



DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (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

This hearing also dealt with the Tenants' 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
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord argued they were never served by the Tenants and were not aware the Tenants filed their own application. The Landlord was prepared to proceed. As such, under section 71(2)(c) of the Act, I find that the Proceeding Package has been sufficiently served for the purposes of this Act.

I find that the Tenants were served on July 6, 2025, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlord provided a copy of the outgoing e-mail showing the documents were included as an attachment to confirm this service. The Landlords also provided the tenancy agreement where the Tenants provided their email for email service.

Service of Evidence

The Landlord argued they did not receive any evidence from the Tenants. The Tenants advised they served the evidence with the Proceeding Package via registered mail. The Canada Post tracking number indicates the package was sent as a regular parcel. The Tenants argued it was sent registered mail but because the Landlord refused to sign it shows as regular parcel. The Tenants advised the only evidence they submitted was a copy of the 10 Day Notice of Unpaid Rent, a previous RTB decision and previous RTB review decision (file numbers noted on cover page). The Landlord agreed to proceed if only those 3 pieces of evidence of the Tenants were considered. As such, only the 10 Day Notice of Unpaid Rent previous decision and review decision were included as the Tenants' evidence.

The Tenants argued they never received the Landlord's evidence. The Landlord advised they served the Tenants at the email addresses listed on the tenancy agreement and provided a copy of the outgoing emails. The Tenants confirmed they did provide their emails on the tenancy agreement, but they never signed a separate document agreeing to email service. The Tenants advised they are not taking any issue with the Landlord evidence.

I will note by the Tenants providing their emails on the tenancy agreement they agreed to email service, as section 16 of the tenancy agreement states "if you provide an email address in this agreement, you may be given or served documents related to the tenancy agreement or to an application for dispute resolution at the email address provided in this agreement. If you provide an email for service, you are responsible for monitoring the email address on a regular basis". As such, even if the Tenants did not agree the evidence of the Landlord could be included, given that the Tenants provided their email address on the tenancy agreement, I find that the Tenants were properly served the evidence.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

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

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

Preliminary Issue- Res Judicata

The Tenants argued the parties had a previous hearing dealing with the 10 Day Notice for Unpaid Rent. The Tenants argued the 10 Day Notice from the previous arbitrator was cancelled and then the Landlord issued a new 10 Day Notice for the same unpaid rent sought in the previous hearing. The Tenants also argued the Landlord filed a review consideration from the previous hearing and that was also dismissed. The Tenants' position is that the Landlords cannot re-adjudicate this issue that was already decided, and a binding and final decision was made.

The Landlord argued they spoke with an Information Officer at the RTB and were told the Landlord could issue a new 10 Day Notice for Unpaid Rent. The Landlord also argued in the previous hearing they were not provided with the Tenants' evidence properly or within the timeframe which resulted in the Landlord not being able to provide the necessary evidence.

Res Judicata is the legal principle which means a matter already decided upon. The principle prevents a party from relitigating a matter that has already been determined by a competent court. The Supreme Court of Canada set out the three preconditions that must be met for Res Judicata to apply: (1) the issue must be the same as the one decided in the prior decision (2) the prior judicial decision must have been final; and (3) the parties to both proceeding must be the same or their privies.

The previous decision dealt with a 10 Day Notice for Unpaid Rent issued April 19, 2025 for \$4,770.00 in unpaid rent for April 15, 2025, to May 14, 2025. The 10 Day Notice for Unpaid Rent in this hearing was issued June 23, 2025, for \$4,300.00 in unpaid rent for April 15, 2025 to May 14, 2025. The Arbitrator in the previous decision canceled the 10 Day Notice issued April 19, 2025, because the 10 Day Notice did not comply with section 52 of the Act and could not be corrected and in the alternative that the Landlord had not satisfied the Arbitrator on a balance of probabilities that April 2025 rent was not paid.

The Supreme Court of British Columbia in *Khan v Shore*, 2015 BCSC 830, advised that for res judicata to apply there is a “fundamental requirement that the decision in the prior proceeding be a judicial decision on the merits”.

I find that the previous decision was not decided on its merits but rather because of an error in the form and contents of the notice. The arbitrator made a statement “in the alternative, even if I am in error on this point, I am not satisfied on a balance of probabilities that the Tenants did not, in fact, pay rent for April”; however, the arbitrator did not do a full analysis on its merits. The Arbitrator did not do an analysis about the service of evidence or the service of the 10 Day Notice. Furthermore, the previous decision only dealt with the preliminary issue of errors in the 10 Day Notice and did not do an analysis of the facts and evidence. Based on the above, I find that the issue is not res judicata as the previous decision was not made on its merits.

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 the parties had a tenancy agreement from April 15, 2023, and then another tenancy agreement was signed October 15, 2023, with a monthly rent of \$4,500.00, due on the 15th of every month.

The Landlord is seeking an Order of Possession and Monetary Order based on a 10 Day Notice for Unpaid Rent. The Tenants filed to dispute the 10 Day Notice for Unpaid Rent and to have the Landlord comply with the Act, Regulation and/or tenancy agreement.

The Landlord issued a 10 Day Notice for Unpaid Rent of \$3,200.00 for April 2025 rent (the 10 Day Notice). The Landlord argued the 10 Day Notice was served June 23, 2025, and the Tenants argued they received the 10 Day Notice on June 26, 2025. The Tenants filed their application on July 2, 2025.

The Landlord’s position is that a discrepancy was found in the Tenants’ rent payments and that the Tenants are behind on rent by \$4,300.00. The Landlord argued that the Tenants advised they made a payment of \$4,500.00 on October 19, 2023, which put the Tenants ahead in rent payments; however, the Landlord argued the payment received on October 19, 2023, was for \$200.00. The Landlord provided bank statements to show the amount deposited from the Tenants’ e-transfer. The Landlord

argued that the Tenants' rent e-transfer from March 16, 2025, which indicated it was for April 15, 2025 rent, covered March 15, 2025 rent and the Tenants did not pay rent for April 15, 2025 to May 14, 2025. The Landlord provided copies of past e-transfers between October 2023 to September 2024, a rent ledger and breakdown of rent payment history.

The Tenants' position is that they are caught up on rent payments and any discrepancy the Landlord found is on their end. The Tenant was asked about the October 2023 e-transfer and the Tenants advised they did not know what the Landlord was referring to and the Tenants reiterated they believe the issue was already adjudicated. The Tenants were also asked if they know the date rent was paid for March 15, 2025 to April 14, 2025, and the Tenants advised they did not recall.

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 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).

The Landlord advised the 10 Day Notice was posted to the rental unit door on June 23, 2025. Section 90 of the Act states that a notice given by posting it to the door is deemed served the 3rd day after it is attached. The Tenants also argued they received the 10 Day Notice on June 26, 2025.

Given the testimony of the Tenants and deemed provisions, I find that the 10 Day Notice was received June 26, 2025. The Tenants had until July 1, 2025, to dispute the 10 Day Notice; however, the Tenants disputed the 10 Day Notice on July 2, 2025. The Tenants also did not file for more time to dispute the 10 Day Notice and therefore, did not present any extenuating circumstances to warrant extending the time limit to dispute. As such, the Tenants are conclusively presumed to have accepted the end of the tenancy, under section 46(5)(a) of the Act.

Based on the testimony and evidence of the Landlord I find that the 10 Day Notice was issued for the valid reason of unpaid rent. I find that the rent ledger provided by the Landlord, the e-transfer and bank summary support that the 10 Day Notice was issued

for the valid reason of unpaid rent. The Tenants did not present any reason for rent to be withheld. The Tenants argued they do not owe any unpaid rent; however, I find that the evidence presented by the Landlord to dispute this and the Tenants did not provide any evidence in support of their position.

I also find that the 10 Day Notice meets all the form and content requirements under section 52 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.

Is the Landlord 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. I find that the 10 Day Notice complies with section 52 of the Act.

The Tenants argued they don't owe any rent and are paid up to date; however, I find that the testimony and evidence of the Landlord supports that a rent payment was missed of \$4,300.00. The rent ledger provided by the Landlord provides the reference number of the e-transfer and the deposit date and supports the Landlord's position that unpaid rent of \$4,300.00 is owed. The Tenants did not provide any evidence to dispute the ledger of the Landlord.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$4,300.00.

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

Given that I have ended the tenancy based on the 10 Day Notice and conclusive presumption, I find that this issue is moot. I dismiss this issue without leave to reapply.

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

As the Tenants were not successful in this application, the Tenants' 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.

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

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 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.

I grant the Landlord a Monetary Order in the amount of **\$4,400.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	\$4,300.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$4,400.00

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 Small Claims Court of British Columbia 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 Tenants' application is dismissed in its 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: July 29, 2025

Residential Tenancy Branch