



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 30, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 04, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Do I have jurisdiction under the *Act* to consider the Landlord's Application for Dispute Resolution?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a rental tenancy agreement which was signed by the landlord and the tenant on April 01, 2013, indicating a monthly rent of \$475.00, due on the first day of the month for a tenancy commencing on April 01, 2013;
- A Monetary Order Worksheet with an attachment showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 22, 2017, with a stated effective vacancy date of September 01, 2017, for \$21,600.00 in unpaid rent.

Analysis

Policy Guideline 27 on Jurisdiction sets out the following in regard to "Indian Lands":

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.

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.

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.

Pursuant to the rental tenancy agreement submitted as evidence, I find the landlord is an Indian band and the rental unit has been constructed on Indian reserve lands. Accordingly, based on the evidence before me and Policy Guideline 27, I find the Residential Tenancy Branch does not have jurisdiction to consider this matter.

Conclusion

I hereby decline to consider this matter for want of jurisdiction.

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: September 15, 2017

Residential Tenancy Branch