



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding WELBEC QUESNEL LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FFL, CNR-MT, RP, OLC, FFT

### Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and an extension of time to file the application; repair orders and orders for compliance.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Issue(s) to be Decided

1. Has the tenant demonstrated that an extension of time to dispute the 10 Day Notice is warranted?
2. Should the 10 Day Notice be upheld or cancelled? If upheld, is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid rent?
4. Award of filing fee(s).

### Background and Evidence

The tenancy started on September 19, 2023. The tenant paid a security deposit of \$825.00 and a pet damage deposit of \$825.00. The tenant is required to pay a monthly rent of \$1650.00 on the first day of every month.

The tenant did not pay rent for October 2023 or November 2023 and on November 8, 2023 the landlord's agent CS issued a 10 Day Notice to End Tenancy for Unpaid Rent with a stated effective date of November 18, 2023 indicating rent of \$3300.00 was outstanding.

The parties were in dispute as to how the 10 Day Notice was served.

The landlord's agent RS testified that he banged on the door of the rental unit on November 8, 2023 and the tenant answered the door and he handed the 10 Day Notice to her, saying "You've been served." The landlord's agent CS was watching from inside her vehicle and confirmed RS served the tenant as he testified.

The tenant testified that she found the 10 Day Notice on the floor inside the rental unit on November 11 or 12, 2023. She asked her 7 year old daughter where it came from and her daughter told her that a man gave it to her. The landlord's agent RS denied that to be true.

The tenant also testified that she has a security camera that captured other conversations at the rental unit door but she did not provide footage to corroborate that her 7 year old daughter was given the 10 Day Notice.

The landlord's agent CS testified that after serving the tenant with the 10 Day Notice the tenant did not pay the outstanding rent. Nor has the tenant paid rent for December 2023. The tenant acknowledged that is accurate.

The tenant claims to have the outstanding rent, plus rent for December 2023, in the bank but she did not pay the rent because repairs were not made to the property.

The landlord requested an Order of Possession as soon as possible. The tenant requested more time to vacate since she has two children. The landlord was agreeable to allowing the tenant to occupy the rental unit until December 31, 2023 if she paid the outstanding rent of \$4950.00 by 1:00 p.m. today. The tenant indicated that she would go to the bank and it would not be a problem.

I informed the parties that I would provide the landlord with two Orders of Possession: a conditional Order of Possession effective two days after service that is enforceable if the tenant fails to pay the landlord \$4950.00 by 1:00 p.m. today and an Order of possession effective December 31, 2023 that is enforceable in any circumstance. Neither party had any questions about this.

### Analysis

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very specific and limited circumstances when a tenant may legally withhold rent. Having outstanding repairs is not one of permissible circumstances for withholding rent.

The written tenancy agreement requires the tenant to pay \$1650.00 on the first day of every month. It is undisputed that the tenant did not pay rent due for October 2023 or November 2023. As such, I find the landlord was in a position to serve the tenant with a 10 Day Notice.

The parties were in dispute as to service of the 10 Day Notice. On a balance of probabilities, I find I prefer the landlord's version of events over that of the tenant. The landlord's agent, RS, who served the 10 Day Notice provided affirmed testimony that he served the tenant and this was supported by testimony of agent CS and consistent with the signed Proof of Service submitted into evidence and the information provided by the landlord in preparing the landlord's Application for Dispute Resolution.

In contrast, the tenant was less clear as to the date she allegedly found the 10 Day Notice on the floor. The tenant's version of events is not supported by any other evidence such as video footage from her surveillance camera. I note that in preparing her Application for Dispute Resolution, the tenant did not state that the 10 Day Notice was not properly served. Rather, the tenant focused on outstanding repair issues on the application. I also reviewed the text message exchanges the tenant had submitted into evidence. The messages appear to be between the tenant and the landlord's agent CS. The tenant's communications are entirely focused on repairs but on two occasions

CS states that the tenant should follow the 10 Day Notice paperwork. At no time does the tenant raise the issue of improper service of the 10 Day Notice or serving the 10 Day Notice to her 7 year old daughter in the text messages.

In light of the above, I accept it is more likely than not that the 10 Day Notice was served in person on November 8, 2023 as submitted by the landlord's agents.

In filing to dispute the 10 Day Notice on November 17, 2023 I find the tenant was outside of the five day time limit for disputing the notice and the tenant did not provide evidence to demonstrate an extraordinary circumstance prevented her from filing within time. However, even if I were to accept that the tenant disputed the 10 Day Notice within time, the reason she put forth for withholding rent is not a legal basis for withholding rent under the Act. As such, I find there is no basis to cancel the 10 Day Notice under the Act, regardless of when the tenant received the 10 Day Notice, and I find the is at an end due to unpaid rent.

Based on all of the above, I uphold the 10 Day Notice and I find this tenancy is at an end due to unpaid rent. I dismiss the tenant's application in its entirety and I provide the landlord with the following orders:

- An Order of Possession effective two days after service upon the tenant (this order is conditional and may only be enforced IF the tenant fails to pay \$4950.00 to the landlord by 1:00 p.m. today)
- An Order of possession effective at 1:00 pm. on December 31, 2023.

I also provide the landlord with a Monetary Order for unpaid and/or loss of rent for the months of October 2023, November 2023 and December 2023 in the amount of \$4950.00. I further award the landlord recovery of the \$100.00 filing fee paid for its application. Provided to the landlord with this decision is a Monetary Order in the sum of \$5050.00.

The landlord did not request authorization to retain the security deposit and pet damage deposit. Accordingly, they remain in trust to be administered in accordance with the Act.

### Conclusion

The tenant's application is dismissed in its entirety.

The landlord's application is granted. The landlord is provided Orders of Possession and a Monetary Order for unpaid rent.

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: December 15, 2023

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Residential Tenancy Branch