



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for multiple remedies, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on December 2, 2022.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenant confirmed receipt of the Landlord's first documentary evidence and Notice of Hearing package. The Landlord sent two additional evidence packages to the Tenant by registered mail, on September 8, 2022, and November 2, 2022. Tracking information was provided at the hearing. Although the Tenant stated he did not get these packages, pursuant to section 83 of the Act, I find these packages were sufficiently served 5 days after they were sent.

The Tenant stated he did not provide any documentary evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The issue of jurisdiction was raised by the Landlord as part of his written submission and evidence package. Both parties were given a chance to speak to the issue of jurisdiction. The Tenant did not speak directly to this issue. However, the Landlord

stated that he is a Status Indian and he provided a copy of his Status Card. He stated that he is also the property manager for the owners of the property, J.B. and W.B., who are members of the Snuneymuxw Nation (Nanaimo). The Landlord stated that this home site, which is the subject of this proceeding, is part of a manufactured home park, all of which is located on Reserve Land under the above noted nation. The Landlord stated he does not have any further paperwork or land title documentation beyond what he provided from Indigenous Services Canada under the Indian Land Registry System for this parcel of land.

After carefully considering all of the evidence and testimony, I find it more likely than not that the Manufactured Home Park Tenancy Act and that the Residential tenancy Branch does not have jurisdiction for the following reasons:

- The owner(s) are members of the Snuneymuxw Nation (Nanaimo River 4) Indian band and are Indians as within the meaning of the *Indian Act*, and this parcel is location on Reserve Lands.

Policy Guideline 27 states the following:

1. First Nation Lands

a. Reserve Lands

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* 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.

I find Policy Guideline 27 applies to the facts of this case as I find it more likely than not that the owners/Landlords are Indians, as defined under 91(24) of the *Constitution Act*, and I also note this dispute is about use and possession of the home site (which is

located on Reserve Lands), given the Landlord has applied for an Order of Possession based off a Notice to End Tenancy. I decline jurisdiction on 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: December 02, 2022

Residential Tenancy Branch