



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with a copy of his Application and Notice of Hearing (the “hearing package”) on September 21, 2010 by posting it on the rental unit door. Section 82(1) of the Act says that an application for a Monetary Order must be served on the Tenant either in person or by registered mail. Consequently, I find that the Landlord’s application for a Monetary Order was not served on the Tenant as required by s. 82(1) of the Act and it is dismissed with leave to reapply. At the beginning of the hearing, the Landlord also claimed that the manufactured home park is situated on Indian Lands. RTB Policy Guideline #27 states at pp. 1 - 2 as follows:

“The case law makes it clear that provincial legislation cannot affect the “use and occupation” of Indian Lands because that power belongs to the federal government under s. 91 (of the Constitution Act). Since a tenancy agreement is an interest in land, ***any part of the Legislation which affects the use and occupation of Indian Lands does not apply to the rental unit or manufactured home site which is in dispute*** (emphasis added). (However) the situation is less clear for disputes which do not affect the use and occupation of Indian Lands but which are nonetheless governed by the Legislation. A monetary claim for damages or rent arrears under the Legislation may not affect the right to the use and occupation of the Lands, particularly if the tenancy agreement has ended.”

Consequently, I find that the Branch does not have jurisdiction to hear the Landlord’s application for an Order of Possession and it is dismissed without leave to reapply.

Conclusion

The Landlord’s application for a monetary order is dismissed with leave to reapply. The Landlord’s application for an Order of Possession is dismissed without leave to reapply. 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 26, 2010.

Dispute Resolution Officer