

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notices to End Tenancy for Unpaid Rent (10 Day Notices) and an extension of the time limit to dispute the 10 Day Notices under sections 46 and 66 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on the Landlord's request for an early end to the tenancy under section 56 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

An agent attended the hearing for the Landlord. S.W.P. attended the hearing on behalf of the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

This was a cross-application. I find that both parties were provided with the Proceeding Package directly from the Residential Tenancy Branch for this hearing.

Service of Evidence

I find that the Tenants' evidence was served to the Landlord by email on three days before the hearing. The Landlord has acknowledged receipt of this evidence. As the Landlord has had the opportunity to review the Tenants' evidence, I find that the Tenants' evidence was sufficiently served in accordance with section 71(2)(c) of the Act.

Based the evidence provided, I find that the Landlord did not provide any evidence.

Preliminary Matters

At the hearing, the Landlord requested to amend their application by withdrawing the claim for an Order of Possession based on the landlord's request for an early end to the tenancy under section 56 of the Act. The tenant in attendance consented to this

amendment. In accordance with Rule 7.12.1 of the *Residential Tenancy Branch Rules of Procedure*, I record that this claim is withdrawn.

Issues to be Decided

Should the Landlord's 10 Day Notices be cancelled? Are the Tenants entitled to more time to cancel the Landlord's 10 Day Notices?

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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

Background and Evidence

I have reviewed all documentary evidence and the affirmed testimony of the parties, but will refer only to what I find relevant for this decision.

The Landlord's agent provided undisputed testimony that the tenancy began in 2020 with a monthly rent of \$2,600.00, due on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy and remains held in trust.

The Landlord testified that the Tenants did not pay full rent for October, November, and December 2025. As of December 8, 2025, the Landlord calculated total arrears of \$7,500.00, comprising \$2,300.00 outstanding for October and \$2,600.00 each for November and December. On December 8, 2025, the Landlord served three 10-Day Notices to End Tenancy for Unpaid Rent, each notice claiming \$2,600.00 the relevant month, all dated December 8, 2025. The Landlord stated the notices were served in person. Copies of these notices were submitted by the Tenants.

After service of the notices, the Tenants made the following payments to the Landlord:

- December 15, 2025: \$2,300.00 (October arrears)
- December 29, 2025: \$2,600.00 (November arrears)
- December 30, 2025: \$2,600.00 (December arrears)

The Landlord confirmed that all arrears were paid in full by December 30, 2025, and that January 2026 rent was also received. The Landlord submitted that although the arrears were cleared, repeated late payments have caused substantial financial strain and uncertainty regarding timely mortgage payments.

Only one of the two Tenants, S.W.P., attended the hearing and provided affirmed testimony on behalf of both Tenants. S.W.P. explained that the delay in rent payment and the delay in filing the Application for Dispute Resolution were due to simultaneous financial and medical hardships. He testified that his employer abruptly ceased operations in early December, resulting in immediate loss of income, and that he experienced significant physical limitations due to an inflamed leg and shoulder injury.

Medical documentation was submitted, including a hospital appointment notice for an MRI scheduled in late November. S.W.P. testified that these circumstances prevented him from filing the application within the required five-day period. He stated that he filed the application on December 15, 2025, as soon as he was physically able, and he requested more time to proceed with the application on the basis that the delay was due to circumstances beyond his control.

The Tenants also submitted evidence showing steps taken to stabilize income, including an acceptance notice for enrollment in a Building Service Worker training program beginning in January 2026. S.W.P. testified that he had also been working through a delivery platform to maintain daily income and had access to financial reserves overseas if needed.

Text message exchanges between the parties were submitted by the Tenants. In these exchanges, the Landlord acknowledged receipt of payments and confirmed that the arrears had been cleared. In one message, the Landlord thanked the Tenants for making up the outstanding balance and confirmed “no remaining owing balance,” while also stating the Landlord’s continued intention to pursue an end to the tenancy. Earlier communications show the Landlord advising the Tenants that they may remain until a specified date to evaluate payment progress, and later communications outline the Landlord’s plan to proceed with dispute resolution if the Tenants did not vacate.

The Tenants submitted that by accepting the full January 2025 rent payment without stating that the payment was being accepted “for use and occupancy only,” and by confirming in writing that all arrears had been paid, the Landlord reinstated the tenancy. The Landlord disagreed, stating that the Landlord had made clear that they still intended to rely on the pending RTB hearing and the previously-served notices.

Copies of the 10-Day Notices, medical documents, job-training enrollment confirmation, and text communications were submitted as evidence.

Both parties provided submissions regarding a fair move-out timeline if I uphold the notices. If the 10-Day Notices are upheld, both the Landlord and the Tenants agree that a move-out date of March 31, 2026 would be appropriate. The Landlord stated they would accept this date provided rent continues to be paid during the period of occupancy; S.W.P. stated that this date would allow time to secure employment and prepare the family to relocate.

Analysis

Should the Landlord's 10 Day Notices be cancelled? Are the Tenants entitled to more time to cancel the Landlord's 10 Day Notices?

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 does 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 Notices were served in person to the Tenants on December 8, 2025. Therefore, the Tenants had until December 13, 2025 to dispute the 10 Day Notices or to pay the full amount of the arrears. In this case, I find that the Tenants disputed the 10 Day Notices on December 15, 2025, two days late to dispute the decision.

Section 66 of the Act states the director may extend a time limit established under the Act only in exceptional circumstances. Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. Rather, the word “exceptional” implies the reason for missing a deadline must be very strong and compelling.

The Tenants filed their application to dispute the 10-Day Notices two days late. Section 66 of the Act allows an arbitrator to extend a time limit when exceptional circumstances prevented timely filing. Based on the evidence of overlapping medical and financial crises, which I accept disrupted the Tenants’ ability to file within the required period, I find that the threshold for exceptional circumstances is met. I therefore extend the filing deadline to December 15, 2025. The Tenants’ application is treated as filed on time, and I proceed to consider the merits.

I now consider whether to uphold the 10 Day Notices.

The evidence shows that the Tenants did not pay all arrears within the five days of receiving the 10 Day Notices on December 8, 2025. The arrears were fully paid only by December 30, 2025, well after the deadline. Both parties agree. The Tenants did not claim that they had a legal reason to withhold rent. Instead, they submitted that they were in a poor financial position and made up the rent arrears as soon as they could.

The Tenants argue that I should cancel the 10 Day Notices because the Landlord reinstated the tenancy when they accepted January’s rent, and told the Tenants that they were caught up on rent arrears. The Tenant argued that the Landlord should have issued an “use and occupancy only” receipt for the payment of January’s rent if they wanted to continue relying on the notices.

Use and occupancy refers to situations where a landlord accepts payments after issuing an eviction notice but makes it clear that these payments are not intended to reinstate the tenancy. If payments are accepted without a specific notation stating they are for “use and occupancy only”, the Arbitrator must look to the parties’ testimony and their communications to determine whether the Landlord clarified that acceptance of those payments did not change their intention to rely on the notice. The question is whether the Landlord’s words or conduct would lead a reasonable person to believe the tenancy was continuing or whether the Landlord maintained that the tenancy was still ending.

In this matter, although the Landlord did not issue receipts marked for use and occupancy only, the evidence provided by the Tenants clearly shows that the Landlord consistently communicated that acceptance of payments did not reinstate the tenancy. Shortly after receiving January's payment, the message sent on January 2, 2026 thanked the Tenants for clearing the arrears and wrote, "The owners still feel like delaying rent for so many months has put them in so much risk of mortgage payment. They would still like to ask your family to move out." The Landlord then continued in the same message, "Please let me know if you are moving out by end of this month or we will proceed on Jan 19 with the RTB hearing at 9:30 am." This message is explicit that despite accepting rent, the Landlord remained committed to relying on the 10 Day Notices and pursuing an Order of Possession at the scheduled hearing.

I find that the text messages submitted demonstrate that the Landlord did not behave in a manner consistent with reinstating the tenancy. At no point did the Landlord suggest that acceptance of payment of January's rent meant the tenancy was continuing. Instead, the Landlord continued to confirm that the tenancy was ending, advised the Tenants to move, and emphasized reliance on the upcoming arbitration. In these circumstances, I find that the Tenants could not reasonably believe that the acceptance of January's rent reinstated the tenancy.

Accordingly, as I find that the Tenants did not pay the rent arrears within 5 days of receiving the 10 Day Notices, that the Tenants did not have a legal reason to withhold rent, and that the Landlord did not reinstate the tenancy when they accepted January's rent, I uphold the 10 Day Notices.

Therefore, the Tenants' application is denied for cancellation of the 10 Day Notices under sections 46 and 55 of the Act.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notices?

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 Notices comply with the form and content requirements of section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession. I find March 31, 2026 the most appropriate date, given the agreement of the parties at the hearing. I take time to note that this date takes into consideration that the Tenants have children, and that the Tenants are up to date on rent payments.

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

As the Landlord was not successful in their application for an emergency end to the tenancy, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their emergency application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord effective **March 31, 2026 at 1:00 PM** 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 Tenants' application is denied for cancellation of the 10 Day Notices under sections 46 and 55 of the Act are dismissed without leave to reapply.

The Landlords request for recovery of the filing fee 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: January 21, 2026

Residential Tenancy Branch