



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 one another's materials. The landlord was represented by legal counsel. Several tenants participated in the teleconference and spoke on their own behalf

Preliminary Issue – Jurisdiction

Does this matter fall within the jurisdiction of the *Act*?

Background and Evidence

There was a previous hearing regarding several other units in the rental building under the file numbers on the first page of this decision on June 4, 2018. At that hearing the arbitrator found, based on undisputed evidence of the parties that the landlord is an Indian or Indian Band and that the property is on First Nations Land.

The parties confirmed that the rental units that are the subject of the present application are also situated on the same First Nations Land and deal with the same landlord that is an Indian or Indian Band. The parties agree that there are no differences between these tenancies and the tenancies for the other units that would lead to a different finding.

The tenants testified that if their claim is outside of the jurisdiction of the Branch then their applications should not have been accepted and they seek a return of their filing fees.

Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In the earlier written decision the other arbitrator accepts the undisputed evidence that the rental address is located on Reserve Lands, as defined by section 91(24) of the *Constitution Act*. The arbitrator states that pursuant to Residential Tenancy Policy Guideline 27, the Residential Tenancy Branch has no jurisdiction on Reserve Lands if:

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

The parties confirm that the respondent landlord is an Indian or Indian Band as was the case in the earlier decision. The parties further confirm that the subject of the present application is substantially the same as the earlier application brought by tenants in other rental units, dealing with the use and possession of common areas of the property. As such, I find that this is a matter that the earlier arbitrator has made a conclusive finding regarding the jurisdiction of the Branch.

I find that I do not have the jurisdiction to make a new different finding. Accordingly, I find that this is not a matter within the jurisdiction of the Branch and I decline jurisdiction over the applicants' applications.

Conclusion

I decline jurisdiction over the applicants' applications. I make no determination on the merits of the applicants' applications. 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: July 30, 2018

Residential Tenancy Branch