



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, MNR, OLC, AAT

Introduction

Pursuant to Section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with an application for:

- an order requiring the landlord to make emergency repairs to the rental unit or site pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue to be Decided - Jurisdiction

At the outset of the hearing, counsel for the respondent raised the issue of jurisdiction. Both parties were given a full opportunity to address the issue as follows.

Counsel for the respondent submits that the subject site is owned by the Penticton Indian Band and that it does not fall under the jurisdiction of the Residential Tenancy Branch. Counsel submits that Residential Tenancy Policy Guideline 27 clearly addresses this issue and supports the respondent's position. Counsel submits that the owners of the property are members of the Penticton Indian Band. Counsel submits that Residential Tenancy Policy Guideline 27 further states that the legislation does not

allow the Residential Tenancy Branch to have jurisdiction that affects the use and occupation of the land, regardless of the fact that the park manager is not part of the Indian Band. Counsel submits that in addition to their position that the property is Indian Land; they further submit that the property is a Recreational Vehicle Park and not a Manufactured Home Park or site; which the Residential Tenancy Branch does not have jurisdiction over either.

TA testified that the property is a travel and accommodation property and that the parties sign a Licence to Occupy, not a tenancy agreement. TA testified that the property has always been governed by the Camping Act and not the Residential Tenancy Branch. Counsel submits that the Residential Tenancy Branch does not have jurisdiction to address this matter on each of the noted factors.

The applicant submits that the “management staff of the property are white people” so the Residential Tenancy Branch has jurisdiction. The applicant submits that she has followed all the rules of the property to the letter and seeks to have the Residential Tenancy Branch address her issues. The applicant submits that she is aware that the property is on Indian Land and that it is a Recreational Vehicle Park and not a Manufactured Home Park or site, but argues that because she has followed all of the rules of the property the Residential Tenancy Branch should hear the matter.

Analysis

Counsel submits that Residential Tenancy Policy Guideline 27 clearly outlines the limitations of the Residential Tenancy Branch when dealing with Indian Lands and specifically when it pertains to the use and occupation of the land. Counsel further submits that the case of *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262, sets out the parameters that are applicable in the matter before me.

Counsel submits that the applicant is seeking a remedy for use and occupancy which the Residential Tenancy Branch cannot address. Counsel submits that despite a monetary aspect to the applicants claim, those remedies would be available to her in the Supreme Court and would be more efficient and effective for her. Counsel submits that the case cited also had a monetary component to it. Counsel submits that the Residential Tenancy Branch does not have jurisdiction of this matter on multiple levels and that the matter should be addressed in Supreme Court. I find that there are significant similarities in the case cited and the one before me. I agree with counsel that despite the monetary portion of the applicants claim, the primary issue is one of use and

occupancy of Indian Lands; therefore the Residential Tenancy Branch cannot address it as noted in Residential Tenancy Policy Guideline 27:

However, when the manufactured home site or the rental unit is on reserve land, but the landlord is not an Indian or an Indian band, the MHPTA or the RTA may apply. In this situation – where the tenancy agreement pertains to a rental unit or site on reserve land, but the landlord is non-Indian – sections of the Legislation which do not affect the use and occupation of the land may apply. For example, a monetary claim for damages or rent arrears under the Legislation may not affect the right to the use and occupation of Indian Lands (particularly if the tenancy agreement has ended) and the RTB may find jurisdiction.

After considering all of the factors outlined above and after listening to the oral testimony of the parties, I find that I am without jurisdiction to consider the application before me as the *Act* does not apply in this matter.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider the application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 07, 2017

Residential Tenancy Branch