

DECISION

Introduction

The Tenants, in an application filed on September 17, 2025, seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy for Cause (the “One Month Notice”);
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- an order pursuant to ss. 44(1)(e) and 62 finding that the tenancy ended after the tenancy agreement was frustrated.

In another application, filed on October 2, 2025, the Tenants seek the following relief under the *Act*:

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed on October 2, 2025 (the “10 Day Notice”);
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- an order pursuant to ss. 44(1)(e) and 62 finding that the tenancy ended after the tenancy agreement was frustrated.

D.O. attended as the Tenant. J.B. attended as the Landlord.

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 Tenant advised that he served the Landlord with his applications but failed to serve him with his evidence as well. The Tenant said he was unfamiliar with the process and did not know that he was required to serve evidence as well.

The Landlord acknowledged receipt of the Tenants’ applications, also confirming that no evidence was served on him.

To be clear, Rule 3.1 of the Rules of Procedure requires applicants, in this case the Tenants, to serve their application and the evidence they have submitted when filing on each named respondent. Additional evidence may also be served by applicants under Rule 3.14 of the Rules of Procedure, with any additional evidence to be served such that it is received by the respondent at least 14 days prior to the hearing.

Dealing first with the Tenants' applications, I accept that these were served on the Landlord as he acknowledges their receipt. I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenants' applications.

With respect to the evidence, I find that the Tenants cannot reasonably assert that they did not know they had to also serve evidence on the Landlord. Information is provided to applicants when filing of their obligation to serve their application and evidence. Further, reminder emails are automatically sent by the Residential Tenancy Branch to parties with respect to any impending deadlines for serving evidence.

I find that the Tenants cannot avoid the consequence of failing to serve their evidence on the Landlord, which is its exclusion. It would be procedurally unfair to include and consider evidence for which the Landlord has received no notice as it would deprive him of his right to provide response. As such, I exclude the Tenants' documentary and video evidence, which will not be considered by me. I will, however, consider the testimony provided by the Tenant at the hearing.

The Landlord advised that he served the Tenant with his response evidence, which the Tenant acknowledges having received without issue. Accepting this, I find under s. 71(2) of the *Act* that the Tenants were sufficiently served with the Landlord's evidence. Since it was served, it is included and shall be considered.

Preliminary Issue – Claims made by the Tenants

As noted above, the Tenants seek orders ending their tenancy due to the tenancy agreement being frustrated. I canvassed this with the Tenant at the outset of the hearing, explaining that any order to this effect would mean his tenancy would be over and he would have to vacate the rental unit.

The Tenant explained that, when filing the applications, he was did not understand what was meant by "frustration", though learnt afterwards that a finding the tenancy agreement was frustrated would end the tenancy.

Based on this, I find that the Tenants seek an order that the tenancy agreement was frustrated in error, which resulted from their misunderstanding of the relief they were claiming. Accordingly, I dismiss without leave to reapply both claims seeking an order under ss. 44(1)(e) and 62 of the *Act* that the tenancy was frustrated.

Further, the Tenants seek orders under s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, or tenancy agreement. Rule 2.3 of the Rules of Procedure

requires claims in an application to be related to one another. Under Rule 6.2 of the Rules of Procedure, where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rules 2.3 and 6.2 of the Rules of Procedure are intended to ensure that matters are dealt with in a timely and efficient manner. These rules also enable parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

The primary issues in dispute are whether the 2 notices to end tenancy served by the Landlord are enforceable. Review of the Tenants' claims under s. 62 of the *Act* either show that they, in effect, replicate their claims disputing the notices to end tenancy or deal with complaints on alleged breach their right to quiet enjoyment protected by s. 28 of the *Act*. In other words, the relief is either duplicative to the main relief sought in both applications or relate to issues that are unrelated to whether the notices to end tenancy are enforceable.

Considering this, I dismiss both claims under s. 62 of the *Act* severing them from the applications by application of Rule 6.2 of the Rules of Procedure. Insofar as the relief sought pertains to alleged breaches of s. 28 of the *Act*, I will dismiss these claims with leave to reapply should the tenancy continue. However, if the tenancy ends, any orders related to the Landlord's compliance with s. 28 of the *Act* would no longer be relevant. If the tenancy ultimately ends, the claims severed from this application will be dismissed without leave to reapply.

The hearing proceeded strictly on whether the One Month Notice or the 10 Day Notice are enforceable.

Issues to be Decided

- 1) Is the 10 Day Notice enforceable? If so, is the Landlord entitled to an order of possession and order for unpaid rent?
- 2) Is the One Month Notice enforceable? If so, is the Landlord entitled to an order of possession?

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

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on March 15, 2025.
- Rent of \$1,800.00 is due on the 1st day of each month.

- A security deposit of \$900.00 was paid by the Tenants.

The Landlord has provided me with a partial copy of the written tenancy agreement, though it confirm the details as outlined above.

1) *Is the 10 Day Notice enforceable? If so, is the Landlord entitled to an order of possession and 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

The Landlord advised that he personally served the 10 Day Notice on the Tenant on October 2, 2025. The Tenant confirmed receiving the notice was received by him as testified to by the Landlord.

Accepting this, I find that the 10 Day Notice was served on both tenants in accordance with ss. 88(a) and 88(e) of the *Act*, with the Tenant taking personal receipt and his co-tenant being served when a copy was left with the Tenant. I find that the notice was received on October 2, 2025, as confirmed by the parties in their testimony.

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 provided to me by 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The effective date, listed as October 11, 2025, is incorrect since the effective date had to be at least 10 days after the 10 Day Notice was received. Despite this, s. 53(1) of the *Act* operates to automatically correct the effective date of a notice to end tenancy when it is incorrect. Though the effective date of the 10 Day Notice is incorrect, I find that the issue is immaterial given that s. 53(1) of the *Act* automatically corrects the effective date to October 12, 2025.

Submissions

The Landlord testified that the Tenants failed to pay rent on October 1, 2025, which prompted him to serve the 10 Day Notice. I am told by him that before handing the

Tenant the 10 Day Notice on October 2, 2025, he asked whether he had money for rent. The Landlord reports that the Tenant told him he did not have the funds to pay rent, such that he then handed the Tenant the 10 Day Notice.

The Landlord says that the Tenant made a partial payment on rent, paying \$900.00 on October 16, 2025.

The Tenant confirms that rent was not paid on October 1, 2025 and that he made a partial payment of \$900.00 on October 16, 2025, as testified to by the Landlord at the hearing. The Tenant says he made the partial payment with most of the funds he had at his disposal at the time.

Findings

I have little difficulty finding that the Landlord has established that the Tenants failed to pay rent when due on October 1, 2025. This point is admitted by the Tenant. It is further admitted by the Tenant that he is still in arrears in his rent payments for October 2025, making a partial payment of \$900.00 on October 16, 2025.

The testimony from the parties indicates that rent was unpaid due Tenants' limited funds. To be clear, s. 26(1) of the *Act* imposes an obligation on tenants to pay rent when it is due irrespective of whether their landlord complies with the *Act*, Regulations, or the tenancy agreement. Funds may be withheld from rent owed only under very limited circumstances, none of which are applicable here since a tenant's impecuniosity is not a relevant consideration.

I find that the Landlord has established that the 10 Day Notice was issued in accordance with s. 46(1) of the *Act* and that the Tenants are still in arrears in their rent payments. Accordingly, I dismiss the Tenants' claim to cancel the 10 Day Notice, without leave to reapply.

Order of Possession

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. As that is the case here, I grant the Landlord an order of possession.

Policy Guideline 54 provides guidance on setting the effective date of the order of possession, suggesting 7 days is generally appropriate though factors may weigh toward a longer or shorter period.

In this case, I accept that rent has not been paid for the month of October 2025 and that, given what I have been told, the Tenants likely have no reasonable prospect of paying rent for November 2025. I further accept that this is a shorter tenancy, such that there is no reason to suggest the Tenants would require more time to vacate the rental unit. However, I am also told that the Tenants have a 2 year old child, which would support giving the Tenants more time to move-out.

Weighing this information, I grant the Landlord an order of possession effective at **1:00 PM on October 31, 2025**. This will give the Tenants some extra time to find alternate accommodations considering their young child while balancing the financial prejudice to the Landlord due to the Tenants inability to pay funds for occupancy in November 2025.

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.

Given that it is undisputed that \$900.00 was paid toward rent for October 2025, I find that total arrears are \$900.00 and grant the Landlord a monetary order in that amount.

2) *Is the One Month Notice enforceable? If so, is the Landlord entitled to an order of possession?*

Under s. 47(1) of the *Act*, a landlord may end a tenancy for cause by giving at least one month's notice to the tenant.

Upon receipt of a notice to end tenancy issued under s. 47(1) of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the respondent landlord.

Though the question of the enforceability of the One Month Notice is moot since the tenancy will be ending based on the 10 Day Notice, I wish to provide brief comment that I would not have enforced the One Month Notice based on the evidence on record.

First, I have not been given a copy of the One Month Notice by the Landlord in his evidence. The Tenants' evidence, though excluded, did not contain a full copy of the One Month Notice either. As noted above, notices to end tenancy must comply with s. 52 of the *Act*. In the case of a notice to end tenancy served by a landlord, it must be in the approved form as per s. 52(e) of the *Act*. Without the full notice on record, I could not enforce it.

Second, I am told by the Landlord that the issue was one of smoking at the property, pointing to a clause within the tenancy agreement, which is a handwritten note, that indicates that there would be "no pets/no smoking". The Tenant confirms that smoking has occurred at the property, though not inside the rental unit. He says that tenancy agreement was unclear on whether smoking was permitted at the property writ large and that he received no warning regarding his conduct prior to being served with the One Month Notice.

As discussed in *Senft v Society for Christian Care of the Elderly*, 2022 BSC 744 at para 38, the context and purpose of s. 47 of the *Act* must be considered when determining whether a notice to end tenancy for cause was properly issued. This means

consideration of the protective purpose of the *Act* when determining whether conduct warrants eviction.

In this case, I find that the tenancy agreement is, on its face, ambiguous on whether it prohibited smoking in the rental unit or at the property writ large. I have been provided with no evidence to clearly support the Tenants have smoked inside their rental unit, though they admit to smoking outside the rental unit. Considering this, I find that the Landlord would have had to give written warning to the Tenants before serving the One Month Notice, particularly since the tenancy agreement is ambiguous on what conduct was being prohibited.

The written warning ought to have highlighted the problematic conduct, indicate it was viewed as a breach of the tenancy agreement, and that any further conduct would result in service of a notice to end tenancy for cause. I accept that did not occur until the One Month Notice was served.

As a result of this, I would not enforce the One Month Notice.

Conclusion

On the Tenants' first application, I dismiss the severed relief without leave to reapply since the tenancy is over. Though moot given my findings on the 10 Day Notice, I would grant them their relief cancelling the One Month Notice.

I dismiss the relief sought in the Tenants' second application, where they dispute the 10 Day Notice, in its entirety, without leave to reapply.

I grant the Landlord an order of possession under s. 55(1) of the *Act* based on the 10 Day Notice. The Tenants, and any other occupants, shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on October 31, 2025**.

I grant the Landlord an order for unpaid rent under s. 55(1.1) of the *Act*. I order that the Tenants pay **\$900.00** to the Landlord.

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 and the monetary order 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 21, 2025

Residential Tenancy Branch