DECISION

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

This hearing also dealt with the landlord's Application under the Act for:

- an Order of Possession based on the One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act; and
- Recovery of the filing fee.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged receipt of the Proceeding Packages from one another. As a result, I found the parties sufficiently served with the Proceeding Packages for the purposes of the Act, and the hearing proceeded as scheduled.

Preliminary Matters

The tenants sought authorization to submit further documentary evidence after the commencement of the hearing. This request was denied as the evidence service deadlines for both Applications had long passed. I was also satisfied that the evidence the tenants wished to gather and submit did not constitute new and relevant evidence under rule 3.17 of the Residential Tenancy Branch Rules of Procedure (Rules) as it was medical evidence that either existed well in advance of the hearing date, or could reasonably have been obtained by the tenants and submitted prior to the hearing through the exercise of reasonable due diligence on their part.

Issues to be Decided

Are the tenants entitled to cancellation of the One Month Notice? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover their filing fee?

Background, Evidence, and Analysis

The agents for the landlord (Agents) stated that the One Month Notice was personally served on the tenant T.L.J. on July 31, 2025. They submitted an #RTB-34 proof of service form confirming this service by Agent J.M. at 3:25 p.m. on July 31, 2025. The form was also signed by a witness K.F. Although the tenant T.L.J. confirmed receipt at the hearing, they stated that they could not be sure of the date.

In the Application the tenants stated that the One Month Notice was personally served on them on August 8, 2025. However, at the hearing, the tenant T.L.J. stated that this is their birthday and they were not even home that day. Given the tenant's uncertainty about the date of service, their affirmed testimony that the service date listed in the Application is incorrect, and the witnessed and signed #RTB-34, I find on a balance of probabilities that the tenant T.L.J. was personally served with the One Month Notice on July 31, 2025.

Section 47(4) of the Act states that a tenant may dispute a notice under this section by making an Application within 10 days after the date the tenant receives the notice. As I have already found above that the tenants were personally served with the One Month Notice on July 31, 2025, I find that they had until only August 10, 2025, to dispute the One Month Notice. As the Application disputing the One Month Notice was filed by the tenants on August 15, 2025, I find that it was not filed on time.

Section 47(5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Section 66(1) of the Act allows for extensions to this time period only in exceptional circumstances, however, the tenants did not file for such an extension.

The tenants stated that they did not realize that the Application had been filed late, as they thought that weekends did not count, and therefore did not seek an extension under section 66(1) of the Act to the time limit set out under section 47(4) of the Act when filing their Application. They also stated that the tenant S.N.J. was hospitalized the night the One Month Notice was received. A doctor's note was submitted wherein it states that S.N.J. experienced a medical emergency on the weekend of August 1, 2025, resulting in the need for paramedics to attend the rental unit and bring them to the hospital. At the hearing S.N.J. stated that they were hospitalized for 1.5 days and then on bed rest at home for a week. I asked if the tenant T.L.J. was hospitalized and they stated that they were not, but needed to take care of S.N.L.

Despite the tenants' testimony to the contrary, I do not accept that they simply made an error when filing their Application in terms of the service date for the One Month Notice. The date used, August 8, 2025, is more than a week after the actual date of service,

and the tenant T.L.J. acknowledged at the hearing that they were not even home that day. They also admitted that it was their birthday on August 8, 2025, and I find it extremely unlikely that they would genuinely mistake having been served with the One Month Notice on July 31, 2025, with having been served with it on their birthday over a week later. The tenant was also personally served with the One Month Notice, and as such, I do not find that they could reasonably have been confused about the date of service by something like the deemed service timelines, which do not apply to personal service. Given the date of service and the time limit set out under section 47(4) of the Act, I therefore find it more likely than not that the tenants chose August 8, 2025, as the service date for the One Month Notice when filing the Application in an attempt to mislead the Residential Tenancy Branch (Branch) into thinking that the Application had been filed on time, which it was not. Even if I am mistaken and this was truly an unintentional error, the Application was nevertheless filed late, and ignorance of the law is not an excuse under it.

Rule 6.2 of the Residential Tenancy Branch Rules of Procedure (Rules) states that the hearing is limited to matters claimed in the Application unless the arbitrator allows a party to amend the Application. In this case the tenants filed a paper Application, and although there was the ability for them to indicate on the Application that it was filed late and that they were therefore seeking an extension, they left this section of the Application blank. As a result, I find that they did not apply for an extension under section 66(1) of the Act.

Although amendments to an Application at the hearing are permissible under rule 7.12 of the Rules, the circumstances for doing so are very narrow. Under rule 7.12 an Application can only be amended at a hearing where the circumstances could reasonably have been anticipated, such as when the amount of rent owing in an unpaid rent claim has increased since the Application was filed, or where the respondent consents to the amendment. The Agents did not consent to an amendment at the hearing and I do not find that the circumstances set out by the tenants could reasonably have been anticipated. Despite not having explicitly selected an extension in the Application, nothing in any other section of the Application states that they filed late or that they are seeking an extension. Further to this, no reasons for the need for an extension were set out anywhere in the Application. Although a Dr.’s note was submitted, it appears to have been submitted to refute a noise complaint, not in relation to a request for an extension under section 66(1) of the Act.

As a result of the above, I did not permit the Application to be amended at the hearing to include a request for an extension under section 66(1) of the Act because I was satisfied that the grounds for doing so under rule 7.12 of the Act had not been met. Even if I erred in that decision, I would not have granted the tenants an extension under section 66(1) of the Act. The Dr.’s note submitted states only that S.N.J. experienced a medical emergency on the weekend of August 1, 2025, and was taken to hospital. It does not detail the nature of the medical emergency or provide any information on the length of the hospitalization or the requirement for any bed rest. Even if what the tenants stated about S.N.J.’s medical episode is correct, nothing before me explains

why S.N.J. was unable to file their Application on August 9, 2025, which was after their hospitalization and alleged bed rest and within the dispute time limit. Further to this, I do not accept that the other tenant T.L.K. was prevented at all material times from doing so due to S.N.J.'s medical condition, as there is no corroboratory evidence that would support such a finding.

As the tenants did not file the Application on time and an extension to the time limit set out under section 47(4) of the Act was not applied for or granted under section 66(1) of the Act, I therefore find that conclusive presumption under section 47(5) of the Act applies. As a result, I dismiss the tenants' Application seeking cancellation of the One Month Notice without leave to reapply. As the One Month Notice complies with section 52 of the Act, I therefore grant the landlord's Application for an Order of Possession under section 55(2)(b) of the Act. I also grant them recovery of their $100.00 filing fee under section 72(1) of the Act.

Although the Agents sought an Order of Possession as soon as possible, the tenants sought additional time to vacate given S.N.J.'s alleged state of health, the long tenure of their tenancy (approximately 11 years), and the fact that they have a pet. In consideration of this testimony, the fact that the payment of rent is not at issue, and Guideline #54, I grant the Order of Possession effective at 1:00 p.m. on October 31, 2025.

Conclusion

The tenants' Application is dismissed, in its entirety, without leave to reapply.

Pursuant to sections 55(2)(b) and 68(2)(a) of the Act, I grant an Order of Possession to the landlord **effective at 1:00 p.m. on October 31, 2025, after service of this Order**. The landlord is provided with this Order in the above terms and this Order must be served by the landlord on the tenants as soon as possible. Should the tenants or anyone on the premises fail to comply with this Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72(1) of the Act, I grant the landlord a Monetary Order in the amount of $100.00 for recovery of their filing fee. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** by the landlord as soon as possible. Should the tenants fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than $35,000.00.

In lieu of enforcing this Order, the landlord may withhold $100.00 from the tenants' security deposit and/or pet damage deposit under section 72(2)(b) of the Act, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: September 25, 2025

Residential Tenancy Branch