

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) by the parties:

The Tenants applied for:

- cancellation of the Landlords' Three Month Notice to End Tenancy for Landlord's Use of Property (Three Month Notice) under section 49 of the Act
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

The Landlords applied 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 and/or Utilities under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Tenant M.V. attending the hearing for the Tenants.

Representative for the Landlords, M.P. attended the hearing for the Landlords.

Service of Notice of Dispute Resolution Proceeding and Evidence (Proceeding Packages)

The Tenants' application

Tenant M.V. stated that she served the Landlords the Proceeding Packages by registered mails on November 13, 2025 and provided the Canada Post tracking numbers to confirm this service. The tracking numbers are recorded on the cover page of this Decision.

I accept the Tenants sent the proceeding packages via registered mails on November 13, 2025. I find that this was done in accordance with section 89(1) of the Act.

Section 90(a) of the Act states that a record given or served by way of registered mail is deemed to be received, on the fifth day after it is mailed, unless earlier received.

Based on Tenant M.V.'s testimony and the evidence, I find the proceeding packages are deemed received on November 18, 2025, the fifth day after the registered mailing, based on section 90(a) of the Act.

The Landlords' application

Tenant M.V. stated that the Tenants were not served with the Landlords' proceeding packages.

M.P. stated that the Landlords' proceeding packages were sent to the Tenants via registered mails three days before the scheduled hearing and that they were still in transit.

Based on the testimony of the parties, I find the Tenants were not served with the Landlords' proceeding packages.

Preliminary Matters

Dismissal of the Landlords' Application

Policy Guideline #12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

I find the Tenants were not served with the Landlords' application for dispute resolution.

Accordingly, I dismiss the Landlords' application in its entirety, with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Severance

The following issue listed in the Tenants' application is dismissed with leave to reapply:

- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 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.

Aside from the application to cancel the Three Month Notice to End Tenancy, I am exercising my discretion to dismiss this issue identified in the Tenants' application with leave to reapply as this matter is not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

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

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

Background and Evidence

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

Both parties agreed that this tenancy began on June 30, 2023, with a monthly rent of \$4,500.00, due on first day of the month, with a security deposit of \$2,150.00.

Tenant M.V. testified that the Tenants received a Three Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on September 7, 2025. In it, it indicates the reason for ending the tenancy is that the rental unit will be occupied by the landlord or the landlord's close family, with an effective date of December 31, 2025.

The Tenants applied to dispute the Notice on November 10, 2025.

Tenant M.V. stated that she did not apply to dispute the Notice within 21 days of receiving it because upon receipt of the Notice, she had various discussions with the Landlords and that the Landlords had never given her the impression that they would enforce the Notice. She said that she initially did not feel the need to dispute the Notice. However, when the Tenants were harassed and threatened by the Landlords' relative, she contacted the RTB and was informed by the RTB staff that she could apply to request for more time to dispute the Notice. She further said that she was overwhelmed with the other two tenants who have serious health issues.

M.P. stated that the circumstances Tenant M.V. described cannot be considered exceptional as the health issues of the other two tenants have existed since the beginning of the tenancy.

Analysis

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

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

Tenant M.V. confirmed that the Tenants received the Notice on September 7, 2025.

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 21 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the Tenants disputed the Notice on November 10, 2025, and since I have found that the Notice was served to the Tenants on September 7, 2025, I find that the Tenants have not applied to dispute the Notice within the time frame allowed by section 49 of the Act.

If a tenant who has received a notice under section 49 does not make an application for dispute resolution within the time frame allowed by section 49 of the Act, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Tenant M.V. stated that the Tenants wished to request more time to dispute the Notice.

Section 66(1) of the Act states that an arbitrator may extend a time limit established by the Act, but only in **exceptional circumstances**. Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Policy Guideline #36 also sets out that the reason for failing to comply must be **strong** and **compelling**, for example, the party was hospitalized at all material times.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit

- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenants have failed to sufficiently argue that their reasons have met the threshold required under section 66 of the Act and Policy Guideline #36. In reaching this conclusion, I note that the Tenants applied to dispute the Notice more than two months after receiving it. I find the reasons given by Tenant C.M. are neither strong nor compelling. I do not find the Tenants have proved on a balance of probabilities that they had a bona fide intent to comply with the relevant time limit or had taken reasonable and appropriate steps to comply with the relevant time limit. I further find the Tenants have provided insufficient evidence to establish that the failure to meet the relevant time limit was caused by the Landlords' conduct.

For the above reasons, the Tenants' application for cancellation of the Three Month Notice under section 49 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.

The Three Month Notice was generated by RTB and complies with section 52 of the Act.

Therefore, I find that the Landlords are entitled to an Order of Possession based on a Three Month Notice under sections 49 and 55 of the Act.

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

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for their application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on December 31, 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.

The Landlords' application 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 is dismissed, with leave to reapply.

The Landlords' application for a Monetary Order for Unpaid Rent and/or Utilities under section 67 of the Act is dismissed, with leave to reapply.

As the Landlords were not successful in their application, the Landlords' application for authorization to recover the filing fee for their application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

The Tenants' application for cancellation of the Landlords' Three Month Notice to End Tenancy for Landlord's Use of Property (Three Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed with leave to reapply.

The Tenants' application for authorization to recover the filing fee for their application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

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: December 15, 2025

Residential Tenancy Branch