



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GITANMAAX INDIAN BAND  
GITANMAAX BAND  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            ET

### Introduction

This hearing dealt with the Applicant's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The Respondent who attended the hearing (the Respondent) represented the interests of both Respondents. The Applicant who attended this hearing (the Applicant) did not speak to his authorization to represent the interests of the Co-Applicant.

The Respondent confirmed that a representative of the Band was handed copies of the Applicant's dispute resolution hearing and written evidence packages on June 25, 2018. I find that the landlord was duly served with this package in accordance with sections 88 and 89 of the *Act*.

The only written evidence supplied by either party was a March 23, 2016 Notice of Application apparently submitted by the Applicant as part of the Applicant's defence against legal action taken against him through the Supreme Court of British Columbia by the Chief Councillor of the Band identified both as the Co-Applicant and Co-Respondent in the current application for dispute resolution. This document was filed with the local Registry Office on June 30, 2016.

Although the property in question in that Supreme Court action was a different one, which was located on Reserve Land, both parties agreed that the property identified in the current application is located on non-Reserve Land within a municipal village.

At the hearing, the Applicant said that he was not actually seeking an Order of Possession as a result of the application for an early end to this tenancy. Rather, he clarified that he was seeking a determination requiring that the Respondent Band enter into a tenancy agreement for this property.

Issues(s) to be Decided

Is the Applicant entitled to an early end to this tenancy and an Order of Possession?

Preliminary Issue - Has any Tenancy been established between the Applicant and the Respondent that is subject to the Act?

At the hearing, the Respondent stated that this property is held under fee simple by an elderly man who resides in another community. The Respondent questioned whether the Applicant had legal authority to act as the landlord in this matter and denied that any tenancy had been established between the Applicant and the Respondent.

When asked about this matter, the Respondent replied that he was acting in this matter on the basis of underlying Indian Title to this land, which was not part of an Indian Reserve, but was on Indian Land. To provide context to this declaration by the Applicant, I note the following wording from the March 23, 2016 Notice of Application that the Applicant in the current hearing (identified below as the Defendant) submitted to the Supreme Court of British Columbia:

*The Defendant is a member of the...Band. The Defendant refers to himself at various times as Chief K..., a Christian Prince, God, an heir to Jesus Christ, Jesus J., and Jesus Christ. The Defendant claims title to all the land in the Province of British Columbia...*

Although the Applicant said that the fee simple holder of this property and six others in that community agree with the Applicant's initiatives to pursue efforts to require the Respondent to acknowledge that they are tenants on fee simple properties in this non-Reserve Land community, the Applicant provided nothing other than his verbal declaration that this was so. The Applicant's advocate read sections of a court case he described as "McKenna McBride", which he maintained was referenced in the Notice of Application document entered into written evidence by the Applicant. The advocate asserted that this court decision outlined the legal basis for the Applicant's attempt to act on behalf of his right to Indian Land as a landlord. The Applicant stated that this material had not been entered into written evidence or even referenced in the material entered into written evidence for this hearing, as it was only included in an amended statement provided to the Supreme Court of British Columbia and not in the original statement he had entered into written evidence for this hearing.

Analysis - Has any Tenancy been established between the Applicant and the Respondent that is subject to the Act?

Section 1 of the Act provides the following definitions of a landlord, a tenancy agreement and a tenant:

**"landlord"**, in relation to a rental unit, includes any of the following:

*(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

*(i) permits occupation of the rental unit under a tenancy agreement, or*

*(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

*(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

*(c) a person, other than a tenant occupying the rental unit, who*

*(i) is entitled to possession of the rental unit, and*

*(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

*(d) a former landlord, when the context requires this;*

**"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

**"tenant"** includes

*(a) the estate of a deceased tenant, and*

*(b) when the context requires, a former or prospective tenant.*

Section 2 of the *Act* establishes that the *Act* applies to tenancy agreements, rental units and other residential property.

Although I have given the Applicant's rather novel claim to take action pursuant to the *Act* as a landlord careful consideration, I find that the Applicant has not established to the extent required that:

- the Applicant has the authorization from the fee simple owner of this property to act as a landlord;
- there has ever been a tenancy agreement between the parties identified in this application as defined in section 1 of the *Act*;

- a tenancy exists between the Applicants and the Respondents (noting that the Co-Applicants and Co-Respondents appear to involve essentially the same parties or subsets thereof); and
- the Respondents are tenants as defined in section 1 of the *Act*.

I also note that the Applicant has not demonstrated that any type of contractual relationship has been entered between the Applicants and the Respondents whereby even an oral tenancy agreement could be established.

The Applicant stated at the hearing that his purpose in initiating this application was to demonstrate to future levels of the judicial system that he had attempted to enforce his rights and those of the Co-Applicant through the *Act*.

As I find that the Applicant has provided insufficient evidence to demonstrate that he and the Co-Applicant identified in his application are landlords for the purposes of the *Act* and that a tenancy between the Applicants and the Respondents exists, I dismiss this application for an early end to tenancy without leave to reapply.

Conclusion

This application is dismissed without leave to reapply.

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: August 10, 2018

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Residential Tenancy Branch