



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPC, FFL / ERP / LRE, OLC

### **Introduction**

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “Act”). One of landlord DW for:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And two of the tenants against landlords LK and CK for:

- an order that the landlords to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70;

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing was reconvened from a hearing on July 29, 2021 for the tenants’ application for an order that the landlords comply with the Act and to suspend conditions on the landlords’ right to enter the rental unit. I issued an interim decision on July 30, 2021 (the “**Interim Decision**”), setting out the reasons for the adjournment, and ordering it to be reconvened to be heard with the other two applications listed above.

### **Jurisdiction**

One of the reasons for the adjournment listed in the Interim Decision was to obtain information so I could determine whether or not the Residential Tenancy Branch has jurisdiction to adjudicate the dispute, as the tenants asserted that the rental unit was located on “Reserve Lands” or “Treaty Lands”, as defined by RTB Policy Guideline 27. I reproduced a large portion of this guideline in the Interim Decision and will not repeat it here. This decision should be read in conjunction with the Interim Decision.

The tenants submitted several documents relating to the land’s status. However, they did not serve these documents (as ordered) on the landlords. Despite this, I accepted the documents into evidence, as I found that there was little prejudice to the landlords if

I did so (in that they show that the rental unit is not located on Reserve or Treaty Lands).

Among the tenants' documents was a 43 page "Draft Land Use Framework" prepared by the C Tribes (full name on cover of this decision) dated February 14, 2014. This document included a section titled "our landlord" which states the following:

[C] Tribes has 2,389 hectares (5,903 Acres) of reserve land spread between nine reserves. The majority of this land (2,254 hectares) is located within IR1. [C] Tribes also has two fee simple land parcels. The [redacted] property is a 202.35 hectares (500 acres) site located on the north side of Lake [C] Highway just west of [redacted] Road. [Redacted] Nursery is a 19 hectare (49 acre) site located in Municipality of North [C]. We are working to add both sites to our reserve land base, a process that can take several years.

The map shows the locations of our nine reserves. More information on individual reserves is provided in section 3.4 Land Development Considerations.

The map referred to shows the areas of the reserves overlayed onto a map of the municipality where the rental unit is located. Major streets and intersections can be seen on this map. It shows that one reserve is to the immediate west of the Trans-Canada Highway and the immediate south of a major road (G Street). A second reservation extends as far west as L Road (roughly 1 kilometer east of the Trans-Canada Highway), except for a small portion located south of a river itself is south of G Street. This portion extends west to the Trans-Canada Highway.

The rental unit is located in the one kilometer area between the Trans-Canada Highway and L Road, north of both the river referenced above and north of G Street. As such, I find that the rental unit is not located on any of the reserves shown in the Draft Land Use Framework. I note that this document is seven years old, and that it is possible that additional lands have been added as Reserve Lands since it was created. However, there is no documentary evidence of this before me on which I could make such a finding.

The tenant also submitted several documents created in 1975 relating to a bylaw of the Corporation of the District of North [C] whereby it gained right of way over reserve lands for sewer purposes. Attached to these documents is a map of what I understand to be the lands subject to the bylaw. The lands depicted on the map are located directly south of T Road. The rental unit is located north east of T Road. I do not find that the land the rental unit is located on is the subject of this bylaw.

No documentary evidence was provided by the tenant relating to whether the rental unit is located on Treaty Lands (including a copy of any treaty between the C tribes and the provincial government). As such, I do not find that the rental unit is located on Treaty Lands.

During the hearing, SL repeatedly referred to the land the rental unit is located on as belonging to the C Tribes. I acknowledged that the land is unceded land traditionally occupied by the C peoples. The landlords acknowledged this as well. DW advised me that the landlords' website contains such an acknowledgement. However, Policy Guideline 27 does not require that an arbitrator decline jurisdiction over rental units on unceded lands. It only requires that an arbitrator decline jurisdiction on Treaty or Reserve Lands (and, even then, not in all circumstances). Based on the evidence provided by the parties, I am unable to find that the rental unit is located on Treaty Lands or Reserve Lands, as defined by RTB Policy Guideline 27. As such, I find that I have jurisdiction to hear these applications.

### **Settlement**

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute and issues (past or future) relating to the tenancy:

1. The tenants will provide the landlords with vacant possession of the rental unit on or before December 31, 2021 at 1:00 pm.
2. The landlords may retain the tenants' security deposit.

This comprises the full and final settlement of all aspects of this dispute and all future disputes relating to this tenancy between the parties. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle all aspects of this and all past or future disputes relating to the tenancy between them.

Tenant SL noted that there was an inherent power imbalance between herself and the landlords, but stated that, despite this, the tenants agreed and understood that the settlement agreement reached was legal, final, and binding.

### **Conclusion**

As the parties have reached a settlement, I make no factual findings about the merits of this application.

To give effect to the settlement reached between the parties, and as discussed at the hearing, I issue the attached order of possession which orders that the tenant provide vacant possession of the rental unit to the landlord by 1:00 pm on December 31, 2021.

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 14, 2021

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Residential Tenancy Branch