



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. An Order to recover the filing fee for this application - Section 72; and
3. Other

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

At the onset of the Hearing, the matter of jurisdiction was raised. Both Parties agreed that the Act did not apply, however the Tenant states that since the named Landlord used the Residential Tenancy Branch (the “RTB”) form to serve notice to end the tenancy, the Tenant made the application with the RTB to dispute the application. The unit under dispute is a rental unit situated on the reserve lands of the Band.

Section 91 of the Constitution Act operates to exclude the application of provincial legislation where such legislation affects the “use and occupation” of Indian lands. Since the Act governs residential tenancy agreements that confer an interest in land, and since the rental unit is located on reserve or Indian lands, I find that the application of this Act to the dispute over the unit as situated would be contrary to the Constitution Act. Accordingly, I dismiss the application of the Tenant.

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: November 2, 2011.

Residential Tenancy Branch