



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended and were given a full opportunity to give affirmed testimony, present evidence, make submissions and call witnesses.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the other's materials. Based on the undisputed evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Jurisdiction

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

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that the subject property is on First Nations Land and that the landlord is a status Indian. The landlord submits that the *Act* does not apply when either of these conditions applies.

The tenant testified that the tenancy agreement signed and the Notice to End Tenancy for Landlord's Use were issued in accordance with the Act. The tenant does not dispute that the property is on reserve land or that the landlord is a status Indian.

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*¹ 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 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.

I find that while the nature of the dispute before me deals with a monetary award and is not about use and possession the landlord is a status Indian as defined under the legislation. The landlord has provided evidence through testimony and their government issued identification in support of their identity as a status Indian. I am satisfied with the parties' evidence that the dispute address is situated on reserve land. Therefore, as this is First Nations Land and the landlord is a status Indian, I find that I do not have the jurisdiction to hear this matter as outlined in the above policy guideline.

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: November 2, 2018

Residential Tenancy Branch