

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) 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
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

And the Landlord's Application for Dispute Resolution under the Act 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 under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants served their Notice of Dispute Resolution to the Landlord by registered mail, although they did not provide the tracking number. The Landlord confirmed receiving the Tenant's notice on December 15, 2025. I find that the Tenants served their Notice in accordance with Section 89 of the Act.

The Landlord testified that they served their Notice of Dispute Resolution to the Tenants in person on December 13, 2025, with a witness present. The Tenants confirmed they received the Notice and agreed with the Landlord's date of service. I find that the Landlord served the Notice in accordance with Section 89 of the Act.

Service of Evidence

The Landlord testified that they served evidence to the Tenants on December 19, 2025. The Tenants confirmed that they received the evidence on that date. As neither party was clear on the method of service, I find the Landlord's evidence sufficiently served under Section 71 of the Act.

The Tenants testified that they did not submit or serve evidence prior to the hearing and intended to make submissions orally under oath during the hearing.

Preliminary Matters

At the outset of the hearing the Landlord sought to increase their monetary claim from \$2,200.00 to \$4,000.00 to reflect the Tenant's failure to pay \$1,800.00 in monthly rent for January 2026, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

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?

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

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence from both applications, and both parties' testimony, but will refer only to what I find relevant for my decision.

The Landlord presented evidence, a tenancy agreement, showing that this tenancy began on May 1, 2016, with a monthly rent of \$1,400.00, due on the first day of the month. There were three subsequent rent increases bringing current rent to \$1,800.00, and a security deposit in the amount of \$700.00 which the Landlord continues to hold. The Tenant confirms these details but disputes the validity of the rent increases.

The Landlord stated that October 2025 rent was not paid in full when due, and that the Tenants paid \$2000 in November, which covered October's owed rent but left \$400 unpaid for November's rent. The Tenants also did not pay December or January's rent. The Landlord testified that the \$400 from November and the full December and January rent remained unpaid at the time of the hearing, the full amount of the arrears is \$3,200.00. The Tenants confirmed this testimony. The Landlord testified that upon

reviewing her records in preparation for the hearing, March 2025 was also unpaid, but she had not noticed at the time because the parties had changed from bi-monthly payments to monthly. The Tenants dispute that March 2025 was unpaid.

The Landlord testified that they had increased rent with the Tenant's agreement three times over the tenancy; in July 2022, October 2023, and in May 2025. The Landlord submitted records of correspondence between the parties from April 2022 and August 2023 to confirm the Tenants agreement with those rent increases.

The correspondence between the parties in 2023 directly acknowledged that the increase the Landlord was asking for was over the allowed limit for that year. The Landlord's message explained that due to the increased costs to maintain and insure the unit as the reason for asking the Tenants to agree to an increase over the statutory limit. The Landlord testified that the Tenants agreed in writing.

The Landlord and Tenant both testified that the March 2025 rent increase was discussed verbally between the parties but that they were unsure of the timing of that conversation or cause for the rent increase, and that neither party had written records of the request or agreement.

The Tenants testified that they had agreed to the rent increases at the time because they were unaware of their rights and were afraid of losing their home, but they dispute the validity of the increases because the Landlord did not use the Residential Tenancy Branch rent increase form, and raised rent by more than the allowed limit for those years; furthermore they claim the Landlord did not provide the Tenants a full three months' notice before the effective date of the rent increase taking effect. The Tenants said that they became aware of their rights while reading the Act in preparation for this hearing, and argue that as the rent increases were invalid due to form, content, amount, and timing, the Tenants are within their rights to withhold rent under the Act in the amounts previously paid towards past illegal rent increases.

The Tenants further testified that their financial situation changed over the past year. Tenant P.P. stated that he was off work a lot over the year and his income wasn't what it normally would be, he also testified that Tenant S.P. is on a fixed disability income, and that as a result of both of those factors the Tenants had been struggling to pay rent. They stated that the November payment of \$2,000.00 was all the money they were able to access at the time.

The Landlord testified that she served a 10 Day Notice in November 2025 after November rent was not paid fully; however she realized the rental unit address was wrong and the notice would be invalid and later issued a second notice. The Tenants applied to contest the November notice, and then the Landlord issued a new notice on December 2, 2025 with the correct address on the rental unit. The Landlord testified that the December 10 Day Notice was served by attaching it to the door of the rental unit on December 2, 2025. The Tenants testified that they received this notice on the same day it was served.

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).

I find that the Tenant was served with two valid 10 Day Notices. A notice was served on November 2, 2025 but had an address error, the Landlord corrected the address and re-served on November 21. After the Tenants made partial payment in November, the Landlord served a new 10 Day Notice with corrected amounts to the Tenant on December 2, 2025. I find it is reasonable that both the Landlord and the Tenant would expect that both notices would be heard at the same time. Based on the testimony and evidence of both parties, I find that the December 2, 2025 10 Day Notice contains the months of rent owing that both parties agree on and accounts for the payment made in November. Based on the most recent 10 Day Notice, the Tenant had until December 7, 2025 to dispute the 10 Day Notice or to pay the full amount of the arrears. I find that the Tenants did not pay the full amount but did dispute the notice on November 28, 2025, having already filed to dispute the 10 Day Notice from November 21 prior to the Landlord issuing the December 2, 2025 notice.

I find that the December 2, 2025 notice meets the form and content requirements under Section 52 of the Act.

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Under Section 43(5) of the Act, a Tenant may deduct from rent the amounts previously paid towards an illegal rent increase. As the Tenants dispute the legality of all three previous rent increases, this would constitute a right under the act to deduct all or a portion of the rent, so I must determine the legality of each prior rent increase before adjudicating the Landlord's notice for non-payment of rent central to the 10 Day Notice.

Section 43(1)(c) says that a Landlord may raise rent by more than the legally allowed amount, if that rent increase is agreed to in writing by the Tenant. Policy Guideline 37B (D) specifies that an agreed rent increase must be in writing, clearly set out the amount of the increase, clearly establish any conditions, be signed by the tenant, and include the date that the tenant agreed to the increase.

In this case, I find that the correspondence submitted by the Landlord from April 2022 and August 2023 meets the form and content requirements laid out in the guideline: they were in writing, the increase amount was clearly stated, the tenant provided written agreement in their reply, and the correspondence from the Landlord as well as the reply from the Tenant are dated.

Policy Guideline 37B (D) does set out that agreed rent increases may be disputed, but are subject to arbitrator decision and are not automatically invalidated.

There are several other factors to consider in assessing past rent increases, the first being the intent of the Act and the Policy Guidelines in setting forth notice and form requirements: the intent is that Tenants are given full and fair information about the change to the cost of their tenancy, with sufficient time to make a decision and to either make alternative arrangements or file for dispute if they object to the rent increase. The intent of notice timelines, formats, and maximum rent increase limits is to ensure that tenants have tools to prevent landlords from increasing rent unreasonably and unilaterally – while in counterbalance, the Act Section 43(1)(c) allows for mutually-agreed increases above the allowed limit.

A further consideration in assessing past rent increases is time passed since the increase and payments made towards it. If a tenant has agreed to a rent increase and paid it consistently for a period of three years as in this case, retroactively rescinding that increase places undue burden on the landlord, especially when that landlord could have then followed up with rent increases that strictly adhered to the Act if the initial increase above the limit was challenged by the Tenant.

The Act allows for retroactive dispute of illegal rent increases, with those provisions intended to allow tenants who are unaware of their rights, to take action when they become aware of their rights later. If a tenant is aware they could dispute an increase, but agrees to the increase, and pays that increase for long enough, the tenant would be considered to have accepted the increase and waived their right to dispute.

In this dispute, I find that the Landlord's request for rent increase in August 2023 specifically stated that the requested increase was above the maximum limit imposed by the Act for that year. As such, I find that the Tenant was aware that the Act placed limitations on rent increases as of that notice, which they did agree to. It would be unreasonable and prejudicial to the Landlord to reset the 2022 and 2023 rent increases now, on the basis of the Tenant's argument they were unaware of the law until this dispute was filed, when they were advised that the law existed and placed limits on rent increases by the Landlord in 2023, and the Tenants agreed in writing to this increase.

The rent increases imposed did use the proper forms for rent increases, however they met the notice provisions in the Act. I find that the Tenant's awareness of limitations in the Act from August 2023, and written agreement to both increases, amounts to a waiver of their right to dispute the rent increase as by their actions they accepted and agreed to in writing.

Both parties agreed that the May 2025 rent increase occurred as a result of verbal conversations that took place at the Tenant's residence, and there was no written record of the request, the Tenant's agreement, nor the effective date of the increase or the date the request was made.

I find that while both parties discussed the May 2025 rent increase and the Tenants agreed to it at the time, the May rent increase is an illegal rent increase as it does not comply with Section 43(1)(c) of the Act which requires that rent increases above the legal limit be agreed to in writing, and the Landlord is unable to provide any written agreement from the Tenant.

In 2025 the maximum rent increase was 3%, for rent of \$1700 that the maximum allowable increase would have been \$51.00 per month. I find that a \$100 increase to a rent of \$1700 in 2025 is above the limit established under Section 43(1)(a).

I find that the July 2022 and October 2023 rent increases were accepted by the tenant and agreed to under Section 43(1)(c) of the Act. I find that the May 2025 rent increase did not comply with Section 43 of the Act and is not valid, re-setting the Tenant's rent at \$1,700.00 per month retroactively to May 2025.

As both parties' testimony and evidence indicate the Tenant paid rent, which included an illegal rent increase, of \$1,800.00 for the months of May, June, July, August, September, and October, I find that the Tenants have overpaid rent due to an illegal rent increase by \$600.00 in that period. As Section 43(5) of the Act allows Tenants to withhold the amount paid towards an illegal rent increase from future rent, I find the Tenants had a right to withhold \$600. As the Tenants paid \$1,200 in October and \$2,000.00 in November, and rent was \$1,700.00 per month, I find the Tenants still owed \$200 of November rent, \$1,700.00 of December rent, and \$1,700.00 of January rent at the time of the hearing, for a total amount of \$3,600.00.

As I have already found that there was unpaid rent in excess of the amount that the Tenants were allowed to withhold under Section 43(5) of the Act, and as the 10 Day Notice meets form and content requirements under Section 52 of the Act, I find that the Landlord is entitled to 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 the Landlord entitled to a Monetary Order for unpaid rent?

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.

As I have already found, the Tenants owe \$3,600.00 in unpaid rent from partial November 2025 and full rent from December 2025 and January 2026. Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent.

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 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. I find that the Notice complies with section 52 of the Act. Policy Guideline 3, section E, elaborates that if the director is satisfied upon review of the evidence and the testimony as to an amount of unpaid rent owing, including rent since the 10 Day Notice was issued, the director must grant an order to the Landlord for the amount of unpaid rent found to be owing.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$3,600.00.

Is the Tenant 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.

I find that the May 2025 rent increase was not compliant with Section 43 of the Act, I order that it be revoked, and that the Tenants rent re-set to \$1,700.00 per month, the amount since the last legal rent increase of October 2023, that both parties agreed to.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) 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 in the Supreme Court of British Columbia.

I grant the Landlord a Monetary Order in the amount of **\$3,700.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid partial November 2025 rent under section 55 of the Act	\$200.00

a Monetary Order for unpaid December 2025 rent under section 55 of the Act	\$1,700.00
a Monetary Order for unpaid January 2026 rent under section 55 of the Act	\$1,700.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$3,700.00

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Tenant's 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 is dismissed, without leave to reapply.

I grant the Tenant's application to an order requiring the Landlord to comply with the Act, and order that the May 2025 rent increase be revoked.

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 23, 2026

Residential Tenancy Branch