



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants EG and JG (the tenant) and the landlord attended the hearing. The landlord was represented by counsel CR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

The landlord affirmed the landlord is an Indian band, as defined in section 2 of the Indian Act. The tenant agreed the landlord is an Indian band. Later the tenant stated she does not know if the rental unit is located on an Indian band reserve land. The landlord testified the rental unit is located on Indian band I.R.5.

Residential Tenancy Branch Policy Guideline 27 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.

(emphasis added)

Based on the landlord’s convincing testimony, I find the rental unit is located on an Indian band reserve land. As such, I find I have no jurisdiction over this dispute.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

Conclusion

I have no jurisdiction to hear this matter.

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: June 09, 2022

Residential Tenancy Branch