



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPT, O

Introduction

This was a hearing with respect to the tenants' application to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The named tenant called in and participated in the hearing. The landlord attended and was represented by her lawyer.

Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled?
Are the tenants entitled to any other relief?

Background and Evidence

The rental property is rural land in Chilliwack. There is a house and a manufactured home on the land. The landlord provided documentary evidence that established that the rental property is Indian Land, under the jurisdiction of a First Nation organization. This was confirmed by an extract from the First Nations Land Registry.

The applicant and the respondent are both members of the First Nation. Counsel for the landlord submitted first that the Residential Tenancy Branch does not have jurisdiction over this dispute because it concerns the use and occupancy of Indian Land and because the parties themselves are members of the First Nation.

Counsel also submitted that the tenants' application was filed out of time because the Notice to End Tenancy was served by registered mail delivered on March 21, 2016 and the tenants did not file their application for dispute resolution until May 17, 2016, well beyond the time allowed to apply to dispute a Notice to End Tenancy for landlord's use.

Analysis

The Residential Tenancy Policy Guideline with respect to jurisdiction provides in part as follows:

1. Indian Lands

Section 91 of the Constitution Act confers the jurisdiction over federal lands to the federal government. The Legislation takes the form of 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.

Historically, the RTB accepted jurisdiction of disputes over monetary claims, but not disputes affecting the use and occupation of Indian Lands. However, a decision issued June 5, 2013 by the British Columbia Court of Appeal found that the entire MHPTA is constitutionally inapplicable to Sechelt lands. This decision, *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262, has broad implications – it is not limited to the Sechelt Indian Band. The decision means that both the MHPTA and the RTA are wholly inapplicable to tenancy agreements on reserve lands and property on reserve lands, where the landlord is an Indian or an Indian Band. Thus, the RTB has no jurisdiction to hear disputes of any nature arising from these tenancy agreements.

Based on the established fact that the rental property is Indian Land and the parties to the dispute are members of the subject First Nation and "Indians" as defined by the Indian Act, I find that I do not have jurisdiction to consider the tenants' application.

Conclusion

The tenants' application is dismissed for want 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*.

Dated: June 22, 2016

Residential Tenancy Branch