

Metis Settlements Act

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Larry Duane Sawan

Appellant

-and-

East Prairie Metis Settlement

Respondent

Concerning a Land Dispute on the SE-07-071-15-W5M.

DECISION

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The Hearing

Appeal heard by the following board members of the Metis Settlements Appeal Tribunal:

Phyllis Collins, Panel Chair
Wayne Cardinal, Panel Member, via teleconference
Floyd Flett, Panel Member

MSAT staff present:

Sara Daniels, Executive Director/Tribunal Secretary
Bella Salvador, Research Assistant

Place and date of the Hearing:

October 24, 2002
Metis Settlements Appeal Tribunal Board Room
11th Floor. 10055-106 Street
Edmonton, Alberta

Other matters at the hearing:

The hearing concerning Mr. Larry Sawan was conducted without the presence of either the appellant or the respondent because the East Prairie Metis Settlement asked that the matter be dealt with immediately because houses that are left uninhabited tend to be vandalized.

Nevertheless, both the appellant and the respondent were given the opportunity to present written or verbal evidence. The information gathered during the investigation was also given to all parties and they were given an opportunity to make comment on the complete package.

Mr. Larry Duane Sawan and the East Prairie Metis Settlement Council agreed to the Tribunal conducting a hearing by written submission.

Background

On August 23, 2002, the East Prairie Metis Settlement posted a Notice of Available Land for the SE-07-071-15-W5M. The Notice lists a house, fenced garden plot, a shed and a yard as improvements to the land. The Notice also specifies that in order to be eligible for the land the applicant must be:

1. 18 years of age.
2. A member of the East Prairie Metis Settlement.
3. In good financial standing or Agreement in place w/payment up to date in the East Prairie Metis Settlement.
4. Must be eligible under the Metis Settlements Housing Policy and eligible under the *Metis Settlement Act* and Policies and By-laws of the East Prairie Metis Settlement.

On September 3, 2002, Larry Sawan applied for the posted land on the East Prairie Metis Settlement.

Mr. Sawan indicated on his application that he needed a home to raise his children and to farm the land. He also indicated that if he was the successful applicant he would give up the interest he currently holds (PMT to the NW-18-071-15-W5M).

On the “confirmation of indebtedness” part of the application, Delores Desjarlais, Coordinator of the Finance Department, indicated that Mr. Sawan owes the Settlement \$580 for his water bill and did not have a payback agreement in place. Ms. Desjarlais told the Tribunal that the Settlement mails the water invoices every month.

On September 16, 2002, the East Prairie Metis Settlement made a decision to award the house and land to another Settlement member.

On October 11, 2002, Larry Sawan appealed the decision of the East Prairie Metis Settlements Council. Mr. Sawan cites the following as the reasons for his appeal:

- He has been a member of the Settlement all of his life and has not received a house;
- He is concerned because he learned that the successful applicant’s spouse and children are treaty and she has a very high potential of becoming treaty; and
- Although he owes money to the Settlement for the rent of the emergency trailer, he has a repayment agreement in place.

Mr. Sawan stated that he thought the Trailer Repayment Arrears Agreement also included his overdue water bill. Mr. Sawan said that he did not know until January of 2002 that he had to pay for water separately from his trailer payments.

Section 4.2 of the Residential Lease between Mr. Sawan and the East Prairie Metis Settlement states:

The charges for the following utilities and services checked below are the responsibility of the Tenant:

Electricity__✓ Telephone__✓ Heat__✓
Cable_✓ Water & Sewer__✓ Garbage pick-up__

According to the East Prairie Metis Settlement Council, Mr. Sawan did not meet all of the posted criteria. His outstanding water debt is the reason why he was not chosen for the house and land.

Mr. Sawan feels that it is not fair that he was ineligible for the house and land because of his outstanding water bill. Mr. Sawan indicated that the Settlement should have informed him that the outstanding water bill was not part of his Trailer Repayment Arrears Agreement.

Mr. Sawan would like to see the land re-posted in order for him to have an opportunity to qualify.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 189(1)(b) of the *Metis Settlements Act*, which states:

189(1) The Appeal Tribunal

...

- (b) Must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, bylaws, or General Council Policies...

And further finds jurisdiction under s.8.1(1) of the General Council Land Policy.

8.1 Right to Appeal

- (1) Wherever this Policy requires the General Council or a settlement council to make a decision related to the granting, transfer, or termination of interests in land in the settlement area, any person affected by the decision, or lack of decision, can appeal in writing to the Appeal Tribunal.

Evidence

Appellant's Evidence

Larry Duane Sawan submitted the following written and verbal evidence:

- I have been a member of the East Prairie Metis Settlement all of my life.
- I have never been accepted in applying for a house.
- I am concerned about the recent decision because I have learned that the successful applicant's spouse and children are treaty, giving the applicant a very high potential of becoming treaty.
- The East Prairie Council told me I was ineligible to apply because I owed money to the Settlement, but I had a repayment agreement in place for the rent on the emergency trailer.
- I thought that having an emergency trailer was the next step before getting a house.
- I would like to be considered for this land and house, or at least see it reposted for application.
- I don't wish to cause problems but I would hate to see this house and land go to someone who has a very high potential in becoming treaty.
- I did not know that the water bill was separate from the repayment agreement.
- The Settlement told me in January of 2002, that I had a water bill.
- When I applied for the house and land no one at the Settlement told me that I owed money.
- I would like the land and house reposted so that I can reapply and have a fair chance at getting it.

Respondent's Evidence

East Prairie Metis Settlement submitted the following written and verbal evidence:

- The posted Notice of Available Land specified that in order to be eligible for the property the applicant has to be in good financial standing or have an agreement in place with payments up to date.
- Mr. Sawan has an outstanding water bill.
- Mr. Sawan does not have a repayment agreement in place for his water bill.
- Water is not included in the trailer repayment agreement.
- Council follows all relevant legislation, policies and bylaws when considering an application.
- The applicant who meets all of the posted criteria is successful.
- Mr. Sawan did not meet all of the criteria.

Findings of Fact

- Mr. Sawan signed a Residential Lease agreement with the East Prairie Metis Settlement that specified that water was the responsibility of the tenant.
- Mr. Sawan had a Trailer Repayment Arrears Agreement with the East Prairie Metis Settlement.
- The posted Notice of Available Land indicated the following as conditions for eligibility,
 1. 18 years of age.
 2. A member of the East Prairie Metis Settlement.
 3. In good financial standing or Agreement in place w/payment up to date in the East Prairie Metis Settlement.
 4. Must be eligible under the Metis Settlements Housing Policy and eligible under the *Metis Settlement Act* and Policies and By-laws of the East Prairie Metis Settlement.
- Section 4.5 of the General Council Land Policy states:

4.5 Considerations
When considering an application for an interest in settlement held land, the settlement council can take into account:
...
(c) the extent of the applicant's existing debt to the settlement and the likelihood that it will be paid;
...
(g) any other criteria established by bylaw.
- Section 7.1(d) of the East Prairie Metis Settlement Housing Program Policy states:

7.1 In order to be eligible to receive a new housing unit under this program, a person shall meet **all** of the following criteria:
...
d) not be in arrears on any debt owing to the Settlement, unless arrangements for payment satisfactory to the Settlement have been made by signed agreement...
- Mr. Sawan has an outstanding water debt with East Prairie Metis Settlement for which he does not have a repayment plan in place.

Decision

The Panel upholds Council's decision not to grant the land and house to Mr. Sawan.

Reasons

The issue that the Panel needed to decide was whether Council's decision not to give the land and house to Mr. Sawan was fair and appropriate. They decided that Council's decision was fair and appropriate because Mr. Sawan did not meet the criteria set by the Council.

Mr. Sawan cited three reasons for appealing the decision of the East Prairie Metis Settlement Council. The Panel found two of his reasons for appealing to be irrelevant to this matter: that he has been a Settlement member all of his life and has not received a house, and that the individual who was granted the house and land has the potential of becoming treaty. The Panel found that the Council's decision hinged upon the criteria set out by the posting, and not on other factors.

The Panel's decision rests upon the Council's claim that Mr. Sawan did not meet the criteria set out in the posting. The Panel decided that Mr. Sawan's third reason for appealing, his claim that he was not aware of the water bill being separate from the repayment agreement with the Settlement, is not a sufficient reason for Mr. Sawan to be exempt from the criteria. It is the Panel's view that each person has a responsibility to make themselves aware of their financial obligations.

Signed in the City of Edmonton in the Province of Alberta this 24th day of October 2002.

Phyllis Collins
Panel Chair