



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, LA, CNL, FF

Introduction

On May 10, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to for an order that the Landlord comply with the Act, Regulation, or tenancy agreement. The Tenant amended the Application on May 28, 2018, to include a dispute of a 2 Month Notice To End Tenancy For Landlord's Use Of Property.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Landlord testified that the rental property is located on Westbank First Nations land and that the Act does not apply.

The Tenant testified that he has already moved out of the rental unit. The Tenant explained that he only wants to proceed with a claim for compensation against the Landlord due to receiving the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 27, 2018.

Since the tenancy ended when the Tenant moved out of the rental unit there is no need to consider whether the Tenant is entitled to the relief he applied for.

The Tenant's application did not include a request for compensation due to receiving a 2 Month Notice To End Tenancy For Landlord's Use Of Property and that request will not be decided in this hearing.

Issue to be Decided

- Does the Act apply to residential tenancies located on Westbank lands?

Background

The Landlord and Tenant both testified that the tenancy began on November 1, 2017, as a fixed term tenancy to continue until July 1, 2018.

Rent in the amount of \$2,400.00 is to be paid by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,200.00.

The Landlord testified that the rental property is located on Westbank First Nations land and that the Act does not apply. The Landlord stated that he called the Residential Tenancy Branch and the Westbank First Nation and was informed that the Act does not apply. Based on the information he received the Landlord felt there is no need to submit any documentation in response to the Tenant's application.

The Tenant submitted that if the Act does not apply, why does the Landlord use the tenancy forms of the residential tenancy branch?

Policy Guideline #27 Jurisdiction provides information regarding Westbank First Nation Lands. The Guideline provides:

Westbank Lands are Reserve Lands and are identical to Indian Act reserve lands in relation to the limited application of provincial laws. The Westbank First Nation Self-Government Agreement delegates law-making authority over "landlord and tenant matters with respect to Westbank Lands and premises on Westbank Land."

The Westbank Residential Premises Law applies to all residential tenancies on Westbank lands therefore the Residential Tenancy Act and Manufactured Home Park Tenancy Act are entirely inapplicable to Westbank lands. The Residential Tenancy Branch will decline jurisdiction on Westbank lands.

Based on the testimony from the parties, and the guided by the policy guideline, I find that the Westbank First Nations has law making authority over Landlord and Tenant matters on Westbank lands. I find that the Act is not applicable and I decline jurisdiction to proceed with the Tenant's application. The Tenant's application is dismissed.

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: July 09, 2018

Residential Tenancy Branch