



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This decision applies to two Applications for Dispute Resolutions filed by the tenant with respect to two manufactured home sites he rented from the landlord in a Manufactured Home Park located on Indian Land. In filing the applications, the tenant sought monetary compensation from the landlord for damage or loss under the Act, regulation or tenancy agreement. Both applications were scheduled to be heard, separately, on October 19, 2011. Both parties appeared at the first hearing scheduled for October 19, 2011 and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord's legal counsel submitted that the manufactured home park was located on Indian Lands, the Act did not apply to these disputes and that I did not have jurisdiction to make a decision with respect to these disputes. Upon hearing from both parties I informed the parties that I would join the two Applications for Dispute Resolution for purposes of determining jurisdiction as I was satisfied the applications involved the same parties, the same manufactured home park, and that I would be making findings on the same facts or law. I also determined on October 19, 2011 that it was necessary and appropriate to require written submissions from both parties with respect to the issue of jurisdiction. The parties were instructed to serve their submissions upon each other and the Residential Tenancy Branch within specified time limits.

After the last deadline for written submissions passed I determined it necessary and appropriate to reconvene the hearing in order to confirm service of submissions upon each other and the Branch and to hear verbal arguments with respect to the issue of jurisdiction. The hearing was reconvened on December 21, 2011. Both parties appeared at the reconvened hearing and were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

I have accepted and considered the landlord's written submissions and I have accepted and considered the two dispute resolution proceeding decisions submitted by the tenant

in reaching a decision about jurisdiction. I have also considered the verbal submissions made by both parties.

### Issue(s) to be Decided

Does the Act apply and do I have jurisdiction to resolve this dispute?

### Background and Evidence

The tenant rented two sites in a manufactured home park ("the Park") from the landlord. The Park was located on Indian Land and the landlord had leased the land from the Indian Band. The tenant is not a member of the Indian Band and the landlord is a corporation. The landlord's lease over the lands expired May 31, 2011 and was not renewed by the Indian Band. The landlord was required to return vacant possession of the land to the Indian Band by May 31, 2011.

The tenant removed the manufactured homes from the rental sites and is seeking to recover the following costs from the landlord by way of these applications: towing, moving, set up fees, and storage fees for the manufactured homes. The tenant is also seeking compensation equivalent to 12 months of rent as provided under the Act in situations where tenants receive a Notice to End Tenancy for Landlord's Use of Property. Under file number 776116 the tenant also requested compensation of \$2,000.00 that he submitted was promised to him by the landlord for moving the manufactured home by June 1, 2011.

The tenant submitted that the Act applies to these disputes and that he is entitled to compensation under the Act because the landlord failed to give the tenant notice to end the tenancy in a manner that complies with the Act. The tenant submitted that the landlord was obligated to serve the tenant with a Notice to End Tenancy for Landlord's Use of Property in the form approved by the Director. The tenant referred to two dispute resolution decisions issued under the *Residential Tenancy Act* involving the sites in support of his position that the Act applies to these disputes. The decisions referred to by the tenant involved rental of the manufactured home and site to a third party, where the tenant's wife was identified as the landlord. In those decisions there is no mention that either party raised the issue of jurisdiction at those hearings or that the subject site was on Indian Land.

The landlord's counsel submitted that the landlord did not serve the tenant with a Notice to End Tenancy in the form approved by the Director of the Act because the Act does not apply to use and occupancy of Indian Land. The landlord's legal counsel provided a

detailed written submission in support of the landlord's position that the Act does not apply and referenced Residential Tenancy Policy Guideline 27: Jurisdiction, and case law dealing with jurisdiction of the Act, or *Residential Tenancy Act*, on Indian Lands. The landlord's counsel also submitted a copy of: the landlord's lease agreement with the Indian Band; correspondence between the Indian Band or the Band's legal counsel and the landlord; and, the case law referenced in the submission.

### Analysis

Section 77.1 of the Act provides that a decision and order of the Director is final and conclusive in respect of which the Director has exclusive jurisdiction. The respondent has raised the issue of jurisdiction and in order to further consider the tenant's request for monetary compensation I must first be satisfied the Act applies and I, as a delegated authority of the Director, have exclusive jurisdiction to consider the request. Upon consideration of all of the submissions before me, I provide the following findings and reasons with respect to jurisdiction of the Act over the disputes before me.

I accept as fact that the sites that are the subject of these disputes were located on Indian Lands. I also accept as fact that the Indian Band had leased the lands on which the Park was located to the landlord, that the lease expired May 31, 2011 without further renewal, and that the use and occupation of the land was returned to the Indian Band.

Section 57(2) of the Act provides that the each decision or order of the Director is based on the merits of the case as disclosed by evidence admitted and that the Director is not bound to follow other decisions. As each dispute resolution proceeding turns on the facts of each particular case that are presented by the parties, the decisions referred to by the tenant in support of his position are not precedent setting and do not form a basis to conclude the Act does apply to these applications. However, section 84 of the Act provides that the common law respecting landlords and tenants shall apply unless modified or varied by the Act. The landlord's counsel has referred to and provided several court cases involving landlords and tenants and Indian Lands. I find the case law provided by the landlord relevant and have considered it in making this decision. I have also considered Policy Guideline 27: Jurisdiction which is produced by the Residential Tenancy Branch, and, the applicable sections of the Act.

Residential Tenancy Policy Guideline 27: Jurisdiction is produced by the Residential Tenancy Branch and is intended to provide a statement of the policy intent of the legislation as it relates to jurisdiction of the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. With respect to jurisdiction

of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (referred to as “the Legislation” or “the Acts” in the policy guideline) over Indian Lands the policy guideline provides the following statements:

## 1. 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.

The Legislation governs residential tenancy agreements within British Columbia. Since a tenancy agreement is an interest in land, **any part of the Legislation which affects the use and occupation of Indian Lands does not apply to the rental unit or manufactured home site which is in dispute.** Examples of sections in the Residential Tenancy Act which could affect the use and occupation of Indian Lands, and therefore may not apply to premises on Indian Lands, are sections 27 (order respecting a service or facility), 44 (notice to end the tenancy agreement) and 54 or 55 (order of possession). Equivalent **sections in the Manufactured Home Park Tenancy Act are sections 21, 37 and 47 or 48.**

The situation is less clear for disputes which do not affect the use and occupation of Indian Lands but which are nonetheless governed by the Legislation. 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. In one case a landlord and tenant in dispute over a monetary claim were found to be subject to the BC Residential Tenancy Act. Worth noting, however, is that both the landlord and tenant were non-Indians. In another case a dispute over a rent increase was found not to affect the use and occupation of Indian Lands.

Until the issue respecting monetary claims is clarified by the courts, parties to arbitration are cautioned that the RTB may refuse jurisdiction if the RTB finds that the nature of the dispute could affect the use and occupation of Indian Lands.

[my emphasis added]

In the matters before me, the tenant is seeking compensation on the basis the landlord failed to give him a Notice to End Tenancy for Landlord's Use of Property, as provided under section 42 of the Act, and the compensation that accompanies such a notice.

Issuing a Notice to End Tenancy for Landlord's Use is only one way of ending a tenancy under the Act. The Act sets out all of the ways a tenancy may end under section 37. Section 37 provides:

**37** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 38 [*tenant's notice*];

(ii) section 39 [*landlord's notice: non-payment of rent*];

(iii) section 40 [*landlord's notice: cause*];

(iv) section 41 [*landlord's notice: end of employment*];

**(v) section 42 [*landlord's notice: landlord's use of property*];**

(vi) section 43 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

[my emphasis added]

Where a landlord has given a tenant a notice to end tenancy, as provided by section 37, a landlord may obtain an Order of Possession from the Director under section 48 of the Act.

As provided in the Residential Tenancy Policy Guideline 27: Jurisdiction, sections 37 and 48 of the Act affect the use and occupation of the land. Accordingly, I find that a Notice that is issued pursuant to section 37 for a site involving Indian Land would not be effective or enforceable as the Director would not have the jurisdiction to resolve a dispute concerning the Notice or to issue an Order of Possession. As the provisions of section 42 are derived from section 37(1)(a)(v) I find that a Notice issued under section 42 specifically would also be ineffective in ending a tenancy on Indian Lands.

In light of the above, I accept the landlord's submission that a Notice to End Tenancy for Landlord's Use was not given to the tenant because the sections of the Act that provide for such a Notice do not apply to sites involving Indian Land.

Having found the landlord could not have ended the subject tenancies under the Act because the sections of the Act that deal with ending of the tenancies do not apply to Indian Lands, then it follows that there was not a violation of these sections of the Act that would entitle the tenant to compensation from the landlord under the Act.

Based on the foregoing, I decline to accept jurisdiction to resolve these disputes. The tenant remains at liberty to resolve these disputes in the appropriate court.

### Conclusion

I have declined to accept jurisdiction to resolve these disputes.

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: January 12, 2012.

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Residential Tenancy Branch