



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR  
                                 For the landlord: OPR-DR

### Introduction

This hearing dealt with a cross application. The tenant applied for cancellation of the 10 day Notice to End Tenancy for unpaid Rent or Utilities (the Notice), pursuant to section 46 of the Act.

The landlords applied for an order of possession under the Notice, pursuant to section 55 of the Act.

I left the teleconference connection open until 11:23 A.M. to enable the landlords to call into this teleconference hearing scheduled for 11:00 A.M. The landlords did not attend the hearing. Tenant JD (the tenant) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I note the tenant's application lists applicant tenant JD and respondents landlords Welbec Quesnel LTD and KG. The landlords' application lists applicants landlords JM, KG and PK and respondent tenant JD.

Preliminary Issue – service of the tenant’s application

I accept the tenant’s testimony that he served landlords Welbec Quesnel LTD and KG with the notice of hearing and the evidence (the materials) by registered mail on October 28, 2021, in accordance with section 89(1)(c) of the Act. The tracking numbers are recorded on the cover page of this decision. The tenant submitted copies of the receipts issued by Canada Post with the tracking numbers.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail landlords Welbec Quesnel LTD and KG are deemed to have received the materials on November 02, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue – Landlords’ application

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicants, I order the landlords’ application dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, are the landlords entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord affirmed the tenancy started on April 01, 2021. Monthly rent is \$700.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$350.00 and a pet damage deposit of \$350.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence. It indicates the landlord is Welbec Quesnel Ltd and monthly rent of \$700.00 is due on the first day of the month.

The tenant confirmed receipt of the October 15, 2021 Notice on the date of the Notice. It indicates the tenant failed to pay rent of \$650.00 due on October 01, 2021. The Notice indicates the tenant's address is the rental unit's address (the QU address) and that the tenant must move out of the rental unit located at a different address (The WL address). Both addresses are recorded on the cover page of this decision. The tenant affirmed the QU address is the rental unit's correct address.

The tenant stated he paid rent in the amount of \$700.00 on October 01, 2021. The tenant submitted this application on October 20, 2021 and continues to occupy the rental unit.

The tenant submitted into evidence a ledger dated October 17, 2021. It indicates the tenant paid rent in the amount of \$700.00 on October 01, 2021 and that the tenant has a balance of \$650.00. The tenant said he does not know why the ledger indicates a balance.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For

example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the tenant's undisputed testimony, I find the tenant received the Notice on October 15, 2021. I find the tenant disputed the Notice within the timeframe of section 46(4) of the Act.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the tenant's undisputed and convincing testimony and the tenancy agreement, I find the tenant must pay monthly rent of \$700.00 on the first day of the month.

I accept the tenant's undisputed and convincing testimony that he paid monthly rent of \$700.00 on October 01, 2021.

Section 46(1) of the Act states:

Within 5 days after receiving a notice under this section, the tenant may  
(a) pay the overdue rent, in which case the notice has no effect, or  
(b) dispute the notice by making an application for dispute resolution.

Per section 46(1) of the Act, as the tenant paid the rent due on October 01, 2021, the Notice is cancelled.

Furthermore, the Notice does not comply with section 52(b) of the Act, as it provides two different addresses for the rental unit.

### Conclusion

The Notice dated October 15, 2021 is cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

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

Dated: March 02, 2022