



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On November 9, 2018, the Applicants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to dispute a One-Month Notice to End Tenancy for Cause, and to recover the filing fee for this application. The matter was set for conference call.

The Landlords attended the conference call hearing; however, the Tenants did not. As the Tenants are the applicants in this hearing, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

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 Matter - Jurisdiction

At the outset of the hearing, the Respondents raised the issue of jurisdiction.

The Respondent testified and submitted documentary evidence show that the rental property is located on Reserve Lands.

Analysis

Based on the above, the testimony and evidence, I find as follows:

I refer to the *Residential Tenancy Branch – Policy Guideline 27 – Jurisdiction*

1. First Nation Lands

a. Reserve Lands

Homes or rental units located on “lands reserved for Indians” as defined by section 91(24) of the Constitution Act (“Reserve Lands”), will fall under Federal

legislative power. The Courts have held that provincial legislation cannot apply to the right of possession on Reserve Lands. In *Sechelt Indian Band v. British Columbia*¹, the Court held that the Residential Tenancy Act and Manufactured Home Park Tenancy Act are inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band².

The Residential Tenancy Branch, therefore, has no jurisdiction on reserve lands if:

- The landlord is an Indian or Indian Band; or
- The dispute is about use and possession.

I find that the Applicant's application affects the use and occupation of First Nations Lands and I, therefore, decline to accept jurisdiction over the Applicant's dispute with the Respondent.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through a court of competent jurisdiction.

Conclusion

For a reason stated above, I decline jurisdiction to resolve this dispute.

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: December 19, 2018

Residential Tenancy Branch