



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for An Order of Possession and a Monetary Order for unpaid rent, for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Applicant said she served the Respondent with the Application and Notice of Hearing (the “hearing package”) by registered mail on April 21, 2011. Based on the evidence of the Applicant, I find that the Respondent was served with the Applicant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The original conference call was held on May 18, 2011. The Respondent questioned whether the Residential Tenancy Branch has jurisdiction in this situation because the dwelling unit is on Indian Lands, the Respondent owns the dwelling in question and there are no contracts or agreements between the Applicant and the Respondent. Consequently the original hearing was adjourned to June 13, 2011 so that the parties could make submissions to establish whether the Residential Tenancy Branch has jurisdiction in this situation.

The Respondent submitted a copy of the land title of the unit in question. The Land Title shows the Respondent is the registered owner and there are no registrations against the land title. In addition the Respondent submitted a copy of the NISGA’ A Village entitlement Act and the NISGA’A Land Title Act to show the rent the Applicant is saying she owes is a result of a loan to her parents; therefore it is not her responsibility. The Respondent said there are no contracts between her and the Applicant and she has not made any payments to them as she owns the property free and clear of any loans. As a result the Respondent said the Residential Tenancy Branch does not have jurisdiction in this situation because there is no tenancy and the land is governed by federal legislation.

The Applicant said they did not make any additional submissions as they believed their original submission covered their concerns.

Decisions and Reasons

There are two issues regarding the jurisdiction of this situation. Firstly, whether there is a tenancy and secondly if the Provincial government has jurisdiction under the *Residential Tenancy Act*. Section 91 of the *Constitution Act* says provincial law cannot affect “use and occupation” of Indian Lands because that power belongs to the federal government under section 91. The Respondent submitted a copy of the land title for the property and it is clearly registered by the Nisga’a Land Title Office, consequently I find the Respondent has established grounds to show the property may be governed by the federal government since the application affects “use and occupation” of the property by an Indian person on Indian lands.

Secondly the Applicant said they do not have any contracts or tenancy agreements with the Respondent and one of the Applicants (M.S.) said the respondent was not making her mortgage payments. He confirmed that he viewed the payments the Applicant is seeking from the Respondent to be mortgage payments not rent payments. Consequently, I find the Applicants have not established proof that a tenancy exists with the Respondent.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent and that evidence has been provided that the Residential Tenancy Branch or the Province Government of British Columbia does not have jurisdiction in this situation I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack of jurisdiction

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*.

Residential Tenancy Branch