

DECISION

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed September 5, 2025 (the “10 Day Notice”);
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord, in its own application, seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after serving the 10 Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

S.K. and H.K. attended as the Landlord’s agents. I.D. also attended on behalf of the Landlord. I was told she is the building manager. The Tenants did not attend the hearing.

The parties affirmed to tell the truth during the hearing. I reminded the parties of Rule 6.11 of the Rules of Procedure, which prohibits them from recording the hearing themselves, and noted that the hearing was automatically recorded by the Residential Tenancy Branch.

Service of the Applications and Evidence

The Landlord’s representatives acknowledge receipt of the Tenants’ application. Accepting this, I find under s. 71(2) of the *Act* that the Tenants’ application was sufficiently served on the Landlord.

I.D. indicates that she personally delivered the Landlord’s application and evidence to the rental unit, handing the package to one of the Tenants on September 15, 2025. I have been provided with a proof of service form signed by F.A. whereby he acknowledged receipt of the Landlord’s application.

Accepting this, I find that the Landlord's application and evidence was personally served on one of the Tenants, while the other received notice by having a copy left with their co-tenant. This was served in accordance with ss. 89(2)(a), 89(2)(c), 88(a), and 88(e) of the *Act*. I find that the Landlord's application materials were received on September 15, 2025.

Since I accept the applications were served on the respective parties, the hearing proceeded in the Tenants absence as permitted by Rule 7.3 of the Rules of Procedure.

Preliminary Issue – Tenants' Claims

The Tenants seek \$847.50 in compensation, setting out that claim in their application as the return of the initial deposit they paid to the Landlord. Their claim for an order under s. 62(3) of the *Act* for the Landlord to comply is described by the Tenants as follows in the application:

As she has no ground declaring my action as tantamount to failure to rent she is deliberately willing to end the tenancy, then she will have to give me one month notice as enshrined in the signed lease otherwise she will have to refund me the deposit I paid. I see the unfair interference with my payment as a failure to accept my payment, which in turn amounts to repudiation of the lease contract.

The Tenants, as applicants, bear the onus of proving the claims for compensation and relief under s. 62(3) of the *Act*. Their application disputing the 10 Day Notice, however, places the onus on the respondent Landlord. I highlight this because the Tenants were not present to advance why they sought the relief for which they bear the onus of proving.

Dealing first with the claim for monetary compensation, S.K. confirmed receipt of a security deposit of \$847.50 under the tenancy agreement, a copy of which was put into evidence. The Landlord has the right under s. 17 of the *Act* to demand payment of a security deposit from the Tenants as part of their tenancy agreement. The amount paid, representing half a month's rent, complies with s. 19 of the *Act*. I am also told that the Tenants have not vacated the rental unit.

I find that the Tenants' monetary claim is premature. The Landlord has every right to hold the security deposit as security for any liability or obligation of the Tenants arising from the tenancy. The Tenants' right to the return of their security deposit, as per s. 38(1) of the *Act*, does not take effect until the tenancy is over and the Tenants providing the Landlord with their forwarding address. Given this, I dismiss this claim, with leave to reapply once the necessary conditions of s. 38(1) of the *Act* have been met.

Looking next to the claim under s. 62(3) of the *Act*, I find that the Tenants have failed to provide evidence and submissions on why this claim was filed. As such, I find that they have failed to prove they are entitled to any order under s. 62(3) of the *Act*. I dismiss this claim without leave to reapply.

The sole issue to be dealt with from the Tenants' application pertains to their disputing the 10 Day Notice, which if filed on time places the onus of proof on the respondent Landlord.

Issues to be Decided

- 1) Is the 10 Day Notice enforceable? If so, is the Landlord entitled to an order of possession? Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to the return of its filing fee?

Evidence and Analysis

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

General Background

S.K. confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on September 1, 2025.
- Rent of \$1,695.00 was due on the 1st day of each month.
- A security deposit of \$847.50 was paid by the Tenants.

As noted above, I have been given a copy of the written tenancy agreement confirming these details.

1) Is the 10 Day Notice enforceable? If so, is the Landlord entitled to an order of possession? Is the Landlord entitled to a monetary order for unpaid rent?

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

Under s. 46(4) of the *Act*, a tenant, upon receipt of a notice to end tenancy issued under s. 46 of the *Act*, has 5-days to either pay the overdue rent listed in the notice or file an application to dispute the notice. When a tenant files to dispute a notice to end tenancy issued under s. 46 of the *Act*, the onus for proving that the notice was properly issued rests with the respondent landlord.

Service of the 10 Day Notice and Form and Content

I.D. testified that she personally delivered the 10 Day Notice to the rental unit, handing it to one of the Tenants, on September 5, 2025. I have been given a signed and witnessed proof of service form confirming service of the 10 Day Notice as testified to by I.D. at the hearing.

Accepting the Landlord's evidence and the testimony from I.D., I find that the 10 Day Notice was served on the Tenant who personally received the notice in accordance with s. 88(a) of the *Act*, whereas their co-tenant received it in accordance with s. 88(e) of the *Act*. I find that the 10 Day Notice was received on September 5, 2025.

Review of the Tenants' application shows they filed it on September 9, 2025. Accordingly, I find that the filed to dispute the 10 Day Notice within the 5-day of its receipt as required under s. 46(4) of the *Act*.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*.

I have reviewed the 10 Day Notice, a copy of which was provided by the Tenants and the Landlord. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Submissions on Unpaid Rent

I am told by S.K. that the Tenants signed a pre-authorized withdrawal form, providing a void cheque, for payment of their tenancy. As explained to me, the withdrawals are submitted in a package to the Landlord's bank prior to their withdrawal. For September 1, 2025, which was labour day, I am told the automatic withdrawals had to be submitted to the Landlord's bank for processing the Friday before the long weekend, which was August 29, 2025.

I.D. testifies that she received a phone call from the Elizabeth Fry Society asking about N.A.'s tenancy. I am told by S.K. that, unknown to them, the Tenants had applied for a rent subsidy before their tenancy started. It was not until August 29, 2025, when I.D. received the phone call, did they learn that N.A. would receive a subsidy of \$300.00 for the months of September, October, and November 2025.

I.D. says she was told that it would take 10 days to process the cheque, which would be sent to the Landlord. S.K. says the first \$300.00 cheque was received on September 18, 2025.

S.K. says that after they were contacted by the Elizabeth Fry Society, they spoke with F.A. asking about it. They told him his withdrawal for September's rent had been submitted for processing and were assured by him that he had the funds in his account for September's rent. H.K. confirms that the Tenants' withdrawal, when it was processed by the Landlord's bank after the long weekend, was declined due to their being insufficient funds.

S.K. says that rent for September 2025 was paid by the Tenants by way of e-transfer sent by the Tenant on September 12, 2025. I am further told by her that the Tenants had failed to provide the password for the e-transfer, such that it could not be deposited until September 15, 2025, which is when the password was received.

Though the Tenants did not attend the hearing to explain their allegation that the Landlord refused to accept their rent, the Landlord's agents and I.D. all deny putting barriers in place for the Tenants to pay their rent. They say they did not refuse payment of cash, cheque, or e-transfer.

S.K. says that the Landlord is still seeking the order of possession, despite the payment of rent for September 2025, due to a loss of trust and what I am told were tense interactions between the Tenant and I.D..

I am further told that the Landlord came to an understanding with the Tenants that the \$300.00 payment from the Elizabeth Fry Society it received after rent for September was paid would be applied to rent for October 2025. S.K. says there are no arrears for October's rent accounting for the payments received from the Tenants and the two \$300.00 cheques received from Elizabeth Fry Society.

Findings

I accept the Landlord's undisputed evidence in its entirety. I have little difficulty finding that the Tenants failed to pay rent on September 1, 2025, which is when it was due under their tenancy agreement.

The Tenants provided a void cheque for the automatic withdrawal of funds from their account for the payment of rent. When the withdrawal for September's rent was processed, I accept it came back due to insufficient funds in the Tenants' account. I similarly accept that the Tenants, though they had received a rent subsidy for 3 months, had not informed the Landlord of this and that receipt of the first \$300.00 payment was received on or about September 18, 2025.

I also accept that the Tenants made payment of \$1,695.00 to the Landlord for September's rent. The Tenant, despite notifying the Landlord on September 12, 2025, did not provide a password for the e-transfer until September 15, 2025, which is when I accept the Landlord received it. Irrespective of the discrepancy between these 2 dates, the payment was sent on September 12, 2025, which is more than 5-days after the Tenants received the 10 Day Notice on September 5, 2025.

Finally, I find that the Landlord did not obstruct or otherwise refuse payment of rent from the Tenants. I accept no offer was made to pay by cash or cheque, that the automatic withdrawal came back with insufficient funds, and that rent was ultimately paid by e-transfer to accommodate the Tenants. The issue is not the Landlord obstructed rent payments. It is that the Tenants did not make the payment until September 12, 2025.

Though I accept the Tenants are not in arrears of their rent payment, I find that the Landlord has established that the Tenants' failed to pay rent when due under their tenancy agreement. I find that the Landlord was within its right to serve the 10 Day Notice under s. 46(1) of the *Act*. I similarly find that the Tenants failed to correct the issue within 5-days of receiving the 10 Day Notice on September 5, 2025, such that the 10 Day Notice is valid and enforceable.

Accordingly, I dismiss the Tenants' claim to cancel the 10 Day Notice, without leave to reapply.

Order of Possession

A landlord may request an order of possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

Since s. 55(1) of the *Act* is applicable here, I grant the Landlord an order of possession.

Policy Guideline 54 provides guidance on setting the effective date of an order of possession, suggesting 7 days is generally appropriate though it may be longer or shorter upon consideration of relevant factors, including the parties' submissions on the question.

In this case, the tenancy has only just started. I accept rent for September 2025 was ultimately paid and that rent for October 2025 was also paid. The Landlord's agents confirm that if an order of possession is to be granted, making it effective for October 31, 2025 would be appropriate.

I agree with the Landlord's submissions on this point. Since payment has been made for occupancy to October 31, 2025, I make the order of possession effective on that date at 1:00 PM.

Order for Unpaid Rent

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent.

I accept there are no arrears in rent for September and October 2025. Accordingly, grant no order for unpaid rent under s. 55(1.1) of the *Act*. I also dismiss the Landlord's claim under s. 67 of its application, without leave to reapply.

2) *Is the Landlord entitled to the return of its filing fee?*

I find that the Landlord was ultimately successful on its application, such that it is entitled to its filing fee. Accordingly, I order under s. 72(1) of the *Act* that the Tenants pay \$100.00 to the Landlord to compensate it for its filing fee.

Conclusion

The Tenant's application is dismissed in its entirety. Their claims under ss. 46 and 62(3) of the *Act* disputing the 10 Day Notice and seeking an order that the Landlord comply are dismissed, without leave to reapply. Their claim for their security deposit is dismissed, with leave to reapply.

I grant the Landlord an order of possession under s. 55(1) of the *Act*. The Tenants and any other occupants must provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on October 31, 2025**.

I dismiss the Landlord's claim for unpaid rent, without leave to reapply, as there are no arrears.

I grant the Landlord **\$100.00** for their filing fee, which shall be paid by the Tenants.

The Landlord must serve the order of possession and monetary order on the Tenants. The order of possession may be enforced at the BC Supreme Court. The monetary order may be enforced at the BC Provincial Court.

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 9, 2025

Residential Tenancy Branch