



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, OLC, PSF, AAT**

Introduction

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

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was primarily represented by their family member SJ (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any materials of their own. Based on their testimony I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Act?
If so, is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties confirm that the dispute property is located on Reserve Lands as defined by section 91(24) of the *Constitution Act*. The parties further gave evidence that the named landlord is an Indian.

The tenant submits that there was a tenancy which commenced August 2021 and ended in October 2021 when the landlord shut off utilities to the rental unit. The parties agree that this tenancy has ended and the tenant withdrew the portions of their application pertaining to an ongoing tenancy. The tenant now seeks a monetary award for out of pocket costs they have incurred.

Analysis

I accept the undisputed evidence of the parties that the dispute address is located on Reserve Lands as defined by section 91(24) of the *Constitution Act*.

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.

In the present case I accept the undisputed evidence that the landlord is an Indian and therefore find that the Branch and Act have no jurisdiction.

In the alternative, even if I found that the present matter falls within the jurisdiction of the Branch and Act, I find insufficient evidence in support of the application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the tenant's testimony about conflicts with the landlord and the circumstances of their vacating the rental unit to be insufficient to find any breach on the part of the landlord that would give rise to a monetary award. I find the subjective complaints, and handful of receipts for hotel stays and eating out to be insufficient to meet their evidentiary onus that any monetary losses are attributable to a violation by the landlord.

Conclusion

I find this matter falls outside of the jurisdiction of the Branch and decline to make any further findings. 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: January 31, 2022

Residential Tenancy Branch