



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to section 39 of the Act.

I left the teleconference connection open until 11:11 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by agent DM (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 87(5) 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."

The landlord affirmed the landlord is an Indian band and the rental unit is located on an Indian reserve.

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.

Based on the landlord's convincing undisputed testimony, I find the landlord is an Indian band and the rental unit is located on an Indian reserve.

As such, I find I have no jurisdiction over this dispute.

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 *Manufactured Home Park Tenancy Act*.

Dated: August 19, 2022

Residential Tenancy Branch