

## **DECISION**

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Tenants' application for:

- 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the Landlord 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 Landlord under section 72 of the Act

And the Landlord's application for:

- an order of possession based on a 10 Day Notice
- a monetary order for unpaid rent and utilities
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Those listed on the cover page of this decision attended the reconvened hearing and were affirmed.

The original hearing began on November 14, 2025, and an interim decision was issued on the same date, which should be read in conjunction with this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

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

Issues related to the legibility of evidence arose at the hearing of November 14, 2025, and orders were made for service of documents.

At the reconvened hearing of December 16, 2025, both parties confirmed service and review of documentary evidence from the other party. As such, I find both parties were served with the required materials in accordance with the Act.

## **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession? Is the Landlord entitled to a monetary order for unpaid rent and utilities?

Are the Tenants entitled to a monetary order for monetary loss or other money owed?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to recover the cost of the filing fee?

Is the Landlord entitled to recover the cost of the filing fee?

## **Background and Evidence**

I have reviewed evidence, including 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 July 1, 2021.

Tenant TD (the Tenant) testified that monthly rent of \$1,470.00, to include rent and utilities, was due on the first day of each month. Family Member TV (TV) for the Landlord testified that monthly rent of \$1,600.00 was due on the first day of each month, and that the Tenants were responsible for monthly utility charges in the amount of \$150.00. TV referenced a previous Residential Tenancy Branch (RTB) decision (Previous Decision), which confirmed monthly rent of \$1,600.00. The Previous Decision is noted on the cover page of this decision.

Both parties agreed that the Tenants paid a security deposit in the amount of \$750.00.

On September 6, 2025, the Landlord served by attaching a copy to the Tenants' door the 10 Day Notice dated September 5, 2025 (10 Day Notice 1), with the effective date of September 20, 2025. The 10 Day Notice 1 listed unpaid rent of \$1,600.00 due on September 1, 2025.

On October 6, 2025, the Landlord served by attaching a copy to the Tenants' door the 10 Day Notice dated October 6, 2025 (10 Day Notice 2), with the effective date of October 20, 2025. The 10 Day Notice 2 listed unpaid utilities in the amount of \$312.56, following written demand issued on September 6, 2025.

TV testified to monthly rent and utilities as follows:

- July 1, 2021 – the tenancy started at monthly rent of \$1,500.00, with utilities included
- July 1, 2022 – parties negotiated and accepted lowered monthly rent of \$1,470.00, plus \$150.00 for monthly utility charges. In September 2022, the parties signed an updated Tenancy Agreement (TA 2) to confirm this agreement, which shows monthly rent of \$1,470.00 and a fixed amount of \$150.00 per month for utilities. TV stated that the Tenants paid the \$150.00 utility amount for an extended period, demonstrating acceptance of the term
- January 1, 2024 – monthly rent was increased to \$1,552.50, plus \$150.00 for monthly utility charges
- January 1, 2025 – monthly rent was increased to \$1,600.00, plus \$150.00 for monthly utility charges

TV stated that the Tenants paid partial rent of \$1,480.00 for September 2025, and the Tenants failed to pay the amount of \$120.00.

TV testified that the Tenants paid partial rent of \$1,470.00 for October 2025, November 2025 and December 2025, and the Tenants failed to pay the amount of \$390.00 (\$130.00 per month x 3 months).

TV stated that the Tenants owed rental arrears in the amount of \$510.00 as of the date of the hearing.

With respect to unpaid utilities, TV testified that utilities were consistently charged at a fixed \$150.00 per month from July 2022 onward, with payments initially made by e-transfer. TV stated that utility payments became partial and irregular beginning in 2024 and that as of late 2025 the Tenants had stopped paying utilities entirely. The last utility payment of \$150.00 was made on October 1, 2025.

TV testified that the Tenants acknowledged owing \$312.56 in utilities in an email dated June 29, 2025, and agreed to pay that amount in installments but failed to do so. As a result, the Landlord issued a written demand dated September 6, 2025, followed by a 10-Day Notice to End Tenancy for unpaid utilities dated October 6, 2025.

The Tenant agreed that while the initial rent was \$1,500.00, TA 2 effective July 1, 2022, and signed in September 2022, set the lawful rent at \$1,470.00 per month. The Tenant testified that TA 2 represents the only valid and enforceable tenancy agreement governing the tenancy and that no enforceable term requiring payment of a separate fixed utility amount exists. The Tenant emphasized that the box relating to a \$150.00 fixed utility charge on the TA 2 was left unchecked, and that the accompanying addendum refers only to rent and not utilities. On this basis, the Tenants maintain that the rent of \$1,470.00 included utilities.

The Tenant acknowledged that they paid amounts greater than \$1,470.00 for significant periods after September 2022; however, they testified that these payments were made under pressure and out of fear of eviction rather than as acknowledgment of a legal obligation. The Tenant stated that the Landlord repeatedly demanded additional monies for utilities and other items without issuing RTB prescribed rent increase notices, and that they paid these additional sums to avoid conflict and potential loss of their housing. The Tenant provided testimony that such payments varied month to month and were inconsistent in amount, which they argue supports their position that the payments were not pursuant to a clear, agreed-upon contractual term.

The Tenants testified that they stopped paying the additional amounts once disputes escalated and after becoming aware of their rights under the Act. The Tenant stated that from late 2025 onward, they paid what they believe to be the lawful rent of \$1,470.00.

In relation to the Landlord's claim for unpaid utilities, the Tenant denied owing any such amount, maintaining that utilities were included in the rent and that any prior utility payments were overpayments. The Tenants seek reimbursement of approximately \$6,037.03, representing alleged rent and utility overpayments made since July 2022.

The Tenant further testified that the Landlord engaged in repeated conduct they characterized as harassment and a breach of quiet enjoyment, including frequent postings of notices on their door, repeated demands for payment, and inspection requests. The Tenant described feeling intimidated during inspections and asserted that some Landlord attendances were unannounced or excessive.

TV responded that the Landlord provided proper notice of entry for inspections, and that the Tenants denied access in October 2025. TV stated that notices of entry are posted on the door of the rental unit.

TV clarified that the Landlord's claim of \$432.56, is for unpaid rent of \$120.00 due on September 1, 2025, and unpaid utilities in the amount of \$312.56, and not an additional claim of \$432.56.

## **Analysis**

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following.

**Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession? Is the Landlord entitled to a monetary order for unpaid rent and utilities?**

Section 46 of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the

tenant is given a written demand for payment for them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Further, 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 RTB. 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).

I find that the 10 Day Notice 2 was duly served to the Tenants on October 6, 2025, and that the Tenants had until October 11, 2025, to dispute the 10 Day Notice 2 or to pay the full amount of the arrears. The Tenants filed their dispute on October 11, 2025, within the five-day period as per the Act.

Based on the totality of evidence before me, I find the Tenants failed to pay utilities in the amount of \$312.56, despite their agreement to do so and the written demand served to them on September 6, 2025. The evidence of email communication from the Tenant shows their acknowledgement of monthly utility payments in the amount of \$150.00, and a balance of \$312.56 as of August 1, 2025.

Further, I find the Tenants were aware of and agreed to this obligation as they paid this amount since July 1, 2022. I do not accept the Tenant's argument that they did not agree given they did not initial TA 2, as noted above the Tenants' conduct of regular payments from 2022 to 2024, and further payments in 2025, and their acknowledgement of unpaid utilities in the amount of \$312.56 shows otherwise. I find that the Tenants accepted the payment of utilities separate from rent for that period.

In this case, I find the Landlord had reason to give to the Tenant the 10 Day Notice 2. I dismiss the Tenants' application for cancellation of the Landlord's 10 Day Notice 2 under section 46 of the Act.

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 the 10 Day Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

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 in this case I find the amount of unpaid utilities that were treated as unpaid 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. As noted earlier in this decision, I find the 10 Day Notice 2 complies with section 52 of the Act.

I find the Landlord is entitled to a Monetary Order for unpaid rent and utilities in the amount of \$822.56 as follows:

- \$312.56 for unpaid utilities
- \$510.00, for unpaid rent (\$120.00 due on September 1, 2025, \$130.00 due on October 1, 2025, to December 1, 2025, inclusive, for the total amount of \$390.00).

The evidence before me supports monthly rent of \$1,600.00, effective January 1, 2025, after the Landlord issued a rent increase notice. As per the Previous Decision, on September 19, 2025, the parties testified to the monthly rent of \$1,600.00 and this was clarified by the arbitrator to be the monthly rent (\$1,600.00) for this tenancy. The clarification decision is dated October 6, 2025.

Based on the above, I make no different finding on the amount of the monthly rent. The lawful rent for this tenancy is \$1,600.00.

Lastly, I make no finding on the 10 Day Notice 1, as I have already ended this tenancy and considered unpaid rent, to include utilities, based on the 10 Day Notice 2.

### **Is the Landlord entitled to recover the cost of the filing fee?**

The tenancy ended and the order of possession and unpaid rent were granted as part of the Tenant's application for dispute resolution.

Further, as noted above in this decision, I did not consider the merits of the Landlord's application and the validity of the 10 Day Notice 1. As such, I decline to award the filing fee.

### **Are the Tenants entitled to a monetary order for monetary loss or other money owed?**

#### Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, second, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, third, verification of the actual loss or damage claimed and fourth, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Tenants did not establish their claim for a monetary order for monetary loss or other money owed. The Tenant's calculation presented included irregular payments, variable amounts, and payments made during periods where the Tenants had not yet formally disputed the rent increases. During the hearing, I find the Tenant did not prove overpayment, or the exact amount of such payment. The Tenant made arguments stating "on average" we paid \$150.00 extra each month.

In this case I find the Tenants paid amounts without dispute for a prolonged period, and the Act does not automatically entitle them to retroactive recovery absent clear evidence of coercion or illegality. While the Tenant testified that the payments were made under pressure, I find the evidence before me does not substantiate this argument.

Accordingly, I find that the Tenants have not proven the full monetary claim on a balance of probabilities, and I decline to award the requested amount. The Tenants' application for a monetary order is dismissed in full, without leave to reapply.

**Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?**

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Although the Tenant argued harassment, excessive notices and unreasonable inspections by the Landlord, I find the submissions and evidence before me did not prove the Landlord's non-compliance with the Act, regulations or tenancy agreement.

The Landlord is at liberty to issue notices to end tenancy and the Tenants are in the position to dispute such notices.

For entry of the rental unit, the Landlord can issue notice to enter in compliance with section 29 of the Act. I find the Tenant's submissions and evidence do not prove a breach or violation by the Landlord.

As such, the Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is dismissed in full, without leave to reapply.

**Are the Tenants entitled to recover the cost of the filing fee?**

As the Tenants were not successful in their application, I decline their application for the \$100.00 filing fee.

## Conclusion

Based on the evidence before me, and the personal circumstances of the Tenants, and RTB Policy Guideline 54, I grant an Order of Possession to the Landlord **effective on January 31, 2026, 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 Landlord a Monetary Order in the amount of **\$822.56** for unpaid rent and utilities under section 55 of the Act.

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** to be enforceable. 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).

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: January 9, 2026

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Residential Tenancy Branch