



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding s7et'h' First Nations
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This hearing, reconvened from a direct request proceeding, dealt with the landlord's application pursuant to the section 55 of *Residential Tenancy Act* (the "Act") for an Order of Possession.

The tenant did not attend this hearing which lasted approximately 30 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agents and counsel (the "landlord") who were given a full opportunity to be heard, to make submissions and to call witnesses.

The landlord testified that they served the tenants with the Interim Decision notice of reconvened hearing and evidence by registered mail. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on May 16, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue- Jurisdiction

Policy Guideline #27 describes the legislative authorities of the federal and provincial governments, and specifically the jurisdiction of the Residential Tenancy Branch to determine disputes. It states:

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.

In this case, the Applicant is an Indian band and the dispute is about possession of a rental unit.

The Policy Guideline continues to provide that:

c. Treaty Settlement Lands

Treaty lands, such as those held by the Nisga'a Nation, Tsawwassen, or Maa-nulth First Nations are not "lands reserved for Indians" (the "Treaty Lands"). Final Agreements and settlement legislation set out the relationship between federal, provincial and First Nation law making authority. Each of the Final Agreements set out a priority rule to address conflicts between the First Nation's law and federal and provincial laws.

The applicant submits that the subject property lies on land that are held by one of the specified nations and are not "lands reserved for Indians". The applicant quotes from the *Maa-nulth First Nations Final Agreement Act* which provides as follows:

1.4.0 CHARACTER OF MAA-NULTH FIRST NATION LANDS AND ONTHER MAA-NULTH FIRST NATIONS LANDS

1.4.1 There are no "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867* for any Maa-nulth First Nation and there are no "reserves" as defined in the *Indian Act* for any Maa-nulth First Nation and, for

greater certainty, Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands are not "Lands reserved for the Indians" within the meaning of the *Constitution Act, 1867*, and are not "reserves" as defined in the *Indian Act*.

1.5.0 APPLICATION OF FEDERAL LAW AND PROVINCIAL LAW

1.5.1 Federal Law and Provincial Law apply to the Maa-nulth First Nations, Maa-nulth-aht, Maa-nulth First Nation Citizens, Maa-nulth First Nation Public Institutions, Maa-nulth First Nation Corporations, Maa-nulth First Nation Governments, Maa-nulth First Nation Lands and Other Maa-nulth First Nation Lands.

The applicant further submits that the *Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Housing Authority Act, KCFNS 33/2014* specifically provides at section 10.8:

10.8 For certainty but subject to this Act, the Residential Tenancy Act (British Columbia) applies to Ka:'yu:'k't'h'/Che:k'tles7et'h' housing and the tenancy agreement

Based on the foregoing, I am satisfied that this Branch and the *Act* have jurisdiction over the present living arrangement and the authority to resolve the dispute. I find this matter falls within the jurisdiction of the Branch and the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord gave undisputed evidence on the following facts. The monthly rent for this periodic tenancy is \$222.50 payable on the first of each month. The tenants have consistently failed to pay rent as required under the signed tenancy agreement and there was an arrear of \$53,549.28 as at January 26, 2022. The landlord provided a ledger showing the amount of rent payable and received throughout the tenancy. The landlord stated that they consistently communicated to the tenants that they were not waiving their right to the rent payment.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on January 26, 2022. The notice was served on the tenants personally by the landlord's agent LJ and the tenants signed a Proof of Service form confirming receipt of the 10 Day Notice.

The tenants failed to pay the full amount of the arrear within 5 days of service. The landlord is not aware of the tenants filing an application to dispute the notice.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$222.50 pursuant to the tenancy agreement. I accept the evidence before me that the tenants failed to pay the rent as required and there was a basis for the landlord to issue a 10 Day Notice. Based on the evidence I find the tenants were served with the 10 Day Notice on January 26, 2022.

I accept the landlord's evidence that the tenants did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they file an application to dispute the notice.

Therefore, pursuant to section 46(5) I find the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an Order enforceable 2 days after service on the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 31, 2022

Residential Tenancy Branch