



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Sage Creek Developments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, PSF, FFT

The Applicant filed for dispute resolution (the “Application”) on September 1, 2022, seeking:

- an order that the Respondent provide services or facilities required by the tenancy agreement or law;
- a reduction in rent for repairs, services or facilities agreed upon but not provided;
- reimbursement for the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on January 20, 2023. In the conference call hearing I explained the process and offered the parties the opportunity to ask questions. Both the Applicants and Respondent attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing.

The Respondent confirmed that they received the Notice of Dispute Resolution Proceeding and evidence from the Applicants.

Reciprocally, the Applicants stated they did not receive evidence from the Respondent; however, this was “not the [Respondent’s] failure” because the Applicants receive mail via their caretaker, and the Applicants did not get to the post office on time. From what the parties stated in this hearing regarding the Respondent’s evidence sent via registered mail, I find the Respondent served the material in a manner that complies with s. 81(c) of the *Act*, and within the prescribed timeline to do so. This material receives full consideration herein.

Preliminary Matter – jurisdiction

The Applicants presents their sublease agreement, and put the amount of \$401.53 on their Application as the monthly rent. The Landlord presented the rental unit property itself exists within a specified landmass that is subject to a special agreement between the federal government and a local first nation. This gives that local first nation jurisdiction over “landlord and tenant matters with respect to that [first nation’s] land and premises on [the first nation’s land].”

The Applicants stated on their form that the Westbank First Nation confirmed with them in writing that “they have no legal jurisdiction over this property as sub-leased for a longer term than 10 yrs and the Landlord is not a Native.” In the hearing they presented that the local first nation’s lawyer, whom they questioned about this matter, directed them to the Residential Tenancy Branch to confirm. At the Residential Tenancy Branch, the response to the direct call from the Applicants was that an arbitrator would decide the matter in a dispute resolution process.

The Applicants’ basic position, as stated in one of their written statements that appears in the evidence: “[Westbank First Nation] suggested we contact [the Residential Tenancy Branch]. Because [Westbank First Nation] does not have jurisdiction and you support Residential rent control over [the rental unit property], we believe you have jurisdiction. This is clearly a Service and Rent Issue.”

In a written submission, the Respondent submitted that whole of the rental unit property is situated within the Westbank First Nation’s lands, “pursuant to the terms of a headlease with the Westbank First Nation government.” The Respondent submitted a copy of the sublease agreement showing this specific term.

In the hearing, the Respondent maintained that neither the *Act*, nor the Residential Tenancy Act apply in this situation. They reviewed the *Residential Tenancy Policy Guideline 27. Jurisdiction* that is specific to the present situation.

As the Respondent submitted here, I find *Policy Guideline 27* applies to the current situation. This guideline, section 1.b., is explicit on the specific point:

The Westbank First Nation Self-Government Agreement between the federal government and the Westbank First Nation gives the Westbank First Nation jurisdiction over “landlord and tenant matters with respect to Westbank Lands and premises on Westbank Land.

The *WFN Residential Premises Law* applies to all residential tenancies on Westbank Reserve Lands. Therefore, the director [an arbitrator is a delegated authority of the director] does not have jurisdiction over tenancies on Westbank lands, as the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* are entirely inapplicable.

For this reason, as set out in policy at the Residential Tenancy Branch, I decline to proceed with the Applicant's claim, and I make no finding thereof under the *Act* s. 58 or s. 60.

Conclusion

For the reasons above, I decline jurisdiction to resolve this dispute. I dismiss the Applicants' Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 14, 2023

Residential Tenancy Branch