



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this application with one another. The respondent confirmed that the applicant handed her a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on July 28, 2012. Although the copy of this Notice entered into written evidence by the applicant was unsigned and identified July 29, 2012 as the date of the Notice, the respondent said that the copy handed to her was signed by the applicant.

The applicant testified initially that his agent handed her this package on July 12, 2012. He changed this testimony when I asked how this could have happened when the Residential Tenancy Branch (RTB) only produced the Notice of Dispute Resolution Hearing to be served to the respondent on August 13, 2012. He then testified that the hearing package, including the Notice of Dispute Resolution Hearing, was served by his agent on August 10, 2012. Once more this was not possible as the Notice was only created by the RTB on August 13, 2012. As it became apparent that the applicant had no accurate information on when this package was served to the respondent, I asked the respondent when she received the dispute resolution hearing package, including the Notice for this hearing. She confirmed that she did receive a copy of the applicant's dispute resolution hearing package handed to her by an agent of the applicant some time after August 13, 2012. Although the details on when the applicant served this package are very unclear, I am satisfied that the tenant was served with notice of this hearing in ample time to enable her to participate in this hearing.

### Issues(s) to be Decided

Can this application be heard under the *Residential Tenancy Act*?

### Background and Evidence

At the hearing, the respondent said that she first moved into this cabin property on First Nations Land at the end of January 2009. She described the property as being a “shell” of a building. The parties agreed that she did so on the basis of an oral purchase agreement. The respondent said that she then vacated the premises in October 2009, returning to live there by May 1, 2010, by which time the weather had improved to the extent that she could live there. Although a standard residential tenancy agreement was entered into evidence by the applicant, the respondent gave undisputed sworn testimony that this agreement signed on June 22, and 24, 2011 was created in order to qualify her for ongoing shelter assistance. The commencement date of this agreement was back-dated to May 1, 2010.

The applicant requested an Order of Possession for unpaid rent and a monetary award of \$7,700.00 in unpaid rent.

### Analysis

Both parties agreed that they never had an actual tenancy agreement and that the payments the applicant was seeking were for the respondent's alleged failure to adhere to the terms of her purchase agreement. They testified that their agreement was always by way of an oral purchase arrangement, the terms of which apparently allowed the respondent to conduct renovations and repairs, and to reside on the premises when her work on the property reached a point when she could stay there. Based on this evidence, I find that the agreement between the parties is not one that falls within the *Act*. I therefore have no jurisdiction to render a decision in this matter.

Although little evidence was submitted by the parties with respect to the location of this property on First Nations Land, there may also be an additional jurisdictional obstacle to my hearing this application if the property in question does in fact lie on reserve lands.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application. 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: September 12, 2012

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Residential Tenancy Branch