

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant (the landlord's daughter) confirmed that the landlord (her father) handed her the 10 Day Notice on September 19, 2011. The landlord confirmed that the tenant handed him a copy of her dispute resolution hearing package on September 30, 2011. I am satisfied that both of these documents were served to one another in accordance with the *Act*.

Preliminary Issues

Although both parties sent copies of late evidence to the Residential Tenancy Branch (the RTB), neither of them served copies of this evidence to the other party. As such, the only written evidence before me is a one page letter from the tenant and a copy of the 10 Day Notice attached to her original application for dispute resolution.

At the hearing, the landlord made an oral request for an end to this tenancy and the issuance of an Order of Possession if the tenant's application were dismissed. The landlord also made an oral request for a monetary award for unpaid rent. I advised him that the *Act* does not permit an oral request for a monetary award. I advised the landlord that if he plans to pursue a monetary Order under the *Act* he will need to apply for dispute resolution himself.

The landlord and his common-law wife who spoke on his behalf also maintained that the property in question does not fall within the jurisdiction of the Province of B.C. because it is situated on the Osoyoos Indian Reserve. They asserted that any jurisdiction would be by way of the Federal Government and/or the Osoyoos Band Council. The tenant did not dispute the landlord's claim that her application to cancel the 10 Day Notice falls outside the *Act*.

Issues(s) to be Decided

Does the tenant's application for dispute resolution fall within the *Act*? If so, should the tenant's application to cancel the landlord's 10 Day Notice be allowed? If the tenant's application were dismissed, should the landlord be issued an Order of Possession?

Background and Evidence

The parties agreed that this month-to-month tenancy commenced on or about October 24, 2010. Although the parties said that they have a written tenancy agreement, neither party entered a copy into written evidence. The landlord said that the initial monthly rent was set at \$660.00, which he reduced to \$500.00 during the course of this tenancy.

The tenant asserted that she actually holds a partial ownership of this property, ceded to her when her father and mother divorced in 1991.

The landlord said that he issued the 10 Day Notice to the tenant when she did not pay September 2011 rent. He said that the tenant has not paid \$400.00 of her August 2011 rent.

Analysis

Based on the undisputed oral testimony of the parties, I accept that the property in question is part of the Osoyoos Indian Reserve. The landlord has argued successfully that the *Act* does not apply to a dispute regarding possessory rights on Reserve land. As such, I find that I have no jurisdiction to hear this application and can make no determination regarding the landlord's 10 Day Notice. I also have no jurisdiction to consider the landlord's oral request for an end to this tenancy and an Order of Possession.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application. Under these circumstances, the applicant bears her costs of filing her application. 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*.