



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR

### Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice pursuant to section 46;

The respondent did not participate in the conference call hearing, which lasted approximately 10 minutes. The applicant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The applicant testified that on September 7, 2016 she forwarded the application for dispute resolution via registered mail to the respondent. Based on the testimony of the applicant and in accordance with sections 89 and 90 of the *Act*, I find that the respondent has been deemed served with the application on September 12, 2016, the fifth day after its registered mailing.

### Preliminary Issue – Jurisdiction

At the outset of the hearing the applicant testified that she shares a home with her common law husband. The applicant explained that she currently has a court ordered no contact with her common law husband and resides in the home on her own. The applicant testified that over the years she has forwarded money to her common law husband to assist with mortgage payments, groceries and other household expenses. The applicant understood that her common law husband owned the home. It is the applicant's position that she is not a tenant.

The applicant confirmed personal receipt of the 10 Day Notice on September 2, 2016 from her common law husband's mother. The 10 Day Notice indicates the applicant has failed to pay "any" rent and "none" of the utilities.

As per Section 2 of the *Act*, the *Act* applies to tenancy agreements, rental units and other residential property. Tenancy agreement is defined in section 1 of the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention no enforceable agreement under the *Act* arises from the relationship.

This relationship lacks the basis of a tenancy agreement. In particular, there is no written tenancy agreement, the applicant did not pay any periodic, fixed sum as rent, but rather contributed to the household expenses. On this basis, I find this is not a matter within the jurisdiction of the Residential Tenancy Branch.

### Conclusion

I have no jurisdiction to render a decision in this matter.

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: October 28, 2016

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Residential Tenancy Branch