Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STANMAR SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FF

Introduction

This hearing involved Applications for Dispute Resolution (the "Applications") made by 38 residents of the Manufactured Home Park (the "Park") under the *Manufactured Home Park Tenancy Act* (the "Act"). The Applicants requested that all the Applications be heard together and as a result a hearing was scheduled to determine the following issues elected by the Applicants: to dispute an additional rent increase; for the Respondent to comply with the Act, regulation or tenancy agreement; and to recover the filing fees from the Respondent for making all the Applications.

The lead Applicant (the "Applicant") appeared for the hearing and confirmed that she was the only party representing the remainder of the Applicants in the joint Applications. Legal counsel for the Respondent company named on the Applications, and the property manager appeared for the hearing.

No issues in relation to the service of the Notice of Hearing documents and the joint Applications were raised at the start of the hearing. Legal counsel confirmed receipt of the Applicants' written evidence. While legal counsel had submitted a large amount of written evidence late to the Residential Tenancy Branch, the Applicant confirmed receipt of the written evidence and confirmed that the Applicants had sufficient opportunity and time to review the evidence and did not require any further time.

Issue to be Decided

The written evidence of the Respondent comprised of lengthy submissions on the issue of jurisdiction in this matter. Legal counsel argues that the Residential Tenancy Branch does not have jurisdiction in this matter as the tenancies in dispute are not subject to the Act because they are located on Indian reserve lands and, as such, fall under Federal jurisdiction. As a result, this hearing focused on the issue of whether the Residential Tenancy Branch has jurisdiction in this dispute.

Background and Evidence

The Applicants in this case were provided with a notice of rent increase on May 23, 2014. The Applicants made their Applications because the Respondent has not complied with the rent increase provisions of the Act. The Applicants submit that the Respondent has not used the correct form and is seeking to impose a rent increase amount that exceeds the allowable amounts under the Act and regulation.

Legal counsel submitted a large amount of written evidence including written submissions and testimony, tenancy agreements associated with the tenancies in dispute, as well as extensive legal precedents claimed to be analogous to this case. At the start of the hearing, I asked legal counsel to briefly summarise the submissions to facilitate a clearer understanding for the Applicant on the arguments being relied upon for the Respondent's case.

While I have not sought to document all of the evidence presented in the hearing as well as the written evidence, I only refer to the relevant portions of the submissions in this decision as follows:

- The Park is located on Indian reserve lands with a total of 76 mobile home sites.
- The Park lands are under the control of four members of the Indian Band who are referred to by legal counsel as "Locatees". Each Locatee has a certificate of possession, issued under the *Indian Act.*
- The Locatees previously owned and held two companies under which the tenancies in dispute were administered before 2010. These companies have since been deregistered and are no longer in operation; however, some of the tenancy agreements showing these companies named as the landlord have not been changed to reflect this. The Locatees are still named as the landlords under these leases as they hold the certificate of possession to the lands.
- Since 2010, all tenancies, including a portion of those in this dispute, show the landlord as being the Locatees which has become the normal practice for renters wanting to rent sites in the Park.
- The Locatees employ a property management company, the Respondent company named on the Applications, to administer the tenancies and deal with the residents of the Park as an agent of the landlord/Locatees.

Legal counsel presented legal submissions in relation to the jurisdiction of the Residential Tenancy Branch in this matter and referred to legal cases and findings made previously by the Residential Tenancy Branch and the courts that were analogous to the facts at issue in this case.

Legal counsel referred to a decision dated June 5, 2013 by the British Columbia Court of Appeal (*Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer),* 2013 BCCA 262) which determined that the entire Act was constitutionally inapplicable to a similar dispute which involved the same circumstances (rent increases) as the one being decided upon in this hearing.

Legal counsel referred to extracts of the above decision and cited the fact that the British Columbia Court of Appeal concluded that any dispute arising from the management and possession of mobile homes situated on Indian lands is a core element of Federal jurisdiction and interference on this subject by a provincial enactment is not permissible. Legal counsel submitted that this decision ousts the jurisdiction of the Act in relation to rent increase disputes regarding mobile home sites located on Indian lands. Legal counsel also referred to a Supreme Court of Canada decision in *Derrickson v. Derrickson* [1986] 1 S.C.R. 285, which found that provincial legislation cannot apply to the right of possession of Indian reserve lands.

Legal counsel made reference to a decision made by the Residential Tenancy Branch on February 28, 2012 (the file numbers for which appear on the front page of this decision). In this case the Arbitrator (then referred to as a Dispute Resolution Officer) declined jurisdiction over a rent increase dispute involving two previous tenants (not part of this dispute) who were renting sites in the same Park.

Legal counsel submitted that due to lack of jurisdiction by the Residential Tenancy Branch in this matter, this is the reason why the Applicants have **not** been provided with a notice of rent increase and in an amount that complies with the Act, rather it was issued under the provisions of the *Constitution Act* and the *Indian Act*.

The property manager provided oral and written testimony verifying that he was the owner of the property management company who managed the Park on behalf of the Locatees and that his company has no interest in the Land.

The Applicant testified that they were unable to understand how a rent increase would interfere with the Landlord’s right for the use and occupation of the land. The Applicant submitted that the amount of the rent increase was excessive and furthermore it was not compliant with the Act. The Applicant testified that they have tried to communicate with the Locatees but cannot do so as their communication with the property management company has broken down. The Applicant testified that they had been given a similar increase in 2013 which they felt was reasonable but the current one attempting to be imposed is excessive.

Analysis

It is clear from the testimony and evidence on behalf of all the Applicants, that they are unhappy with the amount and imposition of a rent increase. However, the issue to be decided upon is not whether the amount the Respondent is proposing to increase the rent is reasonable but whether the Residential Tenancy Branch has the legal authority to make a determination on the issues in question.

In establishing the jurisdiction of the Act in this dispute, I have considered Policy Guideline 27 on Jurisdiction, in particular the section titled 'Indian Lands'. The guideline explains the following:

> "Section 91 of the *Constitution Act* confers the jurisdiction over federal lands to the federal government. The Legislation takes the form of acts of the provincial legislature. The case law makes it clear that provincial legislation cannot affect the "use and occupation" of Indian Lands because that power belongs to the federal government under section 91.
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> Historically, the RTB accepted jurisdiction of disputes over monetary claims, but not disputes affecting the use and occupation of Indian Lands. However, a decision issued June 5, 2013 by the British Columbia Court of Appeal found that the entire MHPTA is constitutionally inapplicable to Sechelt lands. This decision, *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer),* 2013 BCCA 262, has broad implications – it is not limited to the Sechelt Indian Band. **The decision means that both the MHPTA and the RTA are wholly inapplicable to tenancy agreements on reserve lands and property on reserve lands, where the landlord is an Indian or an Indian Band. Thus, the RTB has no jurisdiction to hear disputes of any nature arising from these tenancy agreements.**
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> However, when the manufactured home site or the rental unit is on reserve land, but the landlord is not an Indian or an Indian band, the MHPTA or the RTA may apply. In this situation – where the tenancy agreement pertains to a rental unit or site on reserve land, but the landlord is non-Indian – sections of the Legislation which do not affect the use and occupation of the land may apply. For example, a monetary claim for damages or rent arrears under the Legislation may not affect the right to the use and occupation of Indian Lands (particularly if the tenancy agreement has ended) and the RTB may find jurisdiction".

[emphasis added].

I accept the evidence of legal counsel and the property manager that the tenancies in this dispute are located on Indian reserve lands as this is not disputed. In relation to the tenancy agreements provided in written evidence that were entered into since 2010, I

find that the landlord is clearly shown as the Locatees and thus the landlords in these tenancies are Indian.

In relation to the tenancy agreements that pre-date 2010, I find that the companies documented as being the landlord were companies that were held and owned by the Locatees and that the Locatees have now assumed the tenancies in their name since the companies were de-registered and are no longer in existence.

I find that the submissions of legal counsel are in line with court decisions that have ruled that provincial jurisdiction is not applicable to tenancies on Indian reserve land. I also note that in the decision of the British Columbia Court of Appeal dated June 5, 2013 on the dispute at hand, the decision went further and stated "I would grant the declaration sought by the Band that the *MHPTA* is constitutionally inapplicable to any landlord and tenant relationship created by lease…"

The above findings are also consistent and in line with findings made during a recent hearing held on February 28, 2012 in which the arbitrator dealt with an Application from two previous renters of the same Park who sought to dispute a notice of rent increase; the arbitrator referred to the same court decisions above and also determined that there was no jurisdiction to hear the Applicants' disputes.

For the above reasons, I decline jurisdiction over the joint Applications. The Applicants are at liberty to seek alternative legal remedies to address the dispute.

Conclusion

I dismiss all the Applications **without** leave to re-apply, pursuant to Section 55(4) (b) of the Act.

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: October 01, 2014

Residential Tenancy Branch