third tenant, the Tenant S.D.

Under section 64(3) of the Act, I amend the Tenant's application by adding the third Tenant S.D. to the style of proceeding and also by adding S.D. to the list of Tenants.

Issues to be Decided

Should the 10 Day Notice be cancelled?

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?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this term tenancy began on June 1, 2024. The Landlord collected a security deposit in the amount of \$2625.00.00. The parties agreed that the parties agreed to reduce the monthly rent to \$3,000.00 effective November 2024 due to a flood in the basement. The rental unit consists of three separate suites in two buildings on the Landlord's property. The tenancy is ongoing.

The parties agreed that the Landlord served the 10 Day Notice by posting a copy on the door of the rental unit on July 19, 2025. Indeed, the Tenants' application provides the same date for when they received the Notice.

A copy of the 10 Day Notice is available in the Landlord's evidence, it is in the standard form, it contains the name of Tenant M.D., the name of Landlord, the address of the rental unit, the address of the Landlord. The effective date listed on the Notice is August 2, 2025, and it was signed and dated by the Landlord on July 19, 2025. The amount of unpaid rent listed on the Notice is \$3,000.00 due on July 1, 2025.

The Landlord's Articled Student S.P. submits a copy of the Landlord's 4-page written submissions and contends that there is a significant amount of unpaid rent, which the Tenant is obligated to pay under the written tenancy agreement. S.P. elaborated that the Tenants frequently paid past rent by email money transfer. S.P. stated that the total amount of unpaid rent is \$8,900.00, for incomplete rent payments for June, July and August of 2025. The Landlord submits copies of bank records for the email money transfers received. S.P. affirmed that since serving the 10 Day Notice, the Tenants have made a partial payment of \$100.00 for June 2025's rent. S.P. declared that the Tenants are obligated to pay the arrears or move out on the effective date of the 10 Day Notice.

The Landlord seeks a monetary order for unpaid rent and an order of possession.

The Tenant V.D. stated that the rental unit experience a fire this year in April 2025, and that the rental unit's available suites and living space was significantly decreased due to the fire. V.D. elaborated that the Tenants are of the position that since the living space has been decreased by the fire, that the rent should be decreased to reflect the change.

Analysis

Should the 10 Day Notice be cancelled?

Section 46(1) of the Act permits a landlord to serve a notice to end tenancy on a date after the day rent is due, with an effective date not earlier than 10 days after the Tenant receives the notice. Notices served under section 46(1) must be in the standard form and comply with section 52 of the Act for form and content. According to section 46(4) of the Act, A tenant who receives such a notice may pay the overdue rent within five days of receipt or file an application for dispute resolution. If a tenant who has received a notice served under section 46 of the Act fails to pay the overdue rent or file an application is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice and must vacate by that effective date.

In this case, the parties generally agreed that the 10 Day Notice was received on July 19, 2025. According to Residential Tenancy Branch records, the Tenants filed their application on July 24, 2025.

Did the Tenants file their application within 5 days of receiving the 10 Day Notice?

The Landlord's party contends that conclusive presumption under section 46(4) of the Act should be applied here.

Rules of Procedure definition of days provides guidance on the calculation of days and is applicable here. Regarding the word "days" it states:

c) In the calculation of time expressed as clear days, weeks, months, or years, or as "at least" or "not less than" a number of days, weeks, months, or years, the first and last days must be excluded.

d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

For our purposes, as section 46 of the Act does not specifically mention clear days, I will be using the calculation method in the latter example, specifically that the first day is excluded and the last day included. If we exclude July 19, 2025, from the five-day count, as the Rules of Procedure describe, I find that the Tenants filed their dispute within 5 days and within the required timeline. Therefore conclusive presumption is not applicable here.

Did the Landlord demonstrate that rent was due?

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

The onus is on the Landlord to show that they had grounds to serve their notice to end tenancy.

As for unpaid rent, based on the testimony of both parties, the evidence provided, and on a balance of probabilities, I find that the Landlord has sufficiently demonstrated that the Tenants failed to pay rent in full for the months of June, July and August of 2025.

I assign significant weight to the Landlord's bank statement evidence.

I accept both parties testimony to show that there was an agreement to deduct the rent to \$3,000.00, and that the parties operated based on this agreement since November 2024.

I accept the Landlord's breakdown of the current amount of arrears, the sum of \$8,900.00, including the partial payment of \$100.00 the Tenants paid to the Landlord.

While the Tenants make mention of the fire incident which diminished the ability of the Tenants to occupy the rental unit, I am not persuaded that the Tenants demonstrated that they had a lawful right to unilaterally deduct the rent, or to withhold rent. In the absence of a lawful right to deduct or withhold, I find that section 26 of the Act is clear, rent must be paid in full on the due date under the tenancy agreement.

The Tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply.

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

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.

Section 68(1) of the Act allow the director and their delegates to amend a notice to end tenancy if satisfied that (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances it is reasonable to amend the notice.

In this case, on review of the 10 Day Notice, it is clear to me that the names of Tenant V.D. and Tenant S.D. are not present on the first page of the Notice. However, I find it more likely than not that the Tenants were fully aware that the 10 Day Notice applied to all three Tenants at the rental unit, under this agreement. In my view, the omission of the Tenant V.D. and Tenant S.D.'s names on the 10 Day Notice did not materially affect the Tenants' ability to comprehend the contents of the 10 Day Notice in relation to unpaid rent and in relation to the tenancy agreement.

Under section 68(1) of the Act, I amend the Landlord's 10 Day Notice, by adding the full names of Tenant V.D. and Tenant S.D., to the first page of the 10 Day Notice, under the list of tenants.

Given this amendment, I find that the 10 Day Notice complies with section 52 of the Act for form and content.

I uphold the 10 Day Notice

Pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession, effective seven days after service.

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.

As mentioned above, the 10 Day Notice complies with section 52 of the Act.

While the amount of unpaid rent cited on the 10 Day Notice is the sum of \$3,000.00, based on the Landlord's bank statement evidence and the time the parties spent waiting for the hearing, I am persuaded that the total amount of arrears owing at the time of the hearing is the sum of \$8,900.00.

Under section 55 of the Act, I find that the Landlord is entitled to a Monetary Order, for unpaid rent.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I find that the Landlord is entitled to the recovery of the \$100.00 filing fee. Under section 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$100.00.

Conclusion

The Tenant's 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.

I grant an Order of Possession to the Landlord effective seven (7) days after service of the Order on the Tenant. 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 \$1,800.00 for unpaid rent, and I grant the Landlord in the amount of \$100.00 for the recovery of the filing fee.

Section 72 of the Act permit me to combine monetary awards into one single monetary order in suitable circumstances. In this case, I grant the Landlord a single Monetary Order in the amount of \$1,900.00.

The Landlord is provided with these Orders and the Tenant(s) must be served with **these Orders** 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.

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: August 28, 2025