



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord for an Order of Possession based and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 7, 2017 (the “Notice”).

The Landlord originally applied by way of direct request proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. By Interim Decision dated September 27, 2017 the Adjudicator reconvened the proceeding as a participatory hearing. This Decision is to be read in conjunction with that Interim Decision.

The participatory hearing was scheduled for December 11, 2017 at 9:00 a.m. before me. At that time only the Landlord’s representative, P.S., called into the hearing.

As the Tenant failed to call into the hearing, service of the Landlord’s application materials was considered. P.S. testified that she served the Tenant with the Notice of Hearing and the Application by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served and I proceeded with the hearing in their absence.

*Preliminary Matter—Landlord's Name*

One of the reasons why the original application was adjourned to a participatory hearing is due to the discrepancy between the Landlord named on the Application for Dispute Resolution and the Landlord named on the tenancy agreement.

In response, P.S. stated that the First Nation named on the tenancy agreement, S.F.N., is the First Nations' English name, whereas, T.N., the name on the Notice and the Landlord's Application, is the traditional name. She confirmed that the First Nation went through the treaty process in 2015 and as a result the Nation changed names. She did not provide any documentary evidence to support this, however I accept her testimony in this regard.

*Preliminary Matter—Jurisdiction*

The Adjudicator adjourned the Landlord's application to a participatory hearing as they had questions regarding the jurisdiction of the Residential Tenancy Branch to deal with the issues raised in the application.

At the hearing, P.S. testified that the land upon which the rental unit is located is not Reserve Land, but land owned and governed by T.N. as Treaty Settlement Lands.

*Residential Tenancy Policy Guideline 27—Jurisdiction* addresses the difference between these lands and provides in part as follows:

**1. First Nation Lands**

***a. Reserve Lands***

Homes or rental units located on "lands reserved for Indians" as defined by section 91(24) of the *Constitution Act* ("Reserve Lands"), will fall under Federal legislative power. The Courts have held that provincial legislation cannot apply to the right of possession on *Reserve Lands*. In *Sechelt Indian Band v. British Columbia*<sup>1</sup>, the Court held that the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* are inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band<sup>2</sup>.

The Residential Tenancy Branch, therefore, has no jurisdiction on reserve lands if:

- The landlord is an Indian or Indian Band; or
- The dispute is about use and possession.

The Residential Tenancy Branch may have jurisdiction on reserve lands if:

- The landlord is **not** an Indian or Indian Band; and
- The dispute is not about use and possession.

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### ***c. Treaty Settlement Lands***

Treaty lands, such as those held by the Nisga'a Nation, Tsawwassen, Maa-nulth or Tla'amin First Nations are **not** "lands reserved for Indians" (the "Treaty Lands"). Final Agreements and settlement legislation set out the relationship between federal, provincial and First Nation law making authority. Each of the Final Agreements set out a priority rule to address conflicts between the First Nation's law and federal and provincial laws.

Whether the Residential Tenancy Branch has jurisdiction on Treaty Lands will depend on the terms of the Final Agreements, and whether the First Nation has enacted law. If the First Nation has enacted its own law that may be in conflict with the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*, it is possible that the Acts or parts of the Acts that are in conflict with the First Nation law will be inoperable.

It is important to check the status of First Nations in the Treaty Process and if those First Nations have enacted any laws.

The Landlord's representative did not provide a copy of the First Nations Final Agreement in evidence. As such I have insufficient evidence to determine whether the First Nation has adopted the Provincial *Residential Tenancy Act* or have enacted their own law dealing with tenancies. Notably, the Landlord's representative stated that the First Nation is in the "process of developing laws to deal with such matters", which suggests that the First Nation is enacting their own laws in this respect.

Until the First Nation adopts the Provincial legislation dealing with tenancies: the *Residential Tenancy Act*, I lack jurisdiction to deal with the issues raised in the Landlord's Application. Should the First Nation enact their own laws dealing with tenancies, they would have jurisdiction over such disputes.

### **Conclusion**

Unfortunately, although I find the issue relating to the Landlord's name has been resolved by the testimony of the Landlord's representative, the issue relating to jurisdiction has not.

Based on the evidence before me and the submissions of the Landlord's representative, I find insufficient evidence to conclude that I have jurisdiction to hear this matter and I therefore decline jurisdiction.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 13, 2017

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Residential Tenancy Branch