DECISION

Dispute Codes: **Landlord:** MNR, MNDC, O and FF
Tenant: MNDC, O and FF

Introduction

This hearing originally convened on August 31, 2010 but, as set out in my Interim Decision of September 3, 2010, was adjourned to the present reconvening to give both parties an opportunity to make submissions on questions of jurisdiction. Neither party submitted further documentary evidence.

Jurisdiction is called into question by three factors pertaining to the rental agreement.

First, the rental agreement is constructed as a commercial tenancy agreement in every respect, containing a number of provisions which are not enforceable under the *Residential Tenancy Act*. If the rental agreement was found to fall under the *Commercial Tenancy Act*, jurisdiction would be precluded by section 4(d) of the *Residential Tenancy Act.*

Second, toward the end of the five-year tenancy, ownership of the land passed from the Province of British Columbia to the Tswwassen First Nation as part of a treaty settlement, thus raising the question of whether the tenancies with the newly created First Nation fell within the jurisdiction of the *Act*.

Third, at the creation of the rental agreement, the rental property in question was governed under the *Agricultural Land Commission Act.* In researching the question of jurisdiction, it came to my attention that the *Agricultural Land Commission Act* expressly precludes the application to it of any other enactments save for three, none of which is the *Residential Tenancy Act.*

Issues to be Decided

Does the subject tenancy fall within the jurisdiction of the Residential Tenancy Act.?

Background and Evidence

The rental property in this dispute includes a house, three out buildings and 3.5 acres of land. This tenancy began September 1, 2005 under a fixed term agreement between the Province of British Columbia and the tenant signed on August 23, 2005, and among others, was renewed on April 29, 2009. The tenancy ended on June 15, 2010.

After the rental property was granted to the Tswssassen First Nation under a treaty agreement, the land was removed from the Agricultural Land Reserve resulting in a substantial increase in taxes for which the tenant had been responsible under the rental agreement for the entirety of the tenancy. In addition, prior to the end of the tenancy, the First Nation undertook infrastructure upgrades which the tenant found to have impinged on her right to quiet enjoyment.

The landlord claims for unpaid rent, unpaid taxes NSF fee, and septic tank cleaning.

Analysis

On the question of the application of the Agriculture Land Reserve to the tenancy, I would refer to a Judicial Review decision of The Honourable Mr. Justice McEwan in the matter of *Helgren* v. *Campbell* (September 2, 2010), Nelson 1247/15548 (B.C.S.C.).

While that matter dealt with a Manufactured Home, the decision found at para. 28 that "*The Agricultural Land Commission Act* , S.B.C. 2002, c. 36 is not subject to the *Residential Tenancy Act:*:

> 2. (1) This Act and the regulations are not subject to any other enactment, whenever enacted, except the *Interpretation Act,* the *Environment and Land Use Act* and the *Environmental Management Act* and as provided in this Act.

Therefore, there is no question that the Residential Tenancy Act had any jurisdiction for the first three or four years of the tenancy. As the tenant's application claims return of taxes paid to 2005, I must decline jurisdiction on that part of the claim.

On the question of the agreement creating a commercial tenancy, the tenant points to section 4(d) of the *Residential Tenancy Act* which identifies a tenancy primarily occupied for business purposes as exempt from the *Act.*

However, in every sense, the agreement is written as a commercial tenancy agreement and I cannot find it anything other than prejudicial to the landlord to retroactively impose the vastly different provisions of the *Residential Tenancy Act* when both parties signed and renewed a number of times an agreement clearly intended to be commercial.

As to the succession of the agreement from the Province of British Columbia to the Tswwassen First Nation, I note that the property management company brought application on behalf of the landlord under the *Residential Tenancy Act* and made no submissions to challenge jurisdiction. Therefore, I do not find it necessary to address the question herein.

Conclusion

By virtue of its creation under the Agricultural Land Commission Act, and by virtue of its construction and continued renewal under a commercial tenancy agreement, I find that I must decline jurisdiction on this tenancy.

If the parties are unable to resolve the matters in dispute, I would direct them to make application to a court of competent jurisdiction.

November 3, 2010