



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant for: the return of all or part of the pet damage or security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee from the Respondent for the cost of the Application.

The Applicant and an agent for the Respondent appeared for the hearing and no issues in relation to the service of the hearing documents were raised by the parties. At the start of the hearing the Respondent’s agent raised the issue in her written submissions that the tenancy was not under the jurisdiction of the Residential Tenancy Branch (RTB) as the residency was on Indian Reserves owned by First Nations.

The Applicant was not aware that the residence was located on Indian Reserve lands but acknowledged that she signed a tenancy agreement with the Respondent in the form of a document which had the name of the First Nation band and the tenancy agreement defined the premises as “The Band leases to the tenant for uses and occupation as residential dwelling all those certain Premises...”

### Analysis & Conclusion

In establishing the jurisdiction of the Act in this tenancy I have considered Policy Guideline 27 on Jurisdiction, in particular the section titled “Indian Lands”. The guideline explains the following:

#### **“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.

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.

[Reproduced as written]

Based on the foregoing, I find that as this tenancy is on reserve lands and the Respondent is an Indian Band, the RTB does not have jurisdiction to hear this dispute. As a result, I find that I am unable to make a determination in this matter and I dismiss the Application without leave to re-apply, pursuant to section 62(4) (b) of the Act.

The Applicant is at liberty to seek alternative legal remedies to address the 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: April 23, 2014

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Residential Tenancy Branch

