



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The applicant, the applicant's agent and the respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The applicant testified that the respondent was served with the applicant's application for dispute resolution and evidence via posting but the applicant could not recall on what date the documents were served. The respondent testified that he received the above

documents on June 9, 2022. I find that while service via posting is not a method permitted under section 89 of the *Act*, the respondent was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*, because receipt was confirmed.

The respondent did not submit or serve any evidence for consideration.

#### Preliminary Issue- Jurisdiction

Both parties agree that the applicant entered into an agreement with the respondent's ex-wife. The respondent testified that he and his ex-wife are on title of the subject property. The respondent testified that he was not privy to that agreement and as his ex-wife has left the province, he is left to deal with it. Both parties agree that the subject property is a barn with no power or running water.

The agent testified that the tenant rented out the barn at the subject property to store his tools and firewood. The applicant testified that he does not reside at the barn. In the hearing the tenant provided the address at which he resides.

The respondent testified that he believes the applicant is sleeping at the subject property in a Winnebago. The applicant testified that he is not sleeping at the subject property. The agent testified that the Winnebago is hers and that she stores it at the subject property.

Section 2(1) of the *Act* states that this *Act* applies to tenancy agreements, rental units and other residential property. I am not satisfied that a tenancy agreement was entered into between the parties. Based on the testimony of both parties, that the subject property is a barn with no electricity or running water, I find on a balance of probabilities, that the agreement entered into between the applicant and the respondent's ex-wife, was a storage agreement and not a residential tenancy agreement.

Pursuant to section 2(1) of the *Act*, I find that I do not have jurisdiction to hear this application as a residential tenancy agreement was not entered into.

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 06, 2022

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Residential Tenancy Branch