

## **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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 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 10 Day Notice under section 46 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlord and the Tenant both attended the hearing on their own behalf.

### **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**

Based on the evidence provided, I find that the Tenant served the Landlord with their evidence by registered mail in accordance with section 88 of the Act. The Landlord confirmed receipt during the hearing.

Based the evidence provided, I find that the Landlord served their evidence to the Tenant by registered mail in accordance with section 88 of the Act. The Tenant confirmed receipt during the hearing.

### **Issues to be Decided**

Is the Tenant entitled to an order regarding the Tenant's dispute of an additional rent increase by the Landlord?

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

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

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 Tenant?

### **Background and Evidence**

I have reviewed all the evidence, including the testimony of the parties, the tenancy agreement, and the documents submitted, but will refer only to what I find relevant for my decision.

The Landlord testified that the tenancy began on July 15, 2020 under a written Residential Tenancy Agreement. The agreed-upon rent was \$2,100.00 per month, due on the 15th of each month, and a \$1,050.00 security deposit was paid. The agreement confirms that rent increases must comply with the Act, including use of the approved form and provision of three full months' written notice.

The Landlord states that rent was increased over time to \$2,200.00 in December 2022 and to \$2,300.00 in December 2024. He submitted evidence showing he notified the Tenant of the increases by email and text message and testified that the Tenant agreed to the increases and paid them for years without objection. Text messages from November 2024 show the Tenant responding "Agreed!" to a proposed rent increase. The Landlord also provided a rent-payment ledger showing consistent payments of the increased rent amounts until October 2025, when he received the last rent payment, short by \$5.00 but that he waives his claim to this amount. No rent was paid for November 2025, December 2025, or January 2026.

The Landlord served the Tenant with a 10-Day Notice to End Tenancy for Unpaid Rent on December 11, 2025 by attaching the notice to the Tenant's door. The notice claims \$2,300 owing for rent due November 15, 2025. The Landlord says the Tenant became unresponsive in late 2025 and that he relies on rent to meet mortgage, strata, insurance, and other expenses.

In her written application to dispute the Notice, the Tenant stated:

*"The landlord issued not one but two illegal rent increases to me during my 5+ year tenancy. Both of the increases were above the allowable amount, did not use correct RTA forms and I was not given 3 months notice. The landlord owes me approximately \$4800 in overpaid rent."*

The Tenant testified that she agrees she received the 10-Day Notice on December 11, 2025 but did not dispute it within the statutory deadline. She stated she expected to move out at the end of December, was dealing with personal and health-related matters, including travel to the United States, financial strain, and uncertainty about her plans, and “left it too long.”

The Tenant says she withheld rent because she realized the previous rent increases were unlawful. She relies on the Landlord’s email dated November 15, 2022, and text messages dated November 23, 2024, as evidence that the increases were not served in accordance with the Act. She acknowledges that she agreed to those increases at the time and paid them for several years, explaining that she did not understand the proper procedure for rent increases because her background is in commercial, not residential, property management.

The Tenant does not dispute that she failed to pay rent for November, December, and January, but argues that the amount she overpaid due to the alleged illegal rent increases offsets or eliminates any arrears. She also confirmed she intends to move out and does not seek continuation of the tenancy.

## **Analysis**

### **Is the Tenant entitled to an order regarding the Tenant’s dispute of a rent increase by the Landlord?**

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act, which only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

In this case, the evidence establishes that this tenancy began in July 2020 and that the Landlord issued rent increases in November 2022 and November 2024. The 2022 increase was communicated by phone and followed by an email. The 2024 increase was communicated by text message. Neither increase was served in the approved form and neither provided the required three full months’ written notice. Although the increases occurred more than twelve months apart, they were not completed in accordance with the statutory requirements. I therefore find that both rent increases were not in compliance with the Act.

Although the increases did not comply with the Act, I find it necessary to consider whether the Tenant is estopped from disputing them. While estoppel was not explicitly argued by the Landlord, the facts support considering its application. Section 91 of the Act confirms that the common law continues to apply except as modified by the Act. The Supreme Court of Canada in *Ryan v. Moore*, 2005 SCC 38, explained that estoppel by convention arises where the parties’ dealings are based on a shared assumption

created by representation through words, conduct, or silence; where one party relies on that shared assumption to change their legal position; and where it would be unfair to allow the other party to now withdraw from the assumption because doing so would cause detriment.

Applying the first criterion, I find on the evidence that the parties operated on a shared assumption that the increased rent was acceptable and in effect. The 2022 rent increase was communicated to the Tenant by phone and email, after which the Tenant paid the increased amount of \$2,200.00 dollars without objection. The 2024 increase was communicated by text message, and the Tenant responded "Agreed" before continuing to pay the increased amount of \$2,300.00 dollars. The Tenant paid the increased rent consistently for years without filing an application or raising any concern with the Landlord. Her conduct demonstrates that she accepted the increased rent as the applicable rate throughout the tenancy. The Landlord testified that the Tenant had a background in property management, reinforcing his belief that she understood and accepted the increases. Through their conduct, both parties acted on a common assumption that the increased rent was valid.

With respect to reliance, I find that the Landlord relied on the Tenant's agreement and ongoing payment of the increased rent. The Landlord testified that he depended on the rent to meet the financial obligations associated with the property, including the mortgage, strata fees, insurance, and other recurring expenses. He arranged his financial affairs on the basis of the rent amounts paid by the Tenant. The timing of the increases also reflects reliance. The tenancy began in 2020, the first increase was not issued until 2022, and the next not until 2024, despite the Landlord being able to issue lawful annual increases. The Landlord testified that the Tenant stopped communicating in late 2025, but until that point she had consistently paid the increased rent. Had the Tenant raised any objection or disagreement, the Landlord could have taken steps to comply with the Act or to issue further increases. Instead, he relied on the Tenant's consistent payment and explicit agreement.

Finally, I find that it would be unfair to allow the Tenant to withdraw from the shared assumption now. The Tenant seeks to dispute increases that she expressly agreed to, including by written confirmation, and that she paid for several years. The Landlord has relied on these payments to meet his obligations and reasonably believed that the rent for each period had been settled and accepted. The Tenant did not raise any dispute with the Landlord or the Residential Tenancy Branch until after substantial arrears had accumulated and a notice to end tenancy for unpaid rent had been served. Permitting her to resile from the shared assumption at this late stage would cause clear detriment to the Landlord, who has already relied on the increased rent in managing the expenses of the rental unit.

For these reasons, although I find the rent increases were illegal because they were not carried out in accordance with the Act, I also find that the Tenant is estopped from disputing them for the periods during which she agreed to and paid the increased rent without objection.

**Should the Landlord's 10 Day Notices be cancelled? Is the Tenant 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 to the Tenant on December 11, 2025 and the Tenant confirmed receipt same day. Therefore, the Tenant had until December 16, 2025 to dispute the 10 Day Notices or to pay the full amount of the arrears. In this case, I find that the Tenant disputed the 10 Day Notices on December 30, 2025, fourteen 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.

I find that the Tenant has not established exceptional circumstances under section 66 of the Act. The Tenant stated that she filed late because she had planned to leave Vancouver at the end of December, her personal situation changed, and she simply left the matter too long. These are ordinary personal circumstances of the type that Policy Guideline 36 indicates are not exceptional, and they do not justify extending a statutory deadline.

Based on the evidence before me, I find that the Landlord served the 10 Day Notice to End Tenancy for Unpaid Rent on December 11, 2025, and the Tenant confirmed receiving them the same day. The Tenant did not pay any of the outstanding rent within five days of receiving the notice and did not file an application to dispute the notice within the same five-day period, instead filing on December 30, 2025, fourteen days late. In accordance with section 46(5) of the Act, because the Tenant failed to either pay the arrears in full or dispute the notice within five days, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy.

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. Section 46(2) of the Act specifies that the 10 Day Notice must comply with the form and content requirements outlined in section 52. Upon review, the 10 Day Notice is in compliance with section 52 of the Act.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$6,900.00 representing, three months of unpaid rent. Under section 72 of the

Act, I permit the Landlord to retain the Tenant's security deposit of \$1,050.00, plus interest of \$59.93, in partial satisfaction of the Monetary Order.

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

As above, I have found that conclusive presumption applies under section 46(5) of the Act. Therefore, I find that the Landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act effective **February 15, 2026, at 1:00 p.m.**

**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.

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

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

I grant an Order of Possession to the Landlord **effective by 1:00 PM on February 15, 2026 after service of this Order on the Tenant.** Should the Tenant 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 **\$5,890.07** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 67 of the Act	\$6,900.00
Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order under sections 38 and 72 of the Act	-\$1,050.00
Amount of interest owed on the security deposit from July 15, 2020 to the date of this Order	-\$59.93

authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$5,890.07</b>

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Tenant's claims are dismissed in their entirety, 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 28, 2026

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Residential Tenancy Branch