

DECISION

Dispute Codes OPR, OPB, MNR, FF

This is an application filed by the Landlord for an order of possession for unpaid rent or utilities, for a breach of an agreement with the landlord, a monetary order request for unpaid rent or utilities and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord has filed page 1 of the 10 day notice to end tenancy for unpaid rent dated February 10, 2012. The Tenant's Counsel states that this was not received by the Tenant. The Tenant has filed a 26 page evidence package in relation to a cross application not yet filed. The Landlord has acknowledged receiving this package.

At the beginning of the hearing, the Tenant's Counsel sought an adjournment to make an application for dispute resolution for a monetary claim to be heard in conjunction with the Landlord's claim. The Landlord disputed the adjournment application. The Tenant's Counsel indicated through instructions from his client that they would only seek to apply for dispute resolution if the Landlord continued in their dispute application. The Tenant's application for adjournment is denied as there is no indication or prior notice of an application for dispute provided to the Landlord. The Landlord's hearing shall proceed.

The Tenant's Counsel indicated that they were not properly served with the notice of hearing package by the Landlord. The Tenant states that they only received the notice on Friday, April 20, 2012 prior to the hearing date of April 23, 2012. The Landlord states that the notice of hearing package was served by Canada Post Registered Mail, but was unable to provide any details in support of this claim. The Landlord has provided no evidence in support of her claim except a copy of page 1 of the 10 day notice to end tenancy for unpaid rent dated February 10, 2012. The Tenant's Counsel disputes that his client never received a copy of this notice. The Landlord's notice dated February 10, 2012 states that it was sent by registered mail. The Landlord stated in her direct testimony that the notice was not sent by registered mail, but by regular mail. The Landlord is unsure of which date in which it was sent. The Landlord cannot provide any supporting evidence of service. The notice dated February 10, 2012 states that rent in the amount of \$14,100.00 was due on February 1, 2012 and was not paid.

As the Landlord's service provisions are in dispute and she is unable to provide any supporting evidence or details regarding the service, I find that the Tenant has not been

properly served with the notice of hearing documents under the Act. The Landlord's service for the 10 day notice is also being disputed and as the Landlord has failed to provide any details or supporting evidence of proper service, the notice dated February 10, 2012 is set aside. The Landlord's application based upon the notice dated February 10, 2012 is dismissed without leave to reapply.

The Tenant's Counsel wishes to have the application reflect his law office's address as the mailing address for the respondent. The application shall be amended to reflect this and the decision shall be sent to counsel's address for the Tenant.

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: April 23, 2012.

Residential Tenancy Branch