



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AAT, CNR, LRE, OPT, RR,

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order requesting more time to make this application.
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. An order that the landlord allow access to the unit or site for the tenant or her guests.
- d. A tenant Order of Possession
- e. An order to reduce rent for repairs, services or facilities agreed upon but not provided.
- f. An order to cancel a Notice to End Tenancy served on January 12, 2018.
- g. An order to recover the cost of the filing fee.

The Applicant failed to appear at the scheduled time for the start of the hearing. A representative of the respondent was present and ready to proceed. The telephone line remained open while the phone system was monitored for ten minutes. The applicant failed to appear. I then proceeded with the hearing in the absence of the Application.

On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. The respondent seeks an order that the Manufactured Home Park Tenancy Act does not apply and that Residential Tenancy Branch does not have jurisdiction. All of the evidence was carefully considered.

Preliminary Matter:

The representative of the respondent gave the following evidence.

- The tenancy began on October 1, 2010. The present rent is \$680 per month payable in advance on the first day of each month. Presently the tenant owes outstanding rent of \$4295.
- The lands at issue in this application are located on Penticton Indian Reserve No. 1. The Landlords are 12 members of the band each of whom is an "Indian" within the meaning of the Indian Act and a member of the Penticton Indian Band. The Landlords are the "Locatees" of the lands, meaning they hold a certificate of possession giving them the exclusive right to use, possess and occupy the lands.

- The applicant is the individual who signed a lease for the lands on October 1, 2010. That lease clearly identifies the lands as Indian reserve lands, and the landlord as the locatee of those lands.
- The respondent has no ownership interest in the land. We are the property managers, and act as agents on behalf of locatees.
- The lease signed by the applicant on September 29, 2010 makes it clear that the lands are Indian reserve lands and the locatees are the landlord. Reserve No. 1.”
- Pursuant to the lease, the tenant is solely responsible for “utilities, including cablevision, telephone, electricity and natural gas.”
- The Respondent issued a notice to the tenant of non-payment of rent on January 12, 2018. Pursuant to that Notice, the tenant was given two weeks to pay the rent owed.
- The tenant did not pay the rent as owed. The respondent and the Locatees accordingly took steps to evict the tenants from the lands.
- As of December 2017 the balance owing on the pad rent was \$1640.00. January 1, 2018 \$680.00 lot rent for the month was applied to the account. January 3, 2018 a payment of \$90.00 was submitted. On January 5, 2018 a late fee of \$25.00 was applied for December. The present outstanding balance is \$4295.

The landlord submits the Manufactured Home Park Tenancy Act does not apply and that an arbitrator does not have jurisdiction based on the following:

“RTB Guideline 27 – Jurisdiction makes it clear that the RTB and DRO have no jurisdiction to determine an application involving reserve lands where the landlord is an Indian or the matter in dispute is occupancy of the land. Guideline 27 states as follows:

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. (emphasis in original)

The landlords in this matter are Indians, and the dispute is about an eviction notice, which determines use and possession of lands located on an Indian Reserve. Guideline 27 therefore applies, and jurisdiction should be declined.”

The landlord further refers to the British Columbia Court of Appeal Decision of *Sechelt Indian Band v. B.C. (Manufactured Park Home Tenancy Act)*, 2013 BCCA 262.

“That case concerned an application by tenants of lands on Sechelt Indian Band reserve lands to the RTB for review of a rent increase implemented by the Band. The DRO found that she had jurisdiction to determine the application. She was reversed by the BC Court of Appeal, which found that the MPHTA, as Provincial legislation, has no application to lands reserved for Indians that fall within Federal jurisdiction pursuant to s. 91(24) of the Constitution Act, 1867. The following extracts from the decision summarize the

Court’s reasoning on that point:

[50] The present case concerns the Sechelt Lands which, by s. 31 of the Self-Government Act, are designated “lands reserved for the Indians within the meaning of Class 24 of section 91 of the Constitution Act, 1867”. Consider the case of *Derrickson*, decided subsequent to *RE Park Mobile Homes*, to be clear authority for the proposition that **provincial legislation is not applicable to affect possession of such land**. The MHPTA does purport to regulate possession of land under tenancy arrangements. I consider the comments of Chouinard J. In *Derrickson* set forth at para. 38, *supra*, are applicable in the present case.

[51] While I can agree Silverman J. that there is a monetary aspect to the present case, **I consider the essence of the case (and the dispute) concerns the subject matter of the management and possession of the Sechelt Lands.** I have earlier observed that I consider the terms of s. 31 of the Self-Government Act must have been intended to, and did, provide that such lands shall be considered Lands reserved for the Indians pursuant to s. 91(24) of the Constitution Act. This is a core element of federal jurisdiction under s. 91(24) of the Constitution Act, 1867. It is a matter that lies at the core of Indianness. **Interference on this subject by a provincial enactment is not permissible.**

Determination and Orders:

The applicant failed to appear at the hearing and failed to provide sufficient evidence to dispute the evidence of the landlord set out above. After carefully considering all of the evidence I accept the evidence submission of the landlord that the Manufactured Home Park Tenancy Act and that the Residential tenancy Branch does not have jurisdiction for the following reasons:

- The landlord(s) are members Indian and member of the Penticton Indian band and are Indians as within the meaning of the Indian Act. They, together, hold a certificate of possession for the lands, and they are together known as the “locatees”. As locates, they have the right to possess, manage and use the land.

- The dispute is about the use and possession of land.
- Policy Guideline 27 and the Sechelt Indian Band case applies to the facts of this case. .

I decline to hear the matter for lack of jurisdiction.

This decision is final and binding on the parties.

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: April 10, 2018

Residential Tenancy Branch