



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for other issues.

The tenant along with her advocate and the landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant's advocate stated that they had not received the landlord's documentary evidence but accept that it was served by registered mail. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Preliminary Issues

The matter of jurisdiction was raised at the start of the hearing as the landlord is a status Indian and the property is located on Indian Band land. The landlord argued that the Residential Tenancy Office does not have jurisdiction and referred to her documentary evidence showing her Status Card and Indian Lands Registry for the property. The landlord also referred to the Residential Tenancy Policy Guidelines concerning jurisdiction on Indian Lands. The landlord argued that the only persons who have jurisdiction in this matter are the Indian Band Council.

The tenant's advocate argued that the issue of jurisdiction does not go to the occupancy of the land.

### Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction in this dispute?

### Background and Evidence

The landlord has provided documentation showing she has status as an Indian and documentary evidence showing the parcel of land in question is reserve land as shown in the Indian Lands Registry System. This documentation also shows the lot and the lot plan.

The tenant requested that the matter of jurisdiction is resolved.

### Analysis

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

"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 this tenancy agreement.**

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”.

[Emphasis added].

I accept the evidence of the landlord regarding her status as an Indian and that this property is located on Indian Band Lands. For the above reasons, I decline jurisdiction over the tenant’s Application. The tenant is at liberty to seek alternative legal remedies to address any disputes with the landlord.

### Conclusion

I dismiss the tenant’s Applications **without** leave to re-apply, pursuant to Section 55(4) (b) of the *Act*.

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: December 21, 2015

---

Residential Tenancy Branch

