



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, ERP, LAC, LRE, OLC

Introduction

The tenants apply for a variety of relief claiming the landlord is failing to provide services and facilities due under the tenancy agreement and that the landlord is “terrorizing” them at the manufactured home site.

The landlord made a preliminary objection that the manufactured home park in question was on land reserved for Indians under the federal *Indian Act* and that she herself was a status Indian under that *Act*. As a result, she says, the *Manufactured Home Park Tenancy Act* (the “*Act*”) cannot apply.

Preliminary Issue(s) to be Decided

Does the *Act* have application to the circumstances in this case? Can an arbitrator acting under the *Act* conduct a dispute resolution hearing and make an enforceable order?

Background and Evidence

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence and to make submissions in regard to this preliminary issue.

It was agreed that the park is on reserve land and that the landlord is a status Indian. The tenants say they were not informed about either when they rented the site.

There is no written tenancy agreement. It is not disputed that the tenants took possession of this unnumbered site in October 2016, that the monthly rent is \$500.00 and that it includes utilities, internet, a common shower facility and outhouse.

Initially the tenants paid rent to a Mr. M.H. with the knowledge of the landlord and then, since January 2018, directly to the landlord.

Analysis

Residential Tenancy Policy Guideline # 27, “Jurisdiction” refers to circumstances like the present ones and provides:

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*, 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.

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.

It is apparent that as this land is on reserve lands and as the landlord is an Indian, the Residential Tenancy Branch has no jurisdiction to hear or adjudicate the tenants’ claim. For the purposes of the question of jurisdiction, it does not matter what was or was not told to the tenants at the start of the tenancy, though in the appropriate forum it may be relevant.

The landlord also argues that under the *Indian Act* the contract with these tenants is illegal. Given the jurisdictional finding made in this matter, I decline from making any determination about this argument.

Conclusion

The tenants' application is dismissed because the Residential Tenancy Branch does not have jurisdiction to hear it. They are free to pursue their remedies in the appropriate forum.

This decision was rendered orally at hearing 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: April 15, 2019

Residential Tenancy Branch