

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

There are applications filed by both parties. The Landlord is seeking an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The Tenant has made an application to cancel the 10 day notice to end tenancy for unpaid rent.

The Tenant attended the hearing by conference call. The Landlord did not attend. The Tenant states that the Landlord was served with his notice of hearing and evidence package in person on January 6, 2012 and that the package was returned to him by registered mail from the Landlord. The Landlord has filed a Canada Post Registered Mail Proof of Service Receipt that states that it was sent to the Tenant on January 13, 2012. As both parties had cross applications filed and scheduled together, I am satisfied that each has been properly served with the notice of hearing and evidence packages for each application.

As the Landlord has not attended the conference call hearing to put forth their application and the Tenant has attended in response to it, I dismiss the Landlord's application without leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to an order to set aside and cancel the 10 day notice to end tenancy for unpaid rent?

Background and Evidence

The Tenant states that there is no written tenancy agreement and that his tenancy began on November 18, 2011. The Tenant is seeking to set aside the notice dated December 22, 2011 as it states that rent of \$650.00 was due on November 1, 2011.

Analysis

I accept the undisputed testimony of the Tenant and find that as the Tenancy did not begin until November 18, 2011 that rent of \$650.00 due November 1, 2011 was not

possible. The Landlord's notice dated December 22, 2011 is set aside and the Tenancy shall continue.

Conclusion

The Tenant's application is granted and the notice dated December 22, 2011 is set aside.

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: January 23, 2012.

Residential Tenancy Branch