



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The named representatives of the landlord called in and participated in the hearing. The tenants did not attend the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary award in the amount claimed, or in some other amount?

Background and Evidence

The landlord is a Nisga'a village government. At the outset of the hearing I asked the landlord's representatives to comment on my jurisdiction under the *Residential Tenancy Act* to hear and determine the landlord's claims in this proceeding. The landlord's representatives said it was the landlord's position that I do have jurisdiction to hear and decide this matter because the lands where the rental property is located are not "Lands reserved for the Indians" and there is no constitutional restriction that would prevent me from deciding this matter.

I told the landlord's representatives that in preparation for this application I had looked at the provisions of the *Nisga'a Final Agreement Act*, [SBC1999], c. 2. Section 1 of Chapter 11 of the *Act* provides that:

1. The Nisga'a Nation has the right to self-government, and the authority to make laws as set out in this Agreement.

Section 2 provides that Nisga'a Lisims Government and Nisga'a Village Governments, as provided for under the Nisga'a Constitution, are the governments of the Nisga'a Nation and the Nisga'a Villages, respectively. The *Act* provides that the Nisga'a Nation and each Nisga'a Village is a separate and distinct legal entity, with the capacity, rights, powers and privileges of a natural person, including the right to enter into contracts and agreements. The *Act* further provides that the Nisga'a Lisims Government may make laws in respect of the use and possession of Nisga'a Lands, including lands owned by a Nisga'a Village and the *Act* states that in the event of an inconsistency or conflict between a Nisga'a law made under this provision and a federal or provincial law, the Nisga'a law prevails to the extent of the inconsistency or conflict.

Section 129 of The *Act* also states that:

129. Nisga'a Government may adopt federal or provincial laws in respect of matters within Nisga'a Government Jurisdiction as set out in this Agreement.

When I asked the landlord's representatives if there was some evidence that the Nisga'a Government has adopted the provisions of the *Residential Tenancy Act*, the landlord's representatives appeared to have concluded that I had made a ruling that I was declining jurisdiction over this matter and they ended the conference call and left the hearing.

Analysis and conclusion

I did not state at the hearing that I was declining jurisdiction over this matter, but I note upon examining the copy of the tenancy agreement that was submitted by the landlord, that the agreement contains terms that appear incompatible with the provisions of the *Residential Tenancy Act*. Because the Nisga'a Government apparently has the authority to make laws with respect to tenancy matters, there is an issue with respect to whether or not there is a requirement for the Nisga'a Government to formally adopt provincial legislation before it may be invoked with respect to matters that appear to fall within the legislative authority of the Nisga'a Government. There are also serious questions that may arise with respect to the enforcement of agreements made by a

Nisga'a Village that do not conform to the standard terms imposed upon a tenancy pursuant to the *Residential Tenancy Act and Regulation*.

Because this hearing did not arrive at a conclusion with respect to the question of jurisdiction and the merits of the application were not discussed, this application is dismissed with leave to reapply. If the landlord chooses to proceed with a new application, then it will be necessary and helpful for the landlord to provide evidence to show how the provisions of the *Residential Tenancy Act* apply to this tenancy.

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: July 11, 2014

Residential Tenancy Branch

