



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the Tenant to recover an overpayment of rent and a security deposit.

This oral hearing via teleconference started at 11:00 a.m. as scheduled however by 11:10 a.m. neither party had dialled into the conference call. As there has been no hearing into the merits of the Tenant's application, it is dismissed with leave to reapply. However, one of the documents provided as evidence by the Tenant indicates that the rental property in question is located on Indian Lands. RTB Policy Guideline #27 states at p. 1 as follows:

"Section 91 of the Constitution Act confers the jurisdiction over federal lands to the federal government. The Legislation (ie. the Manufactured Home Park Tenancy Act) are Acts of the provincial legislature. 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 section 91."

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 manufactured home site which is in dispute."

[and at p. 2] "A monetary claim for damages under the Legislation may not affect the use and occupation of Indian Lands"....(however) the issue has not been clarified by the courts and therefore an arbitrator may decline jurisdiction if the nature of the dispute is found to affect the use and occupation of the Lands.

Furthermore, I note that the rental property is a campground and that the Tenant ordinarily resides in another province. RTB Policy Guideline #9 states at p. 1 that "the Act does not apply to an occupation of land that under the common law would be considered a ***license to occupy***." It also states at p. 2 that,

"The following factors would tend to support a finding that an arrangement is a license to occupy:

- The manufactured home is intended for recreational rather than residential use;



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- The home is located in a campground or RV Park, not a Manufactured Home Park;
- The property owner pays utilities such as cablevision and electricity.

Consequently, although the Tenant is granted leave to reapply, a further application would be dismissed if it was found not fall within the jurisdiction of the Act for the above-noted reasons.

Conclusion

The Tenant's application is dismissed with 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: December 22, 2010.

Dispute Resolution Officer