

DECISION

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- 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
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Preliminary Issue – Tenant's Other Claims

The Tenant filed two separate applications disputing the 1 Month Notice and 10 Day Notices to End Tenancy they had received. Additionally, the Tenant argued that they have been harassed by the Landlord, and requested additional orders for the Landlord to comply with the Act.

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The dispute resolution process is intended to be a fair, efficient, and effective process where a decision can be delivered in a timely manner. As the priority claim relates to two Notices to End Tenancy and the continuance or end of this tenancy, I exercise my discretion to dismiss the claims unrelated to the One Month and 10 Day Notices to End Tenancy with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Service of Applications and Admission of Evidence

While the Landlord confirmed receipt of the Tenant's applications, the Landlord testified that they did not receive the Tenant's evidence packages. The Tenant also disputes receiving the Landlord's evidentiary materials.

The Tenant confirmed that they were late in submitting and serving their evidentiary materials. The Tenant had uploaded their evidence on September 15, 2025 and on the

date of the hearing October 8, 2025. The Tenant testified that they suffered from autism, and would procrastinate. The Tenant also stated that they were waiting to receive the Landlord's evidence first.

The Landlord testified that due to their relationship with the Tenant, and the Canada Post strike, they had posted their package on the Tenant's mailbox. The Landlord had uploaded their evidence to the online dispute resolution portal on September 30, 2025 and October 3, 2025, October 5, 2025, October 6, and October 7, 2025.

The Landlord testified that they have already served another 10 Day Notice to End Tenancy for unpaid rent for October 2025 as that the Tenant has continued to refused to pay the rent, and confirmed that they did not want to further delay the matter and adjourn the hearing. The Landlord confirmed that they consented to the exclusion of their written evidence, and would provide sworn testimony in support of their case.

The Tenant confirmed that they did receive a second 10 Day Notice, which they had disputed as well.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

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.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the tenant to file and serve additional evidence was September 23, 2025.

In review of the evidentiary materials submitted by the Tenant, the original submissions include copies of the 1 Month Notice and 10 Day Notices, as well as photos and screenshots in support of the tenant's claims of harassment by the Landlord. The additional evidence submitted on the date of the hearing appear to be more photographs in relation to the Tenant's application for the Landlord to Comply with the Act.

I find that some of the Tenant's evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

As noted above, the Tenant's original submissions include copies of the Notices that were served on the Tenant. The other evidentiary materials mostly relate to the alleged harassment by the Landlord, and are not relevant to the dispute related to the Landlords' Notices to End Tenancy.

As I am satisfied that the original materials are documents that the Landlord is already in possession of, I do not find it would be prejudicial to admit the Tenant's original evidence. Accordingly, these materials would still be considered.

In consideration of the additional evidence that was uploaded on the date of the hearing, I note that an arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant. As the additional evidence pertains to issues that are not being heard, and are unrelated to the Landlord's Notices to End Tenancy, and as the Landlord did not receive or have an opportunity to review these materials prior to the scheduled hearing, I find it would be prejudicial to admit and consider the Tenant's late evidence. Accordingly, the Tenant's late evidence is excluded for the purposes of this hearing.

I had considered whether an adjournment was necessary or justified in order to allow the parties to re-serve each other with their evidentiary materials.

The criteria provided for granting an adjournment, under Rule 6.4 of the Residential Tenancy Branch Rules of Procedure are:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I informed parties that I would not be granting an adjournment of this matter. Although I am sympathetic about the fact that the Tenant is autistic, and may have been confused about the service requirements, I find that the Tenant was able to articulate themselves and communicate well during the hearing, and appeared to understand the process and requirements for a dispute resolution hearing. The Tenant was able to file their applications within the required timeline, and was able to articulate the reasons for why they did not feel the Notices were valid.

I find that it would be prejudicial to the Landlord to adjourn the hearing as they were ready to proceed, and the matters before me include issues of unpaid rent.

I also find that the Tenant's evidentiary materials relate to their claims of harassment, and are not particularly relevant to the issues raised in relation to the 1 Month and 10 Day Notices. I also note that the burden of proof falls on the Landlord to support that the Notices are valid. I do not find that an adjournment would likely result in a different finding or resolution.

For the above reasons, I find it would be prejudicial to the Landlord if this matter was delayed further. An adjournment was not granted, and the hearing proceeded in relation to the two Notices to End Tenancy.

Issue(s) to be Decided

Should the landlord's 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

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

This tenancy began on February 1, 2020. The Landlord provided the following history of the rent owed and paid as follows: monthly rent was originally set at \$1,280.00, payable on the first day of the month. The monthly rent increased in the following amounts:

January 2023: rent was increased to \$1,305.00

March 2024: rent was increased to \$1,350.00

The Landlord testified that they had attempted to increase the rent to \$1,390.00 as of May 2025, but the Tenant did not accept this increase. The Landlord testified that the Tenant had paid the requested amounts until February 2025 when they reduced their payments back to \$1,305.00 per month, and then back to \$1,280.00 per month as of June 2025. The Landlord testified that the Tenant decided to stop paying the monthly rent as of September 2025, and the Landlord subsequently issued the 10 Day Notice to End Tenancy for Unpaid Rent dated September 7, 2025.

The Landlord confirmed that they had never served the Tenants with any Notices of Rent Increases on the proper form, but argued that the Tenant was issued rent increases in the amounts allowed, and with consideration to the timelines required under the Act.

The Landlord also served the Tenant with a One Month Notice to End Tenancy for Cause on August 23, 2025 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant is repeatedly late paying rent.
3. The tenant has done repairs to the unit/site
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The Landlord testified that they had served the 1 Month Notice for many reasons, including the fact that the Tenant had changed the locks without the Landlord's knowledge or permission, and denying the Landlord access to inspections despite giving proper notice. The Landlord testified that the Tenant has also refused to address multiple bylaw violation letters issued by the strata, and repair damage to the bathroom sink. The Landlord also noted that the Tenant continues to pay their rent late, and recently not at all.

The Tenant testified that they were very angry at the Landlord and with the strata, and expressed frustration over the fact that the Landlord has not provided the Tenant with the requested documentation and tools they required to proceed with their grievances with the strata issues.

The Tenant testified that they felt harassed by the both the Landlord and the strata council, and argued that the Landlord had only recently brought up issues that were never raised before, such as the late payment of rent, and damage to the washroom sink.

The Tenant denies that they had changed the locks or that they had denied the Landlord reasonable access. The Tenant also took issue with the fact that the Landlord has failed to issue rent increases in a manner compliant with the Act.

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).

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.

The tenant confirmed receipt of the 10 Day Notice on September 10, 2025, which they had disputed within the five days required, on September 15, 2025. I must now consider whether the 10 Day Notice is valid.

I find it undisputed that the monthly rent was originally set at \$1,280.00 at the beginning of the tenancy, and was increased several times by the Landlord. I also find it undisputed that the Landlord has not served the Tenant with any Notice of Rent Increase forms.

Section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

Based on the evidence and testimony before me, I find that the Tenant was never served with a notice of rent increase in the approved form. Although the Tenant did pay the additional rent as requested by the Landlord, I find that the Landlord failed to follow the proper steps as set out in the legislation and policy guidelines.

As per RTB Policy Guideline 37B:

A tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase.

Agreements must:

- *be in writing,*
- *clearly set out the rent increase (for example, the percentage increase and the amount in dollars),*
- *clearly set out any conditions for agreeing to the rent increase,*
- *be signed by the tenant, and*
- *include the date that the agreement was signed by the tenant.*

A Notice of Rent Increase must be issued to the tenant three full months before the increase is to go into effect. The landlord should attach a copy of the written agreement signed by the tenant to the Notice of Rent Increase given to the tenant. A term in a tenancy agreement imposing an ongoing rent increase that is substantially higher than the annual increase amount without compelling circumstances to justify it may be considered unconscionable and/or unlawful.

I find that the landlord has failed to comply with the requirements of sections 42 and 43 of the Act. I find that all of the rent increases were imposed in contravention of the Act.

As per section 43(5) of the Act, “If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.” In this case, I find that the tenant had the right to deduct the additional rent paid that exceeded the original rent owed of \$1,280.00 per month.

I have calculated the following amounts based on the information provided by the Landlord, and which the Tenant did not dispute in the hearing:

January 2023-February 2024: \$1,305.00 paid per month ($\$25.00 \times 14$ months= $\$350.00$ overpaid).

March 2024-January 2025: \$1,350.00 paid per month ($\$70.00 \times 11$ months= $\$770.00$ overpaid)

February 2025-May 2025: \$1,305.00 paid per month ($\$25.00 \times 4$ months= $\$100.00$ overpaid).

June 2025-August 2025: \$1,280.00 paid per month (no overpayment of rent).

I find that the Tenant had the right to deduct **\$1,220.00** from the September 2025 rent under section 43(5) of the Act. As rent is set at \$1,280.00 per month, the Tenant was still \$60.00 in arrears. I find that the Tenant did not have the right to withhold the \$60.00, nor did they pay this amount within the five days required, after being served with the 10 Day Notice.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

I find that the 10 Day Notice complies with section 52 of the *Act*. I find that the Landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*, which states that “a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.” In this case, although the Tenant may have had the right to withhold some of the rent, the Tenant did not have the right to withhold the entire monthly rent for September, or stop paying the monthly rent as per the original tenancy agreement.

Accordingly, I dismiss the Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, without leave to reapply.

Section 55(1) of the *Act* reads as follows:

55 (1) 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

I find that the Landlord is entitled to an Order of Possession against the Tenant, pursuant to section 55 of the *Act*. As per RTB Policy Guideline #54, an Arbitrator has discretion to extend the effective date of an Order of Possession beyond the usual two days provided, and may consider various factors such as whether the rent has been paid, the length of the tenancy, and what would be considered reasonable provided the circumstances. As the tenant has not paid the arrears, and has not made any effort to do so since the 10 Day Notice was issued, I find that the Landlord is entitled to a two (2) day Order of Possession against the Tenant, pursuant to section 55 of the *Act*.

Based on my decision to dismiss the Tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the Landlord is entitled to a monetary order in the amount of \$60.00 for the rent that remains outstanding for September 2025. I note that this hearing strictly dealt with the Tenant's applications as the Landlord had not filed their own application at the time of the hearing despite the monetary orders requested. The Landlord may file their own application for any additional losses or money owed for this tenancy within the timelines set out in the *Act*.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the Landlord retain \$60.00 of the tenant's security deposit in satisfaction of the monetary award granted.

As the Landlord has been granted an Order of Possession pursuant to the 10 Day Notice, and the tenancy has come to an end, I make no findings on the merits of the One Month Notice.

Conclusion

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

I grant an Order of Possession to the Landlord **effective two 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.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the Landlord retain \$60.00 of the tenant's security deposit in satisfaction of the monetary award granted.

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: October 10, 2025

Residential Tenancy Branch