



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONCERT REALTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, RR, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. The landlord was represented by legal counsel. Several tenants participated in the teleconference and spoke on their own behalf.

Preliminary Issue – Jurisdiction

At the outset of the hearing, the issue of jurisdiction was raised by the landlords counsel.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Residential Tenancy Act (the Act)?

Background and Evidence

Counsel for the landlord submits that the subject property is on First Nations Land and that the landlord and owner of the subject property is an Indian Band, and that the dispute is over use and possession of common areas of the property. Counsel submits that Residential Tenancy Act does not apply when either of these conditions applies. Counsel submits that both conditions apply and that the Branch does not have the constitutional jurisdiction to hear the matter. Counsel submits that the guiding authority in this matter is *Sechelt Indian Band v. British Columbia (Manufactured Home Park tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262.

AA testified that the landlord has terminated security, removed the irrigation system for planters, have lost the use of the planters and have suffered a loss of quiet enjoyment due to construction. GM testified that although she does not dispute that the landlord is an Indian Band and that the property is on Native Land, she submits that the parties entered into a lease agreement in good faith and under the Residential Tenancy Act, and therefore, the Branch should have jurisdiction. GM further testified that the landlord still has “full governance” of the property and that the matter should be dealt with by the Branch and that each tenant is entitled to a monetary order of \$6846.00 as compensation for the loss of use of portions of the property.

Analysis

Residential Tenancy Policy Guideline 27 addresses the issue before me 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* 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, the Court 2.

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.

I find that the very nature of the tenants’ dispute and the explanation provided by the tenants is over the use and possession of common area portions of the property. In

addition, the tenants do not dispute that the landlord is an Indian or Indian Band and that the property is on First Nations Land. In the result, as this is First Nations Land, and that the dispute is in relation to use and possession of the common area of the property, both of the above conditions apply, accordingly; I find that I do not have the jurisdiction to hear this matter as outlined in the above policy guideline. The landlord has submitted extensive documentation to support their position.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicant's application.

Conclusion

I decline jurisdiction over the applicant's application. I make no determination on the merits of the applicant's application. Nothing in my decision prevents either party from advancing their claims before a Court of competent 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 05, 2018

Residential Tenancy Branch