

## **DECISION**

### **Introduction**

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed on August 8, 2025 (the “10 Day Notice”) and an order under s. 66 for more time to do so;
- an order pursuant to s. 70 restricting the Landlord’s right of entry; and
- return of the filing fee pursuant to s. 72.

The Landlord, in its own application, seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10 Day Notice; and
- return of the filing fee pursuant to s. 72.

M.B. attended as the Tenant. A.O. attended as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I reminded the parties of Rule 6.11 of the Rules of Procedure, which prohibits them from recording the hearing themselves, and noted that the hearing was automatically recorded by the Residential Tenancy Branch.

### **Service of the Applications and Evidence**

The Tenant advised that his application and evidence were served on the Landlord, which the Landlord’s agent acknowledged receiving a mail package on September 3, 2025.

The Tenant provided evidence to the Residential Tenancy Branch on September 18, 2025. I asked the Tenant whether there was any evidence he provided to the Residential Tenancy Branch at that time that was not also served to the Landlord. Initially, the Tenant said there was new evidence that had not been served. Afterwards, the Tenant clarified that he served the Landlord with everything that was provided to the Residential Tenancy Branch.

The Landlord's agent, for his part, indicates that the Landlord was received approximately 50 pages of evidence from the Tenant, though he had not counted each page from the Tenant's evidence package.

Dealing first with the Tenant's application, I accept that this was served on the Landlord and received without issue. I find that the Tenant's application was served in accordance with s. 89(1) of the *Act*.

With respect to the Tenant's evidence, I accept that the Landlord was served with this as well. Though the Tenant did not clearly confirm all the evidence provided to the Residential Tenancy Branch was also served on the Landlord, vacillating on this point, the number of pages received by the Landlord as confirmed by the agent corresponds with the approximate number provided to the Residential Tenancy Branch. I accept it likely that the Tenant served all his evidence.

Be that as it may and in an abundance of caution, I asked the Landlord's agent to notify me if the Tenant referred to evidence that was not also served. The Landlord's agent took no issue with proceeding on this basis. No issue was raised during the hearing.

Accordingly, I find that the Tenant's evidence was served on the Landlord in accordance with s. 88 of the *Act*.

The Landlord's agent advised that the Tenant was served with the Landlord's application and evidence by way of registered mail sent on August 26, 2025, which he says was received on August 28, 2025 based on review of the tracking information. The Tenant acknowledged receipt of this package. Accepting this, I find that the Landlord's application was served in accordance with ss. 89(2) and 88 of the *Act*.

## **Preliminary Issue – Parties Named in the Applications**

The spelling for the parties named in the application differ from one another, with the Tenant listing a co-tenant, H.Y., as a party to the dispute.

Generally, parties in a dispute before the Residential Tenancy Branch ought to be names as listed in the tenancy agreement, with the spelling in the tenancy agreement being the correct spelling the legal names. Tenancy disputes are, at their core, contractual in nature, which means only those persons privy to an agreement are subject to its terms.

I have been given a copy of the tenancy agreement, which lists the Landlord as it is named in its own application and does not list H.Y. as a co-tenant. The Tenant, who called into the hearing late, did not provide explanation on who H.Y. is, though the Landlord's agent says the only tenant is the Tenant named in their application. The Landlord's agent further says that the Landlord is correctly named in its application.

Based on the tenancy agreement and the testimony from the Landlord's agent, I accept that H.Y. is not a party to the agreement. They may be an occupant, though they would not be bound to the terms of the contract between the Landlord and Tenant. As such, I remove them as a party to the dispute by amending the Tenant's application.

Similarly, I accept that the Landlord is named correctly in its application, which is again confirmed by the tenancy agreement and the testimony from the Landlord's agent. Accordingly, I amend the Tenant's application to correct the spelling of the Landlord's name such that it conforms with the spelling from the Landlord's application.

Finally, the Tenant has named himself with the full spelling of his first name, whereas the tenancy agreement and Landlord's application name him with the contracted spelling. I accept that the contraction is not likely the correct spelling of the Tenant's legal name and that the Tenant likely named himself properly in his own application. Accordingly, I amend the Landlord's application such that the spelling of the Tenant's name conforms to the spelling of his name as added by him in his application.

## **Preliminary Issue – Severing the Tenant's Claim**

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Under Rule 6.2 of the Rules of Procedure, where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rules 2.3 and 6.2 of the Rules of Procedure are intended to ensure that matters are dealt with in a timely and efficient manner. These rules also enable parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

In this case, I find that the primary issue in dispute is whether the 10 Day Notice is enforceable, both since it unifies the issues in dispute in both applications and since it will be determinative on the Tenant's other claim under s. 70 of the *Act* to restrict the Landlord's right of entry. Simply put, if the tenancy comes to an end based on the 10 Day Notice, whether restrictions should be placed on the Landlord's entry into the rental unit would be irrelevant.

Based on this, I find that the Tenant's claim under s. 70 of the *Act* is not sufficiently related to whether the 10 Day Notice is enforceable. As such, I sever it from the Tenant's application by use of Rule 2.3 of the Rules of Procedure. The claim is dismissed. Should the tenancy continue, the claim will be dismissed with leave to reapply. Should the tenancy end, the claim will be dismissed without leave to reapply.

The hearing proceeded strictly on the question of whether the 10 Day Notice is enforceable.

## Issues to be Decided

- 1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession?
- 2) Is either party entitled to the return of their filing fee?

## Evidence and Analysis

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

### ***General Background***

The parties confirm the following details with respect to the tenancy:

- The Landlord purchased the property in 2022 and the Tenant resided in the rental unit prior to that time.
- Rent of \$1,500.00 is due on the 1<sup>st</sup> day of each month.

I have been given a copy of the written tenancy agreement signed by the Landlord and Tenant around when the Landlord purchased the residential property.

The Tenant advises that he moved into the rental unit in May 2018. The Landlord's agent says that it received a copy of a tenancy agreement from the seller that was signed in 2020, though he does not question that the Tenant lived in the rental unit prior to 2020. I accept that the Tenant has resided in the rental unit since 2018.

The Tenant, in his application, states that he paid \$1,500.00 as a security deposit. The Landlord's agent says that it never received a security deposit from the seller through the statement of adjustment, referring to the 2020 tenancy agreement that failed to list a security deposit.

The Tenant explained that he took over the tenancy from the former landlord, who was also his employer at the time. I am told by him that the rental unit was in a terrible state, and that he spent a month repairing it before moving in. He argued that the payment of rent for the month in which he did not occupy the rental unit was a security deposit, though he says these were all cash transfers and were dealt with informally at the time and that there were plans to ultimately demolish the rental unit.

I accept that there was no security deposit paid by the Tenant. It is not noted in the tenancy agreement given to the Landlord by the seller and I further accept it is not noted in the tenancy agreement from 2020 between the Tenant and his former landlord. Given the circumstances, I find it unlikely the Tenant's previous landlord, who had plans to demolish the rental unit and the rental unit being in a terrible state, would have requested a security deposit from the Tenant.

**1) *Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession?***

A landlord may request an order of possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

Under s. 46(4) of the *Act*, a tenant, upon receipt of a notice to end tenancy issued under s. 46 of the *Act*, has 5-days to either pay the overdue rent listed in the notice or file an application to dispute the notice.

When a tenant files to dispute a notice to end tenancy issued under s. 46 of the *Act* on time, the onus for proving that the notice was properly issued rests with the respondent landlord.

***Service of the 10 Day Notice and Form and Content***

The Landlord's agent advised that email is an approved method of service between the parties, directing my attention to term 18 of the tenancy agreement addendum. Having reviewed the tenancy agreement addendum, I accept the Tenant gave his email address as an address for service.

I am told by the Landlord's agent that the 10 Day Notice was served on the Tenant on August 8, 2025 by having a copy posted to a gate at the property and by having another copy sent to the Tenant's email address. The Tenant acknowledges receipt of the 10 Day Notice on August 10, 2025.

I find that the 10 Day Notice was served on the Tenant on August 8, 2025 in accordance with s. 88(g) of the *Act*, by having posted to the gate, and s. 43(1) of the Regulations, by having a copy sent to the Tenant's email address for service. I accept the Tenant received the 10 Day Notice on August 10, 2025, as confirmed by him at the hearing.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*.

I have reviewed the 10 Day Notice. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

### Request for More Time

Rule 2.6 of the Rules of Procedure indicates that an application is considered to have been made when the application is filed and the filing fee has been paid or a fee waiver submitted.

Review of the information on file shows that the Tenant submitted his application on August 22, 2025, and paid the filing fee on August 25, 2025. As such, I find that the Tenant filed this application on August 25, 2025, being when he met the 2 requirements set by Rule 2.6 of the Rules of Procedure.

Considering this and the Tenant's receipt of the 10 Day Notice on August 10, 2025, the Tenant requested a time extension to file his application to dispute the 10 Day Notice.

Under s. 66(1) of the *Act*, I may extend a time limit imposed by the *Act*, though only in exceptional circumstances. However, pursuant to s. 66(3) of the *Act*, I may not extend the time limit to make an application disputing a notice to end tenancy beyond the effective date of the notice.

In this case, the Tenant filed his application on August 25, 2025, and the 10 Day Notice had an effective date of August 22, 2025. Based on this, I find that I cannot grant a time extension to the Tenant since his application requesting the time extension was made after the effective date of the 10 Day Notice.

Accordingly, the Tenant's request for more time is dismissed, without leave to reapply. Correspondingly, I dismiss the Tenant's claim to cancel the 10 Day Notice, without leave to reapply.

### Order of Possession

The Landlord's agent says that the Tenant failed to pay rent on August 1, 2025 and did not pay rent until August 22, 2025. The Landlord says that he contacted the Tenant on August 6, 2025 to request rent payment, called on August 7, 2025 leaving a voicemail, doing so again on August 8, 2025 before serving the 10 Day Notice. The Landlord's evidence contains copies of the email correspondence.

The Tenant says that he was dealing with issues resulting from the hospitalization of his mother in late July 2025, as well as the death of his stepfather at the same time. I am told by him that he did not pay rent on August 1, 2025, though asked his father to do so on his behalf since he was preoccupied with caring for his mother. The Tenant says his father is not tech savvy, and that payment was not made until August 22, 2025 when he made payment.

Both the Landlord's agent and the Tenant confirm rent was paid by the Tenant for September 2025. The Landlord's agent says that the payment on August 22, 2025 was for use and occupancy, so too was the payment received for September 2025.

The Tenant says that the Landlord wishes to demolish the rental unit, that he had issues with the Landlord beginning in May 2025 due to a pet at the property, and that he has been living in the rental unit for years with his child and had no issues with payment of rent.

To be clear, the Tenant failed to dispute the 10 Day Notice within the 5-day time limit imposed by s. 46(4) of the *Act*, nor did he pay the arrears within 5-days of receiving the notice on August 10, 2025. This means that s. 46(5) of the *Act* has been triggered, such that the Tenant is conclusively presumed to accept the end of the tenancy and was required to vacate on August 22, 2025, being the effective date of the 10 Day Notice. Since he did not do so, I find that the Landlord is entitled to an order of possession under s. 55(2)(b) of the *Act* and an order will be granted on this basis.

I have provided a summary of the submissions at the hearing to address the Tenant's position related to the 10 Day Notice.

First, even had he filed on time, there is no dispute rent was unpaid on August 1, 2025 and was not paid until August 22, 2025. The Tenant provided explanation for why this occurred detailing personal tragedy tied to the health of family members. I have no reason to disbelieve the Tenant. However, under the *Act* extenuating circumstances provide the Tenant no excuse for his failure to pay rent when it is due. Further, the Landlord in this case did not serve the 10 Day Notice at its first opportunity, with attempts made by the agent on August 6, 7, and 8 to contact the Tenant to make payment. The Tenant failed to do so.

Second, the Tenant says he asked his father to pay rent and that he is not tech savvy, such that he believed rent had been paid. Again, even if this were true, the fact remains that rent was not paid. It is no excuse for the Tenant to say he asked a third-party to the tenancy agreement, his father, to pay rent on his behalf. The fact is rent was not paid until August 22, 2025.

Third, the Tenant says that rent has always been paid, arguing that the Landlord received rent payment for August 2025 and September 2025. Even if rent was always paid on time, the Landlord had the right to serve the 10 Day Notice under s. 46(1) of the *Act* due to the failure to pay rent on August 1, 2025. There is no dispute that occurred here.

Further, the Landlord's agent indicates payment from the Tenant was received for use and occupancy only. I accept this to be the case as supported by an email dated August 22, 2025 from the Landlord's agent to the Tenant confirming receipt of the funds for use and occupancy. The Landlord filed its application on August 25, 2025, such that I do not accept that receipt of payments from the Tenant reinstated the tenancy.

Finally, the Tenant says that the rental unit would be demolished and that the Landlord is simply trying to end the tenancy. That may well be true. However, that does not negate the fact that the Tenant failed to pay rent in August 2025 until August 22, which itself was the effective date of the 10 Day Notice. The Landlord is within its rights to serve the 10 Day Notice and seek its enforcement.

Though not argued by the Tenant, I have considered the Tenant's entitlement to withhold payment for rent from the Landlord due to overpayment on the security deposit as permitted by s. 19(2) of the *Act*. As noted above, I do not accept that the Tenant paid a security deposit, such that there would be no entitlement to withhold any portion of the rent owed to the Landlord.

I grant the Landlord an order of possession under s. 55(2)(b) of the *Act*. Policy Guideline 54 provides guidance on setting the effective date of an order of possession, suggesting 7 days is generally appropriate, though factors may weigh toward a shorter or longer period as necessary.

In this case, I accept that the Tenant is not in arrears for rent payment in August 2025 and has paid for occupancy in September 2025. I accept that he has not had issues with payment of rent, such that there is no concern that payment will be made should a longer period be granted.

Further, I accept that the Tenant has resided in the rental unit since 2018, living there with his child. Given this, I accept that the Tenant will require more time to find alternate accommodation.

An order of possession, if granted effective within 7 days, would place this beyond October 1, 2025, such that additional payment for occupancy may be inevitable in any event.

Accordingly, I grant the Landlord an order of possession effective for October 31, 2025 at 1:00 PM. To be clear, the Tenant is required to pay the Landlord for occupancy on October 1, 2025 in the same amount as rent payable under the tenancy agreement, being \$1,500.00.

## ***2) Is either party entitled to the return of their filing fee?***

I find that the Tenant was unsuccessful and is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

I find the Landlord was successful and is entitled to its filing fee. I order under s. 72(1) of the *Act* that the Tenant pay the Landlord's \$100.00 filing fee.

## **Conclusion**

I dismiss the Tenant's application, in its entirety, without leave to reapply.

I grant the Landlord an order of possession under s. 55(2)(b) of the *Act*. The Tenant and any occupant must provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on October 31, 2025**.

I grant the Landlord its filing fee and order under s. 72(1) of the *Act* that the Tenant pay **\$100.00** to the Landlord.



The Landlord must serve the order of possession and monetary order on the Tenant. The order of possession may be enforced at the BC Supreme Court and the monetary order at the BC Provincial Court.

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: September 23, 2025

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Residential Tenancy Branch