

## **DECISION**

### **Introduction**

This hearing dealt with the Landlords' 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

This hearing also dealt with the Tenants' 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlords acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenants were served on September 16, 2025, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlords provided a copy of the outgoing e-mail showing the documents were included as an attachment to confirm this service and the Landlords provided a copy of the tenancy agreement where Tenant M.L. provided their email for service.

### **Service of Evidence**

Tenant M.L. argued they could not recall if they received the evidence. Then Tenant M.L. was asked to check their email box and advised they never received the Landlords' evidence. The Landlords provided a proof of service and copy of the email to establish

they served the Tenant M.L. by email. The Landlords advised Tenant M.L. provided their email address on the tenancy agreement. Tenant M.L. confirmed the email address was correct. During the hearing, the Landlord re-served their evidence on Tenant M.L. and Tenant M.L. was given time to review.

Given the proof of service, copy of the email, confirmation the email the evidence was sent to was correct and the fact that Tenant M.L. received the re-served email containing the evidence, I find that that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act. I find that it would be prejudicial to the Landlords to exclude evidence that was served in accordance with the Act. Additionally, Tenant M.L. was re-sent the evidence and given time to review the evidence. As such, I have considered the Landlords' evidence.

No evidence was received from the Tenants.

## **Preliminary Issues**

- Amendment

The Landlords filed an amendment seeking to include the unpaid rent for October 2025 and the Tenants confirmed receiving this amendment. As such, I amend the Landlords' application to seeking October 2025 unpaid rent.

- Severing

The following issues are dismissed with leave to reapply:

- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act

*Residential Tenancy Branch Rules of Procedure*, Rule 6.2, states 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.

Tenant M.L. argued the claims are all related because the Tenants are entitled to have full use and enjoyment of the rental unit and the Landlords are not completing repairs. The Tenants confirmed the repairs they are seeking are the front gate, flooding garage, cracked window, oven hutch fan and outdoor plug. The Landlords argued these are not emergency repairs and are not related to the unpaid rent.

I find that the request for repairs and the reduction of rent for repairs is not significantly related to the issue of whether the 10 Day Notice or Unpaid Rent is valid. 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.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

## **Issues to be Decided**

Should the Landlords' 10 Day Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Tenants entitled to more time to cancel the Landlord's 10 Day Notice?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

## **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 March 16, 2025, with a monthly rent of \$2,550.00, due on first day of the month, with a security deposit in the amount of \$1,275.00 and a pet damage deposit of \$1,275.00.

The Tenants applied to dispute a 10 Day Notice for Unpaid Rent, more time to dispute the notice, and the Landlords are seeking an Order of Possession and Monetary Order based on the 10 Day Notice for Unpaid Rent

The Landlords served a 10 Day Notice for Unpaid rent on September 2, 2025, for unpaid rent of \$2,550.00 (the 10 Day Notice). Tenant M.L. confirmed receiving this notice on September 2, 2025, but argued they needed more time as they have been in and out of the hospital dealing with health issues related to the Tenants' children and the Tenants themselves. Tenant M.L. could not recall the exact date they were in the hospital but argued it was around early September 2025, and they continued to be in and out of the hospital.

The Landlords advised they could not make an argument, and they have no knowledge about what was happening for the Tenants.

The Landlords' position is that the Tenants did not pay rent for September 2025, the 10 Day Notice was issued and then the Tenants continued to occupy the rental unit for October 2025 and did not pay rent. The Landlords advised the Tenants made a partial payment of \$900.00 on September 22, 2025, and the Landlords issued a receipt for use

and occupancy only. The Landlords provided a copy of the e-transfer and the receipt. The Landlord is seeking \$4,200.00 for unpaid rent for September 2025 and October 2025.

The Tenants' position is that they withheld rent because the Landlords would not make the required repairs. The Tenants argued they were out of options to get the repairs completed. Tenant M.L. could not confirm they received the receipt for "use and occupancy" but confirmed they paid \$900.00 on September 22, 2025.

## **Analysis**

### **Are the Tenants Entitled to More time to Cancel the Landlord's 10 Day Notice?**

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 find that the 10 Day Notice was duly served to the Tenants on September 2, 2025, and that the Tenants had until September 7, 2025, to dispute the 10 Day Notice or to pay the full amount of arrears.

The Tenants have applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

Tenant M.L. argued they were late disputing because they had been in and out of the hospital dealing with issues for the Tenants' children, themselves and the other tenant. The Tenants didn't provide any evidence to support this claim; however, the Landlords also did not make an argument against accepting the Tenants' request for more time to dispute the notice.

As such, I accept the argument of Tenant M.L, that they needed more time to dispute the 10 Day Notice because they were in and out of the hospital. I find that this was a circumstance outside the Tenants' control and impacted their ability to file a dispute. As such, I grant the Tenants an extension of time to file their dispute.

I find that the Landlords issued the 10 Day Notice for the valid reason of September 2025 unpaid rent. The Tenants argued they withheld September 2025 rent because the Landlords would not complete repairs. 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. As such, the Tenants were not entitled to withhold September 2025 rent because the Landlords were not making repairs.

I find that the Tenants made a partial payment on September 22, 2025; however, this was not full payment and was after the 5 day deadline. As such, this partial payment did not cancel the 10 Day Notice. The Landlords' evidence and testimony supports that a letter was given advising the Tenants the partial payment was for occupancy only.

Based on the above, I accept that the Tenants did not pay rent for September 2025 and that the 10 Day Notice was issued for the valid reason of unpaid rent.

For the above reasons, the Tenants' application for cancellation of the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

### **Are the Landlords 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 10 Day Notice complies with section 52 of the Act.

Therefore, I find that the Landlords entitled to an Order of Possession. I issue an Order of Possession effective **1:00 pm on November 15, 2025**. I grant this date because the Tenants have young children, but the Tenants have not paid rent for 2 months and the Tenants have only been occupying the rental unit for 7 months.

### **Are the Landlords 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 10 Day Notice complies with section 52 of the Act.

Based on the testimony of both sides I find that the Tenants did not pay rent for September 2025, the 10 Day Notice was issued, the Tenants made a partial payment of \$900.00 on September 22, 2025, but then the Tenants did not pay October 2025 rent.

Based on the above I award the Landlords unpaid rent for part of September 2025 and October 2025 of \$4,200.00. Under section 72 of the Act, I allow the Landlords to retain the Tenants' security and pet damage deposits of \$2,550.00, in partial satisfaction of the monetary award.

Therefore, I find the Landlords are entitled to a Monetary Order for unpaid rent in the amount of \$1,650.00.

## **Are the Landlords entitled to recover the filing fee for this application from the Tenants?**

The Tenants argued they filed their dispute first and the Landlords should not get the filing fee; however, as the Landlords were successful in their application, I find that the Landlords are 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 at 1:00 PM on November 15, 2025 after service of this Order 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 Landlords a Monetary Order in the amount of **\$1,750.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 67 of the Act	\$4,200.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$2,550.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,750.00</b>

The Landlords are 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) 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.

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Dated: October 24, 2025

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Residential Tenancy Branch