

DECISION

Dispute Codes OPC, FF

This is an application filed by the Landlord for an order of possession resulting from a 1 month notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the evidence submitted by the other party, I am satisfied that each has been served.

The Tenant states that the 1 month notice to end tenancy for cause was not served upon him and that his first time receiving it was on June 19, 2012 when he picked up the notice of hearing and evidence package sent by Canada Post Registered Mail on June 15, 2012. The Landlord disputes this stating that the Tenant was served in person on May 31, 2012 on the same date of the notice.

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as he has made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The Landlord was unable to satisfy me that the Tenant had been served the 1 month notice to end tenancy for cause dated May 31, 2012 in accordance with the Act and as a result, I dismiss the Landlord's application. The notice dated May 31, 2012 is set aside and the Tenancy shall continue. The merits of the application were not considered as a result. The Landlord is at liberty to serve a new notice to end tenancy 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: July 10, 2012.

Residential Tenancy Branch