

## **DECISION**

### **Introduction**

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

- cancellation of the Landlords' 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 to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order to allow access to or from the rental unit for the Tenants or the Tenants' guests under sections 30 and 62 of the Act
- an order for the Landlords to provide services or facilities required by law under section 27 of the Act
- an order allowing the Tenants to assign or sublet because the Landlords' permission has been unreasonably withheld under sections 28 and 58 of the Act
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act

Tenant J.M.S.M. and Tenant J.I.D.C.J. attended the hearing for the Tenants.

Agent for the Landlords, L.M. attended the hearing for the Landlords.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)**

L.M. acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I find the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

### **Service of Evidence**

Both parties acknowledged receipt of the documentary evidence and confirmed that they had enough time to review it. I therefore found the documentary evidence before

me duly served on each party in accordance with the Act and accepted it for consideration.

## **Issues to be Decided**

Should the Landlords' 10 Day Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an order to end the tenancy based on a frustrated tenancy agreement?

Are the Tenants entitled to an order to allow access to or from the rental unit for the Tenants or the Tenants' guests?

Are the Tenants entitled to an order for the Landlords to provide services or facilities required by law?

Are the Tenants entitled to an order allowing the Tenants to assign because the Landlords' permission has been unreasonably withheld?

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

## **Background and Evidence**

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

Evidence was provided showing that this tenancy began on October 1, 2025, with a monthly rent of \$3,995.00, due on first day of the month, with a security deposit in the amount of \$1,997.50, currently being held by the Landlords.

### **10 Day Notice**

Both parties confirmed that the Landlords served and the Tenants received a 10 Day Notice dated January 3, 2026.

A copy of the 10 Day Notice was put into evidence by the parties. In it, it indicates that the Tenants failed to pay \$3,987.50 in rent due on January 1, 2026 and identifies January 16, 2026 as its effective date.

The Tenants disputed the 10 Day Notice on January 11, 2026, claiming that they withheld rent due to the Landlords' misrepresentation and breach of a material term of the tenancy agreement (TA).

Both parties confirmed that rent for January and February 2026 remains outstanding and the Tenants are currently residing at the rental unit.

### **Monetary Compensation**

The Tenants are seeking a monetary compensation of \$20,300.00 due to the Landlords' misrepresentation and breach of a material term of the TA. A copy of the addendum was provided indicating the following term:

*The tenants are granted permission to rent out the in-law suite within the premises. The tenants named on this tenancy agreement remain fully responsible under the Residential Tenancy Act for payment of the entire rent amount, regardless of whether the suite is sublet or occupied by another person. The tenants will manage the suite at their own discretion and expense. Any issues, complaints, or damages arising from the occupancy or use of the suite are the sole responsibility of the tenants named on this tenancy agreement.*

The Tenants submitted that following an inspection on December 4, 2025, the City of Kelowna declared the in-law suite as an illegal secondary suite, prohibiting it from being rented. They stated that although personal use remains possible, the in-law suite has become unusable for its contractual purpose and that the Tenants' use and benefit of the rental unit have been compromised. As a result, they suffered a direct loss due to the Landlords' breach of the material term.

L.M. submitted that the City of Kelowna has requested the Landlords to either legalize or decommission the in-law suite, to which the Landlords have chosen the latter. They said that the decommissioning works include removing the stove and hood fan, converting the kitchen sink to a single basin and removing the deadbolt on the adjoining door to allow an open space. They said that as the decommissioning works would be carried out on February 9, 2026, the Tenants were served with a Notice Terminating or Restricting a Service or Facility (#RTB-24) reflecting a rent reduction of \$100.00 starting from February 1, 2026 for the removal of an additional stove in the in-law suite.

L.M. submitted that the in-law suite was never advertised, represented, or warranted, as a legal or registered secondary suite. They testified that at the property showing on September 8, 2025, they had expressly informed the Tenants that the in-law suite was not a legal suite to be rented out as it is not separate from the rental unit. In support, they provided the original advertisement with the following description of the in-law suite:

*The 1-bedroom in-law suite is conveniently located at street level, making it ideal for multigenerational living or a perfect set-up for a home office or guest space.*

L.M. stated that while the Tenants were granted permission to sublet the in-law suite under the TA, this did not constitute a representation that the suite was legal under the municipal by-laws. They said that the municipal by-laws are separate from the Act and it is permitted to rent out a non-conforming suite under the Act.

### **Rent Reduction**

The Tenants are seeking a rent reduction of \$1,400.00 for unable to use the in-law suite. In their application, they state:

I am seeking a rent reduction because a material service and facility expressly agreed upon in the tenancy agreement, the lawful use of the authorized secondary suite, has been withdrawn. Page 8 of the agreement authorized subletting. Following a City inspection on December 4, the suite was declared illegal and cannot be occupied or rented, permanently reducing the value and lawful use of the premises. This constitutes a withdrawal under section 27 of the Residential Tenancy Act.

### **Frustration**

The Tenants are seeking an order to end the tenancy on December 4, 2025 based on a frustrated tenancy agreement, for the in-law suite was declared illegal and could not be sublet.

### **Analysis**

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. The onus to prove their case is on the person making the claim.

### **Should the Landlords' 10 Day Notice be cancelled? If not, are the Landlords entitled to an Order of Possession and a Monetary Order for Unpaid Rent?**

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 10 Day Notice was duly served to the Tenants on January 2, 2026, and that the Tenants had until January 7, 2026, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Pursuant to section 26(1) of the Act, 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 Act grants the tenant the right to deduct all or a portion of the rent. The Act proscribes a set of limited circumstances in which monies claimed by a tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by section 19(1), then the amount that was overpaid may be deducted from rent (see section 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by section 33(5) have been followed (see section 33(6)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see section 43(5)).
4. As ordered by the Director pursuant to sections 65 and 72.

In this instance, none of the above circumstances are applicable here. I find the Tenants did not have a legal reason to withhold the rent under the Act.

The Tenants acknowledged that the rent for January and February 2026 remains unpaid.

Accordingly, I find that the 10 Day Notice was properly issued. The Tenants' application to cancel the 10 Day Notice is hereby dismissed.

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 that the Notice complies with section 52 of the Act.

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

I grant the Landlord an order of possession effective 7 days after service of this Order on the Tenants.

### **Are the Landlords entitled to a Monetary Order 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. As previously stated, the 10 Day Notice complies with section 52 of the Act.

Therefore, I find the Landlords are entitled to a Monetary Order for unpaid rent in the amount of **\$7,882.50**, calculated as follows:

January 2026 balance of \$3,987.50 + February 2026 balance of \$3895.00 = \$7,882.50

The Landlords continue to hold the Tenants' security deposit of \$1,997.50 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlords to retain the Tenants' security deposit in partial satisfaction of the monetary order.

I further order the Landlords to retain the interest accrued on the security deposit, which is \$5.61 as of the date of the hearing.

**Are the Tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

All four conditions of the abovementioned test must be satisfied to be awarded compensation.

The Tenants are seeking a monetary compensation in the amount of \$20,300.00 for the Landlords' misrepresentation and breach of a material term of the TA. Specifically, the Tenants said that the Landlords granted them permission to sublet the in-law suite in writing when they knew that the suite was illegal and could not be lawfully rented.

Based on the evidence before, the testimony of the parties, and on a balance of probabilities, I find the Tenants have failed to establish that the Landlords violated the Act, regulation or tenancy agreement.

While I accept that the Tenants were granted permission to rent out the in-law suite under the tenancy agreement, the Tenants did not provide sufficient evidence to establish that the Landlords have warranted that the in-law suite was a legal secondary suite under the municipal by-laws. I find that there is neither a description in the advertisement nor a term in the tenancy agreement that ties to the legality of the in-law suite. As such, I find the Tenants have failed to establish that the Landlords were in breach of the tenancy agreement.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

**Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?**

Section 27 of the Act states that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is the same as the reduction in the value of the tenancy.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

Policy Guideline #22 provides that where the tenant claims that the landlord has terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant and that the following 6 issues must be considered.

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

Based on the evidence before me, the submissions of the parties, and on a balance of probabilities, I find that the Tenants have failed to establish a claim for a rent reduction for services or facilities agreed upon but not provided. In reaching this conclusion, I find the sublet of the in-law suite cannot be considered as a service as set out in section 1 of the Act. I also find that the legality of the in-law suite is not a material term of the tenancy agreement nor is essential to the use of the rental unit as living accommodation.

Therefore, I find the Tenants are not entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided.

### **Are the Tenants entitled to an order to end the tenancy based on a frustrated tenancy agreement?**

Section 44(1)(e) of the Act states that a tenancy ends if the tenancy agreement is frustrated.

Residential Tenancy Policy Guideline #34 states that: "A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract."

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I find the Tenants have failed to prove that the tenancy agreement was frustrated. In reaching this conclusion, I note that the Tenants acknowledged the in-law suite remains usable for personal use. I find the Tenants have not provided sufficient evidence to establish that there was a radical change in circumstances that totally affect the nature, meaning, purpose, effect and consequences of the tenancy agreement.

While I acknowledge the Tenants' concern that they were unable to sublet the in-law suite, I find this has not radically changed the circumstances rendering the fulfillment of the contract as originally intended impossible.

Furthermore, Policy Guideline 20 states that municipal by-laws are not statutes for the purposes of determining whether or not a contract is legal. A rental in breach of a municipal by-law does not make the contract illegal.

I find that while the in-law suite was declared as an illegal secondary suite under the municipal by-law, it does not make the TA illegal and unenforceable.

For the above reasons, the Tenants' application for an order to end the tenancy based on a frustrated tenancy agreement is dismissed without leave to reapply

**Are the Tenants entitled to an order to allow access to or from the rental unit for the Tenants or the Tenants' guests?**

Under section 30(1) of the Act, a landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant.

Based on the submissions before me, I find the Tenants have failed to provide sufficient evidence to demonstrate that the Landlords have unreasonably restricted access to the rental unit by the Tenants, the Tenants' family, or the Tenants' guest.

Therefore, the Tenants' application for an order to allow access to or from the rental unit for the Tenants or the Tenants' guests is dismissed without leave to reapply.

**Are the Tenants entitled to an order for the Landlords to provide services or facilities required by law?**

I find that this aspect of the Tenants' application is moot as the 10 Day Notice is upheld and the tenancy is ending. Therefore, the Tenants' application for an order for the Landlords to provide services or facilities required by law is dismissed without leave to reapply.

**Are the Tenants entitled to an order allowing the Tenants to assign because the Landlords' permission has been unreasonably withheld?**

I find that this aspect of the Tenants' application is moot as the 10 Day Notice is upheld and the tenancy is ending. Therefore, the Tenants' application for an order allowing the Tenants to assign because the Landlords' permission has been unreasonably withheld is dismissed without leave to reapply.

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

I find that this aspect of the Tenants' application is moot as the 10 Day Notice is upheld and the tenancy is ending. Therefore, the Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed without leave to reapply.

**Conclusion**

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

I grant the Landlords a Monetary Order in the amount of **\$5,879.39** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$7,882.50
<i>Tenants' security deposit plus interest</i>	-\$2,003.11
<b>Total Amount</b>	<b>\$5,879.39</b>

The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. 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).

The Tenants' application for cancellation of the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

The Tenants' application for an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided is dismissed, without leave to reapply.

The Tenants' application for an order to end the tenancy based on a frustrated tenancy agreement is dismissed, without leave to reapply.

The Tenants' application for an order to allow access to or from the rental unit for the Tenants or the Tenants' guests is dismissed, without leave to reapply.

The Tenants' application for an order for the Landlords to provide services or facilities required by law is dismissed, without leave to reapply.

The Tenants' application for an order allowing the Tenants to assign because the Landlords' permission has been unreasonably withheld 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, 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: February 10, 2026

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Residential Tenancy Branch