

DECISION

Introduction

This hearing dealt three applications that were joined together.

The Tenants filed an 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
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord filed two Applications for Dispute Resolution under the Act for:

- an Order of Possession based on the One Month Notice
- an Order of Possession based on the 10 Day Notice
- a Monetary Order for unpaid rent for January 2026
- authorization to recover the filing fees for each application from the Tenants under section 72 of the Act

Service of Proceeding Packages

I confirmed the parties sent their proceeding packages to each other via email and the other party received the packages. The parties had consented to service by email in their tenancy agreement. Therefore, I was satisfied each party was duly served in accordance with the Act.

Other procedural matters

The Tenant's application was amended to correctly name the Landlord. The Tenant's application was amended to remove the name of a child who is an occupant, not a Tenant.

The Tenants sought multiple unrelated remedies in a single application. I confirmed that the Tenants continue to occupy the rental unit and they seek to continue the tenancy. As such, I determined it necessary and appropriate to resolve the disputes concerning the notices to end tenancy and I severed the Tenant's claim for compensation with leave to reapply under Rules 2.3 and 6.2 of the Rules of Procedure.

Shortly after the hearing started, the Tenants expressed concern because the owner of the property was not present because they had reached an agreement with the owner. The landlord's agent stated the owner was not available and he was acting as the landlord's agent.

The Landlord's agent pointed out that he did not receive any evidence from the Tenants. I had the Tenants orally describe their evidence, which were text messages and an email exchanged with the owner of the property. Near the end of the hearing, the landlord's agent sought to have the owner join the hearing. The owner joined the teleconference call and confirmed key information described by the Tenant before the teleconference call was ended unexpectedly. I am satisfied I heard enough testimony concerning this key issue to make a decision without reconvening the hearing.

The Landlord's application was amended during the hearing to reflect payment of January 2026 rent after the Landlord's application had been filed but non-payment of rent for February 2026. I amend the claim as I am satisfied this amendment would have been reasonably foreseeable by the tenants.

Extension of time to file Application for Dispute Resolution

Section 66 of the Act permits me to grant an extension of time to file an Application for Dispute Resolution in "extraordinary circumstances".

The Tenants filed their Application for Dispute Resolution on January 19, 2026. The Tenants requested more time to make their application to dispute the notices to end tenancy.

The notices were sent to the Tenants via email on January 2, 2026. The 10 day Notice has an effective date of January 15, 2026 and the One Month Notice has an effective date of February 28, 2026.

The Tenants submitted that on January 4, 2025, via text message, the Landlord and the Tenants reached an agreement causing the Tenants to believe the Landlord was not going to enforce the notices to end tenancy which is why the Tenants did not file to dispute the notices sooner. The property manager who was in attendance at the hearing responded that he had no knowledge of an agreement between the Tenants and the owner as he had not seen copies of the text messages or email and the owner did not inform him of any agreement.

I have seen a copy of the text messages and email and during the hearing the property manager called the owner to the hearing. The owner acknowledged that she indicated to the Tenants that she would wait until March 2026 even though she was entitled to an Order of Possession to see if they paid rent on time for March 2026.

In the above circumstances, I find the Tenant's belief that the Landlord had decided not to enforce the notices to end tenancy to be reasonable, and I grant the Tenants an extension to dispute the One Month Notice since they filed their application before the effective date of the One Month Notice.

I cannot grant an extension of time to dispute the 10 Day Notice since section 66 of the Act prohibits me from extending a time limit beyond the effective date of a notice to end tenancy. The effective date of the 10 Day Notice is January 15, 2026 and I cannot grant an extension beyond that date. Therefore, I deny the Tenant's request for an extension to dispute the 10 Day Notice.

Issues to be Determined

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

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the filing fee(s) from the Tenants?

Are the Tenants entitled to recover the filing fee from the Landlord?

Background and evidence

The tenancy started on November 25, 2023. The Tenants paid a security deposit of \$1,400.00 and the rent was set at \$2,800.00 payable on the first day of every month.

The property manager stated the Landlord increased the rent without a Notice of Rent Increase although he was uncertain when the increase(s) came into effect. The Tenants testified that the Landlord increased their rent twice, via text message and the Tenants paid \$2,900.00 starting December 2024 and then \$3,000.00 starting December 2025.

The Tenants did not pay rent for January 2026 when due and on January 2, 2026 the Tenants were served with the 10 Day Notice and the One Month Notice.

The One Month Notice states the reason for ending the tenancy is because the Tenants are repeatedly late paying rent. In the details of cause, the Landlord does not describe when the late payments were made. The 10 Day Notice indicates rent of \$2,800.00 is outstanding as of January 1, 2026.

Shortly after the Tenants were served with the notices to end tenancy by the landlord's agent, the owner and the Tenant exchanged messages providing that the Landlord was willing to continue the tenancy under certain conditions and give the Tenants until March 2026 to see if they paid the rent on time.

On January 4, 2026 the Landlord wrote up their agreement and sent it to the Tenant via email. The email is entitled Agreement of Rent at [address of rental unit] 2026 and states:

Hi [name of Tenant]

I asked [name of landlord's agent] to suspend the dispute of the towards you if you reply and agree on the terms and conditions as below.

If you can not pay rent on time, you need to inform me as soon as you know the late pay, at least one day before 1st of the month.

When rent will be paid late three times in total, you will move out voluntarily.

If the rent paid on 5th- 10th, \$50 late charge need to be paid. If rent is paid 11-15th, \$100 need to be paid, and so on.

The outstanding water bill you will pay by March 15th, 2026.

Please reply the email with agreement, [name of landlord's agent] will be witness about this new agreement between you and me.

The Tenant testified that he agreed to the terms put forward by the Landlord.

During the hearing, the Landlord's agent testified that he was unaware of any agreement between the Landlord and the Tenant; however, the email sent to the Tenant by the Landlord on January 4, 2026 also includes the agent's name in the list of addressees.

In subsequent text messages exchanged between the Landlord and the Tenant, the Landlord requesting payment of rent for January 2026 and acknowledged that February 2026 rent would be late. In text messages sent by the Tenant, the Tenant expressed

concern that the Landlord will still try to evict them even if he were to pay. The Landlord responds:

“No, I will not.”

“We have agreement. I will wait till March and see how is your payment.”

“You need to pay Jan rent now.”

On February 1, 2026 the Tenants paid \$2,770.00 to the Landlord. The Tenants and the landlord’s agent confirmed that this payment was considered a payment toward rent for January 2026. The Tenants further pointed out that the Landlord had recognized in her text message that she understood rent for February 2026 would be late and they believe they until March 2026 to catch up on rent arrears.

During the hearing, the owner said that after the January rent was late and paid on February 1, 2026 she told the Tenants she would wait until March to see how their payments went before taking further action. She explained that this was an effort to maintain a good relationship with the Tenants, even though she believed she was entitled to pursue an order of possession, and give the tenants the opportunity to catch up and improve their payment of rent.

Analysis

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

During the hearing, I informed the parties that the One Month Notice was not sufficiently completed since it did not specify the late payments the Landlord was intending to rely upon in ending the tenancy for repeated late payment of rent. Aside from failing to provide sufficient details on the Notice, I have also considered whether the notices to end tenancy were waived.

Residential Tenancy Policy guideline 11 deals with withdrawal and waiver of notices to end tenancy.

D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY

Express waiver happens when a Landlord and Tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the Landlord and Tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a Landlord and Tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the Landlord or Tenant.

For example, if a Landlord gives a notice to end tenancy, a Landlord may accept rent from the Tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the Landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the Landlord and Tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the Landlord specifically informed the Tenant that the money would be for use and occupancy only;
- whether the Landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

Based on the Landlord’s email of January 4, 2026, and subsequent text messages, I find the parties agreed to waive the notices to end tenancy issued on January 2, 2026 so as to continue the tenancy for the time being provided the Tenants catch up on the rent arrears and start paying their rent on time, or at least give the Landlord advance notice if rent will be paid late.

In the Landlord’s communications to the Tenants, she asked for January 2026 rent and acknowledged February 2026 rent would be late. My reading of the parties’ agreement and conduct is that the Landlord expects the Tenants to catch up on their arrears for January 2026 right away, pay rent for February 2026 by March 2026 and start paying rent for March 2026 and subsequent months on time, or at least to receive advance notice of a late payment for the months of March 2026 onwards, but that no more than three more late payments would be tolerated.

I am satisfied the Tenants paid the rent for January 2026. Even though the Tenants paid \$2,770.00 and the 10 Day Notice indicates rent outstanding was \$2,800.00, I heard that for several months prior to January 2026 the Tenants had overpaid rent when they paid unlawful rent increases and the tenants were entitled to recover some of their overpayment by deducting it from rent otherwise payable.

Given all of the above, I find the notices to end tenancy that were issued on January 2, 2026 were subsequently waived by agreement between the parties and I deny the Landlord’s request for an Order of Possession based on those notices to end tenancy.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Under section 43(5) of the Act, a Tenant who has paid an unlawful rent increase is entitled to recover the overpayments by withholding the overpayments from future rent otherwise payable.

In this case, I heard the Tenants paid rent increases without receiving Notices of Rent Increase, as required under section 42 of the Act to be lawful.

When a Landlord increases the rent without issuing a Notice of Rent Increase that complies with the Act, the rent increase is considered unlawful. Both the Tenants and the Landlord's agent provided consistent testimony that the Landlord had increased the rent without giving the Tenants a proper Notice of Rent Increase.

I accept the Tenants' unopposed submissions that they paid an increase of \$100.00 per month for the months of December 2024 through November 2025 which amounts to \$1,200.00 in overpaid rent, and for the month of December 2025 they paid a rent increase of \$200.00. That means the Tenants overpaid a total of \$1,400.00 between December 2024 and December 2025 and they were entitled to withhold \$1,400.00 from rent otherwise payable to recover the unlawful rent increases, as provided under section 43(5) of the Act. The Tenants withheld \$30.00 from the January 2026 rent payment, leaving a balance of overpaid rent in the net amount of \$1,370.00 that is recoverable by the Tenants by deducting this balance from rent otherwise payable.

Based on the above, I find the Landlord is entitled to a Monetary Order for the rent owed for **February 2026** which I calculate to be:

\$ 2,800.00 lawful rent based on tenancy agreement

-1,370.00 minus: remaining balance of unlawful rent increases paid by Tenants

\$ 1,430.00 Net amount owing to Landlord for February 2026 rent

The Tenants remain obligated to pay the Landlord \$1,430.00 for rent for the month of February 2026 and \$2,800.00, subject to lawful rent increases, every month thereafter to continue the tenancy. The monthly rent may only be increased by way of a proper Notice of Rent Increase provided to the Tenants in the approved form and at least three full months in advance, and for a permissible amount as set out in section 43(1) of the Act.

Are the parties entitled to recover the filing fee they paid from the other party?

Pursuant to the discretion afforded me under section 72 of the Act, I make no order for recovery of filing fees paid by either party for their respective applications.

Conclusion

The 10 Day Notice and the One Month Notice issued on January 2, 2026 were waived and are unenforceable. The tenancy continues at this time and the Landlord's request for an Order of Possession is denied.

The Tenants have overpaid rent between the months of December 2024 and December 2025 and the overpayments are recoverable by withholding the overpayments from rent otherwise payable. After deducting the unlawful rent increases the Tenants had paid, the Landlord is provided a Monetary Order for February 2026 rent in the net amount of \$1,430.00.

The monthly rent remains at \$2,800.00 until such time it lawfully increases.

The Tenant's monetary claims were severed and dismissed with 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 20, 2026

Residential Tenancy Branch