



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF, MNDC, O, CNC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, both brought by the tenant. Both files were heard together.

One application is a request to cancel a Notice to End Tenancy.

The other application is a request for a monetary order and a request to dispute an additional rent increase.

Before dealing with the issues claimed on both these applications I dealt with the issue of jurisdiction, as the dispute property is on Indian reserve lands..

Decision and reasons

Counsel for the landlord has argued that the Manufactured Home Park Tenancy Act has no jurisdiction over either of these matters.

With regards to the claim that the Manufactured Home Park Tenancy Act has no jurisdiction over use and occupancy of Indian reserve lands, the courts have been very clear on this matter and therefore I declined jurisdiction over the request to cancel a Notice to End Tenancy as this is directly related to the use and occupancy of the lands.

With regards to the claim that the Manufactured Home Park Tenancy Act has no jurisdiction over rent increases, the courts have been less clear.

In the B.C. Court of Appeal's decision in *Re-. Park Mobile Home Sales and Le Greele*, (1978) the court found that an increase in rent does not affect Indian lands or the use of Indian lands. It follows that the Rentalsman has jurisdiction under section 27 of the Landlord and Tenant Act to deal with a dispute.

However in a subsequent Supreme Court of Canada decision in *Derrickson v. Derrickson* (1986) not only does it state that provincial legislation cannot apply to the right of possession of Indian reserve lands, it also states under paragraph 37:

“I cannot but agree with the Attorney General of Canada who writes in his factum:

In essence, part three of the Family Relations Act is legislation which regulates who may own or process land or other property. Its true nature and character is to regulate the right to beneficial use of property and its revenues and the disposition thereof.”

This seems to indicate, as argued by counsel for the landlord, that the right to derive revenue from land is inseparable from the right to determine use and occupancy of the land.

Given the *Derrickson v Derrickson* decision, I am not willing to accept jurisdiction over the rent increase dispute either, and the parties will have to resolve their disputes through the courts.

Conclusion

I declined jurisdiction over both these applications for dispute resolution.

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: February 28, 2012.

Residential Tenancy Branch