



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FFT

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Notice of Rent Increase pursuant to section 43;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Decision

The application is dismissed without leave to reapply.

There is no jurisdiction under the *Act* to hear this dispute.

Background

The hearing began on March 3, 2023. At that time, the agents for the landlord attended ("the landlord"). The tenant NS attended for both tenants ("the tenant").

The hearing was adjourned to allow the parties to submit written submissions. The terms of the adjournment were set out in my Interim Decision of March 3, 2023.

Written submissions have now been submitted and exchanged pursuant to the terms of the Interim Decision.

I find it is not necessary to reconvene the hearing.

Issue(s) to be Decided

Does the Arbitrator have jurisdiction to resolve this dispute?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence, written submissions and the testimony presented, only the facts and arguments relevant to the issues and findings in this matter are reproduced here.

This is an application by a tenant disputing a notice of rent increase for leased residential property located on Reserve land for non-compliance with the *Residential Tenancy Act* (the “RTA”)

The landlord claimed there is federal jurisdiction over the land. Therefore, provincial legislation (the RTA) does not apply. They requested the application be dismissed without leave to reapply.

Tenancy Background

1. Tzeachten Indian Reserve No. 13 is referred to as the “Reserve”.
2. Tzeachten First Nation is referred to as “Tzeachten”.
3. Tzeachten leased Lot 455 of the Reserve to the landlord on January 1, 2021.
4. The tenant subleased the rental unit from the landlord under a residential lease agreement dated June 19, 2021 (the “Sublease Agreement”).

5. The rental unit is part of a building complex of townhouses and apartments located on Lot 455.
6. The Sublease Agreement contains the following relevant sections:
 - I. The tenant is aware that the RTA and rent increases under the Act do not apply to the Sublease Agreement as the unit is located on Reserve lands.
 - II. Rent shall increase on February 1st in each year for the term by the amount by which rents for residential accommodation in Chilliwack, B.C. increased in the previously completed calendar year as published by Canada Mortgage Housing Corporation in its Residential Market Survey for Chilliwack, B.C.
 - III. The tenant promised to comply with the bylaws, rules and regulations of the landlord and Tzeachten.
7. On January 13, 2023, the landlord delivered a notice of rent increase ("Notice") to the tenant notifying them of a 7.55% monthly increase, effective April 1, 2023.
8. On January 31, 2023, the tenant applied to the RTB to dispute the Notice under the RTA. The tenant claimed the proposed rental increase exceeded the allowed annual increase under the RTA. They requested that the Notice be cancelled.
9. The landlord argued that the RTB has no jurisdiction to hear the Application because the unit is located on Reserve land.

Analysis

10. Under the *Constitution Act*, 1867, the federal government has exclusive jurisdiction to enact laws relating to “Indians and Lands reserved for the Indians” (“Reserve Lands”). When provincial laws conflict with federal legislation, the provincial laws do not apply.
11. *The Indian Act*, RSC, 1985, c. I-5 governed the Reserve until 2008.
12. In 2008, Tzeachten enacted the Tzeachten First Nation Land Code (the “Land Code”) under the *First Nations Land Management Act*, S.C. 1999, c. 24 (“FNLMA”).
13. Subsection 5(c) of the FNLMA states that reserve land to which a land code applies continues to be “land reserved for the Indians” within the meaning s. 91(24) of the *Constitution Act*, 1867.
14. The RTA has exclusive jurisdiction to resolve disputes involving the rights and obligations under the Act and the tenancy agreement relating to the tenant’s use, occupation or maintenance of the rental unit.
15. The *Residential Tenancy Policy Guideline # 27 – Jurisdiction* address the issue of jurisdiction:

Rental units located on “Lands reserved for Indians” (“Reserve Lands”), fall under Federal legislative power (section 91(24) of the *Constitution Act*, 1867).

The Court of Appeal has held that provincial legislation cannot apply to the right of possession on Reserve Lands. In *Sechelt Indian Band v. British Columbia* [2013 BCCA 262], the Court held that the *Residential Tenancy Act* (“RTA”) and *Manufactured Home Park Tenancy Act* (“MHPTA”) are inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band.

16. In *Sechelt Indian Band v British Columbia*, the court held the provincial legislation did not apply to disputes concerning notices of rent increase for leased residential property on reserve lands or lands designated as “lands reserved for the Indians”.
17. The unit is located on Reserve Lands which falls under federal legislative power pursuant to the *Constitution Act, 1867*
18. In conclusion, I find the RTA does not have jurisdiction to hear this dispute as it concerns an application by a tenant disputing a notice of rental increase for leased residential property located on land expressly designated as “Lands reserved for the Indians” under federal legislation.

The application including the request for reimbursement of the filing fee is dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

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: April 09, 2023

Residential Tenancy Branch