



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, LRE, FFT

### Introduction

This hearing dealt with the Applicants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the Respondents to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the Respondents' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the Respondents pursuant to section 72.

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 Applicants, who purported to be the tenants in this application, handed the Respondent who attended this hearing, and who was identified in their application as their landlord, a copy of their dispute resolution hearing package on July 20, 2019. On this basis, I find that the Respondents were duly served with this package in accordance with section 89 of the *Act*.

Since it would appear that Applicant DM owns the manufactured home in question, it would appear that any tenancy, which may exist would fall within the *Manufactured Home Park Tenancy Act* and not the *Residential Tenancy Act*.

### Preliminary Issue - Does this Application fall within the Jurisdiction of the *Act*?

At the hearing, the Applicants confirmed information presented in their written evidence package that Applicant DM has lived in a manufactured home on this acreage property since August 8, 1995. Until March 24, 2019, DM resided there with their husband, who

passed away that day; Applicant DM continues to live there. The other Applicant, DID, is the daughter of Applicant DM and has been assisting DM with this situation. Respondent JM identified their husband, Respondent BCM as the step uncle of Applicant DID. Respondent JM said that BCM owns this property on First Nations Reservation Land.

The parties agreed that there was no written tenancy agreement between the parties. The Applicants gave undisputed sworn testimony and written evidence that the arrangement that had been in place since Applicant DM and their husband moved to this property where they have occupied a modular home has been that they would look after the animals on the property during their lifetimes. Applicant DM said that they have only attempted to pay any rent to the Respondents one time, in February 2019, when their offer to pay \$400.00 was rejected by the Respondents.

Applicant DID said that they were hospitalized when a hearing was held on June 24, 2019, to consider the previous application from DID and DM to have a Notice to End Tenancy issued to them by the Respondents cancelled and for other measures (see above). Since the Respondents did not issue a formal Notice to End Tenancy on any approved Residential Tenancy Branch form, Respondent JM in this hearing made no attempt at that hearing to obtain an Order of Possession pursuant to the *Act*. In the June 24, 2019 decision to dismiss the application without leave to reapply, the presiding Arbitrator noted the following statement by the landlord (Respondent JM in this hearing), the only person who attended that hearing:

*...The Landlord advised that it was her belief that the Residential Tenancy Branch had no jurisdiction on this matter as the rental unit was on First Nations lands. As well, she stated that she did not ever serve the Tenants with the Notice...*

At the current hearing, Respondent JM reiterated the above statement that since the property in question is located on a First Nations Reservation, the *Act* does not apply and the Residential Tenancy Branch has no jurisdiction over this matter. Respondent JM also said that they do not consider any tenancy agreement to be in place, as the Applicants have never paid anything to the Respondent property owner, and there has never been any tenancy agreement in place for the years while Respondent DM has been living there.

Analysis - Does this Application fall within the Jurisdiction of the Act?

Based on the undisputed evidence before me, there are at least two major obstacles that prevent me from accepting jurisdiction over this matter.

First, Respondent JM has given undisputed sworn testimony now in two dispute resolution hearings that the property in question is on First Nations Reservation land. As such, I have considered the following guidance provided to Arbitrators with respect to "Indian Lands" provided in Residential Tenancy Branch Policy Guideline 27 on Jurisdiction:

*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...*

Accordingly, based on the evidence before me and Policy Guideline 27, I find the Residential Tenancy Branch does not have jurisdiction to consider this matter.

Even if I were wrong on this determination, there is a second reason why this application does not fall within the jurisdiction of the Act. Without any tenancy agreement in place between these parties, and without the Respondents' acceptance of any consideration from the Applicant(s), usually in the form of money exchanged, it does not appear to me that there is any residential tenancy contract in place between the parties that would fall within the jurisdiction of the Act.

For these reasons, I decline jurisdiction over this matter as I have no authority to consider this application for dispute resolution.

Conclusion

I hereby decline to consider this matter for a lack of jurisdiction in this matter.

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: September 17, 2019

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Residential Tenancy Branch