

27. Jurisdiction

Nov-23

This policy guideline is intended to guide Residential Tenancy Branch staff and the public in understanding jurisdiction of the director appointed under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act¹. This policy guideline may be revised and new guidelines issued from time to time.

The question of jurisdiction can arise in two ways:

1. Does the director or the director's delegate ("the director") have constitutional authority to resolve the dispute?
2. Does the director have statutory authority to resolve the dispute?

A. CONSTITUTIONAL JURISDICTION

The *Constitution Act, 1867* specifies the legislative authorities of the federal and provincial governments. Canada has exclusive legislative jurisdiction under section 91(24) with respect to "Indians and Lands reserved for Indians" and under section 91(7) for "Militia, Military and Naval Service, and Defence". Provinces are entitled to pass legislation that overlaps with federal jurisdiction provided the legislation is for a "valid provincial purpose" and is compatible with the purpose of the Federal legislation. When provincial laws interfere with the core of federal powers or conflict with federal legislation, the provincial laws are inapplicable or inoperable to the extent of the interference or conflict.

The division of powers between the provincial and federal governments is a complex area of constitutional law.

1. First Nation Lands**a. Reserve Lands**

Rental units located on "Lands reserved for Indians" ("Reserve Lands"), fall under Federal legislative power (section 91(24) of the *Constitution Act, 1867*). The Court of Appeal has held that provincial legislation cannot apply to the right of possession on Reserve Lands. In *Sechelt Indian Band v. British Columbia*², the Court held that the *Residential Tenancy Act* ("RTA") and *Manufactured Home Park Tenancy Act* ("MHPTA") are inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band³.

The director, therefore, has no jurisdiction on Reserve Lands if:

- The landlord is an Indian or Indian Band; or
- The dispute is about use and possession.

The director may have jurisdiction on Reserve Lands if:

¹ *Residential Tenancy Act*, s. 9; *Manufactured Home Park Tenancy Act*, s. 9.

² *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262. See also *McCaleb v. Rose*, 2017 BCCA 318.

³ "Indian" and "Indian Band" used as a term defined by the Indian Act, R.S.C., 1985, c. 1-5.

27. Jurisdiction

Nov-23

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- The landlord is **not** an Indian or Indian Band; and
 - The dispute is not about use and possession.

b. Westbank First Nation Lands

The Westbank First Nation Self-Government Agreement between the federal government and the Westbank First Nation gives the Westbank First Nation jurisdiction over “landlord and tenant matters with respect to Westbank Lands and premises on Westbank Land.”

The *WFN Residential Premises Law* applies to all residential tenancies on Westbank Reserve Lands. Therefore, the director does not have jurisdiction over tenancies on Westbank lands, as the RTA and MHPTA are entirely inapplicable.

c. Treaty Settlement Lands

Treaty lands, such as those held by the Nisga’a Nation, Tsawwassen, and Maa-nulth First Nations are **not** “lands reserved for Indians” (the “Treaty Lands”). The Final Agreements and the legislation giving effect to the Final Agreements set out the relationship between federal, provincial and First Nation law-making authority. Each of the Final Agreements sets out a priority rule to address conflicts between a First Nation’s law and federal and provincial laws.

Whether the director has jurisdiction with respect to tenancies on Treaty Lands will depend on the terms of a Final Agreement, and what, if any, law a First Nation has enacted respecting tenancies. If the First Nation has enacted its own law that may be in conflict with the RTA or MHPTA, it is possible that the Acts or parts of the Acts that are in conflict with the First Nation law will be inoperable.

It is important to check the status of [First Nations in the Treaty Process](#) and if those First Nations have enacted any laws.

2. Military Housing

Under section 91(7) of the *Constitution Act, 1867*, the federal government has exclusive jurisdiction over the “Militia, Military and Naval Service, and Defence.” Military housing that is administered by the Department of National Defence and is managed by the Canadian Forces Housing Agency (“CFHA”) is not covered by the RTA or MHPTA. The CFHA has a dispute resolution service for disputes involving military housing.

B. STATUTORY JURISDICTION

1. Legislative Framework

Section 84.1 of the RTA and 77.1 of the MHPTA give the director exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review brought under those Acts, and to make any order permitted to be made.

Section 58 of the RTA and 51 of the MHPTA give the director exclusive jurisdiction to resolve disputes involving:

- the rights, obligations and prohibitions under those Acts
- the rights and obligations under the terms of a tenancy agreement that are required or prohibited under those Acts, or relate to
 - the tenant's use, occupation or maintenance of the rental unit or manufactured home site, or
 - the use of common areas or services or facilities.

Section 58(3) and (4) of the RTA and 51(3) and (4) of the MHPTA provide that a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution, except the Supreme Court of British Columbia ("BC Supreme Court") may hear and determine a dispute if:

- the amount claimed for debt or damages is more than the monetary limit for claims under the [*Small Claims Act*](#), excluding any amount claimed under section 51(1) or (2) or 51.1 of the RTA or 44(1) or (2) or 44.1 of the MHPTA, or
- the dispute is linked substantially to a matter that is before the BC Supreme Court.

2. Small Claims Limit

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director must not determine disputes involving claims for debts or damages if the monetary amount claimed exceeds the limit set out in the *Small Claims Act*. The limit is currently \$35,000.

If a claim for debts or damages exceeds the small claims limit, a person must apply to the BC Supreme Court. The court then determines whether it will hear and determine the dispute or order that the director hear and determine the dispute. This ensures that, where appropriate, more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available.

If an applicant abandons part of a claim to come within the small claims limit, the director has jurisdiction.

Claims for compensation under section 51(1) or (2), or 51.1, 51.3 or 51.4 of the RTA, or

27. Jurisdiction

Nov-23

section 44(1) or (2) or 44.1 of the MHPTA are excluded from the amount that determines jurisdiction.

These claims are not claims for debts or damages, but rather the amount claimed is determined by a formula embedded in the statute. The director has no authority to alter this amount, and mitigation is not a consideration. They are not usually complex. See [Policy Guideline 50: Compensation for Ending a Tenancy](#) for information about these compensation provisions.

The small claims limit also does not apply to orders that do not seek monetary compensation, such as repair claims. The director may order a landlord to make repairs that cost more than the small claims limit.

a. Small Claims Limit – Monetary orders for unpaid rent resulting from a tenant's application to cancel a notice to end tenancy for unpaid rent

Under the RTA and MHPTA⁴, if a tenant disputes a landlord's notice to end tenancy for unpaid rent and the director upholds the notice to end tenancy, the director must grant a monetary order for the unpaid rent to the landlord. The small claims monetary limit does not apply to monetary orders for unpaid rent that arise from a tenant's application to cancel a notice to end tenancy for unpaid rent. In these instances, the order results automatically from a dismissal of a tenant's application disputing a notice to end tenancy and does not require a landlord to make an application claiming any amount.

b. Small Claims Limit – Monetary orders for unpaid rent resulting from a landlord's application for compensation for unpaid rent

Under the RTA and MHPTA⁵, a landlord can apply for dispute resolution to request an order of possession and a monetary order for unpaid rent when they have served a tenant a notice to end tenancy for unpaid rent and the tenant has not disputed the notice or paid the owed rent amount. The small claims monetary limit applies to monetary orders for unpaid rent arising from a landlord's application when there is no application by the tenant being heard. This is because the landlord must file an application claiming an amount for unpaid rent, which is a debt owed to the landlord. Unlike a monetary order arising from the dismissal of a tenant's application to cancel a notice to end tenancy, which requires the director to grant an order requiring the payment of unpaid rent, on a landlord's application for monetary compensation for unpaid rent, the director has discretion to grant an order requiring payment of the unpaid rent. In circumstances where the unpaid rent is more than \$35,000, a landlord has three options:

- (1) abandon the amount of rent owing that is over \$35,000 and apply for both an order of possession and an order for payment of unpaid rent under the RTA or

⁴ RTA, s. 55(1.1); MHPTA, s. 48(1.1).

⁵ RTA, s. 55(4)(b); MHPTA, s. 48(4)(b).

MHPTA;⁶

- (2) seek only an order of possession under the RTA or MHPTA⁷ and apply to the BC Supreme Court for an order for the full amount of unpaid rent⁸; or
- (3) apply to the BC Supreme for both an order of possession and an order requiring payment of the unpaid rent.⁹

The BC Supreme Court may order that even though the amount being sought is over \$35,000, the director must hear and determine the dispute.¹⁰ If that occurs, the director can make an order for unpaid rent that is over \$35,000.

c. Dividing Claims

An applicant may not divide (or split) their claim between applications to avoid the monetary limit.

An applicant may bring more than one application even if the total combined amount of the applications is above the small claims limit so long as the claims are sufficiently distinct. In determining whether the claims are sufficiently distinct, the director will consider whether the claims arise from the same series of events or are integrally interwoven.

For example, say a tenant makes an application for dispute resolution seeking compensation for emergency repairs due to a leak in the roof and submits a second application seeking damages for property that was ruined because of the leak and compensation for loss of enjoyment of the property while there was a leak. In a situation like this, the total of the monetary compensation sought cannot exceed \$35,000 because both applications concern claims arising from the same series of events: the roof leak.

However, a tenant could make an application for dispute resolution seeking monetary damages of \$35,000 or less for loss of quiet enjoyment because the landlord unlawfully entered the rental unit, and a second application for dispute resolution seeking monetary damages of \$35,000 or less because the landlord terminated access to utilities. Even if the total of the damages being sought between the two applications exceeds \$35,000, the director has jurisdiction over both applications because the claims do not stem from the same series of events. They also are not integrally interwoven. In this situation, both applications would rely on different evidence and findings of fact.

⁶ RTA, s. 55(2)(b); MHPTA, s. 48(4)(b).

⁷ RTA, s. 55(2)(b); MHPTA, s. 48(4)(b).

⁸ RTA, s. 58(4); MHPTA, s. 51(4).

⁹ RTA, s. 58(4); MHPTA, s. 51(4).

¹⁰ RTA, s. 58(4); MHPTA, s. 51(4).

3. Licenses to Occupy

Section 2 of the RTA states the RTA applies to tenancy agreements, rental units and other residential property. A “tenancy agreement” under the RTA includes a licence to occupy a rental unit.

Section 2 of the MHPTA states the MHPTA applies to tenancy agreements, manufactured home sites and manufactured home parks. The definition of “tenancy agreement” under the MHPTA does not include a license to occupy. See [Policy Guideline 9: Tenancy Agreements and Licenses to Occupy](#)

4. Float Homes, Travel Trailers and Recreational Vehicles

The definition of “manufactured home” in the MHPTA does not include float homes. This means the MHPTA does not apply to float homes.

The MHPTA may apply to travel trailers and recreational vehicles. See [Policy Guideline 9: Tenancy Agreements and Licenses to Occupy](#) for more information.

The RTA defines a “rental unit” as living accommodation rented or intended to be rented to a tenant. This means a person could rent a travel trailer, a recreational vehicle, or a float home under the RTA. For example, if an owner rented out their float home for a fixed term of 6 months, the RTA likely would apply.

5. Statutory Exceptions

Section 4 of the RTA and MHPTA set out specific types of living accommodations and agreements that the Acts do not apply to. Some of these are discussed below.

a. Accommodation Owned or Operated by an Educational Institution

The RTA does not apply to living accommodation owned or operated by an educational institution and provided to students or employees of the institution. If an educational institution provides accommodation to individuals other than its students or employees, the RTA may apply.

b. Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if the accommodation is rented under a tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

27. Jurisdiction

Nov-23

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- whether the agreement to rent the accommodation is for a term;
 - whether the occupant has exclusive possession of the hotel room;
 - whether the hotel room is the primary and permanent residence of the occupant;
 - the length of occupancy.

Even if a hotel room is operated pursuant to the *Hotel Keepers Act*, the occupant is charged the hotel room tax, or the occupant is charged a daily rate, a tenancy agreement under the RTA may exist. A tenancy agreement may be written or oral.

A person occupying a room in a residential hotel may make an application for dispute resolution, without notice to any other party, requesting an interim order that the RTA applies to that living accommodation.¹¹

c. Commercial Tenancies

The RTA does not apply to living accommodation included with premises that

- (i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement.

Generally, if the primary use of the premises is residential, the RTA will apply. For example, if a tenant rents a house to live in, and the house has a detached garage out of which the tenant runs a small yoga studio, the RTA likely applies.

If a tenant rents a store and a small living accommodation above the store under a single agreement and the purpose for renting the property is to run the store, the RTA likely will not apply even if the tenant lives in the accommodation.

The director may consider municipal bylaws including how the property is zoned in deciding whether the tenancy is primarily residential or commercial.

See [Policy Guideline 14 Type of Tenancy: Commercial or Residential](#)

6. Transferring Ownership

A tenancy agreement transfers a landlord's right of possession to a tenant. It does not transfer an ownership interest. If a dispute concerns the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, the director may consider whether

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest greater than the right of possession;
- there was a right to purchase in the tenancy agreement and whether it was exercised.

¹¹ RTA, s. 59(6).

7. Co-Signers and Guarantors

A co-signer is a person who signs the tenancy agreement along with the tenant to guarantee the tenant performs the tenancy agreement, e.g., pays rent. A guarantor is a person who signs a separate agreement with the landlord to guarantee the tenant performs the tenancy agreement, e.g., pays rent.

The director has jurisdiction to resolve disputes between co-signers and landlords because they are parties to the tenancy agreement. The director has no jurisdiction to resolve disputes between landlords and guarantors, however, because they are not parties to the tenancy agreement.

8. Disputes Between Tenants and Roommates

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is occupying a rental unit is excluded from the definition of a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Person A enters into a tenancy agreement to rent a 2 bedroom rental unit from a landlord and occupies the first bedroom and rents the second bedroom out to Person B, the RTA would not apply to a dispute between Person A and Person B even if Person B has exclusive possession of the second bedroom. The director does not have jurisdiction to resolve these types of disputes.

However, if Person A is renting a residential property with more than one rental unit (like a house with an upper suite and a lower suite) and Person A rents out the lower suite to Person B, the director may have jurisdiction. Person A may meet the definition of a landlord under the RTA because they are not occupying the rental unit Person B resides in but they are entitled to possession of that rental unit and are exercising the rights of a landlord in relation to it.

For information on the requirements around subletting, please see [Policy Guideline 19: Sublet and Assignment](#).

Depending on the particulars, the Civil Resolution Tribunal may have jurisdiction to resolve disputes between tenants and roommates. More information about the Civil Resolution Tribunal can be found at civilresolutionbc.ca

9. Strata Corporations

Section 138 of the *Strata Property Act* allows a strata corporation to evict a tenant of a residential strata lot for a repeated or continuing contravention of a reasonable and

27. Jurisdiction

Nov-23

significant bylaw or rule if the contravention seriously interferes with another person's use and enjoyment of a strata lot, the common property, or the common assets. This provision allows the strata corporation to issue a Notice to End Tenancy under section 47 (landlord's notice: cause) of the RTA.

The definition of "landlord" in the RTA sets out what that term "includes" in relation to a rental unit. The definition can also include persons who are not listed. Thus, it can include a person to whom the Legislature has given the powers of a landlord in another statute, such as the *Strata Property Act*. The strata corporation can be a landlord under the RTA but only for the purposes of issuing a notice to end tenancy under section 47 of the RTA, defending any application disputing that notice, and seeking an order and writ of possession in relation to that notice.

Once a strata corporation issues a Notice to End Tenancy under section 138 of the *Strata Property Act*, the director has statutory authority to cancel the notice or uphold the notice and grant an order of possession.

If a tenant disputes the Notice to End Tenancy, the director will determine whether:

1. The tenant repeatedly or continuously contravened a bylaw or rule; and
2. The contravention of that bylaw or rule seriously interfered with another person's use and enjoyment of a strata lot, the common property or the common assets.

Under an order of possession, the rental unit must be returned to the strata lot owner's possession, but pursuant to section 62(3) of the RTA, the director can also order that the strata corporation is permitted to file and enforce the order of possession at the BC Supreme Court under section 84 of the RTA.

Notes:

- As per section 64.5(c) of the RTA, the director may order that the strata unit owner/landlord be given notice of a dispute resolution proceeding and an opportunity to be heard in the dispute resolution proceeding if, in the director's opinion, the strata unit owner/landlord will be or is likely to be materially affected by the resolution of the dispute.
- The director does not have jurisdiction to determine whether a strata bylaw or rule is legally valid. The Civil Resolution Tribunal has jurisdiction to decide disputes about strata bylaws and rules. If there is a challenge to the bylaws before the Civil Resolution Tribunal, the director may adjourn the dispute resolution hearing concerning the Notice to End Tenancy until the Civil Resolution Tribunal has made a decision.
- The Civil Resolution Tribunal cannot cancel an order of possession or change the director's decision about ending a tenancy; only the BC Supreme Court may do so on a petition for judicial review.

CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
A 1	am	Amended pursuant to Sechelt decision	2013-08-19
B 2	am	Claim amount changed pursuant to Order in Council 166.	2017-06-01
A & B(1)(ii)	am	Amended to clarify jurisdiction around treaty settlement lands and float homes	2017-12-11
B-E	del		2018-05-17
B	new	Replaces old sections B-E	2018-05-17
B	am	Updated for MHPTA amendments and monetary small claims	2018-06-06
E	new	Section on roommates added	2019-01-07
A 1.C	del	Reference to Tla'amin Nation removed	2019-06-10
B	am	Added reference to RTA 51.4	2021-01-07
B 2	am	Clarified small claims limit for monetary orders for unpaid rent; added content on dividing claims	2022-11-21
B 9	new	Added section on strata corporations	2022-11-21
All	am	Minor changes throughout for clarification based on legal advice	2022-11-21
2	Am	Updated to reflect amendment that the amount claimed for debt or damages excludes any amount claimed under section 51.3 or 51.4 of the RTA	2023-11-30

Change notations

am = text amended or changed

del = text deleted

new = new section added