

## 27. Jurisdiction

Jan-19

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*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 Act. This policy guideline may be revised and new Guidelines issued from time to time.*

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The question of jurisdiction can arise in two ways:

1. Does the Residential Tenancy Branch have constitutional authority to resolve the dispute?
2. Does the Residential Tenancy Branch 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) “Militia, Military and Naval Service, and Defence”. Provinces are entitled to pass legislation that will overlap with this jurisdiction providing the legislation is for a “valid provincial purpose” and does not interfere with the purpose of the Federal legislation. When laws interfere with the core of federal powers or are in conflict with federal legislation under section 91 constitutional doctrines result in certain laws to be deemed inapplicable or inoperable.

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

#### 1. First Nation Lands

##### a. Reserve Lands

Homes or rental units located on “lands reserved for Indians” as defined by section 91(24) of the *Constitution Act* (“Reserve Lands”), will fall under Federal legislative power. The Courts have held that provincial legislation cannot apply to the right of possession on *Reserve Lands*. In *Sechelt Indian Band v. British Columbia*<sup>1</sup>, the Court held that the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* are inapplicable to tenancy agreements on Reserve Lands where the landlord is an Indian or Indian Band<sup>2</sup>.

The Residential Tenancy Branch, 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 Residential Tenancy Branch may have jurisdiction on reserve lands if:

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

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<sup>1</sup> *Sechelt Indian Band v. British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262

<sup>2</sup> “Indian” and “Indian Band” used as a term defined by the Indian Act, R.S.C, 1985, c. 1-5.

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### **b. Westbank First Nation Lands**

Westbank Lands are Reserve Lands and are identical to *Indian Act* reserve lands in relation to the limited application of provincial laws. The Westbank First Nation Self-Government Agreement delegates law-making authority over “landlord and tenant matters with respect to Westbank Lands and premises on Westbank Land.”

The *Westbank Residential Premises Law* applies to all residential tenancies on Westbank lands therefore the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* are entirely inapplicable to Westbank lands.

The Residential Tenancy Branch will decline jurisdiction on Westbank lands.

### **c. Treaty Settlement Lands**

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

Whether the Residential Tenancy Branch has jurisdiction on Treaty Lands will depend on the terms of the Final Agreements, and whether the First Nation has enacted law. If the First Nation has enacted its own law that may be in conflict with the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*, 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 is not covered by the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. The CFHA has a dispute resolution service for disputes involving military housing.

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## B. STATUTORY JURISDICTION

### 1. Legislative Framework

Section 84.1 of the RTA and 77.1 of the MHPTA give the director (“director” and “arbitrator” are used interchangeably in this guideline) 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) of the RTA and 51(3) 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 if:

- the claim is for an amount that is more than the monetary limit for claims under the [Small Claims Act](#)
- the dispute is linked substantially to a matter that is before the Supreme Court

#### ***Small Claims Limit***

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the *Small Claims Act*. The limit is currently \$35,000.

If a claim for damage or loss exceeds the small claims limit, the director’s policy is to decline jurisdiction. This ensures that 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 RTB will accept jurisdiction.

If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have 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.

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The small claims limit only applies to monetary claims. It does not apply to repair claims. An arbitrator may order a landlord to make repairs that cost more than the small claims limit.

### ***Licenses to Occupy***

Section 2 of the RTA states the Act applies to tenancy agreements, rental units and other residential property. A tenancy agreement under the RTA includes a licence to occupy. Section 2 of the MHPTA states the Act applies to tenancy agreements, manufactured home sites and manufactured home parks. A tenancy agreement under the MHPTA does not include a license to occupy. See [Policy Guideline 9: Tenancy Agreements and Licenses to Occupy](#)

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

### ***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. But if a university provides accommodation to individuals other than students or employees of the university the RTA may apply.

### ***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 it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies.

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

- 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 Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be 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

### ***Float Homes and Recreational Vehicles***

The MHPTA does not apply to float homes. It may apply to travel trailers. See [Policy Guideline 9: Tenancy Agreements and Licenses to Occupy](#) for more information.

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The RTA defines a rental unit as living accommodation rented or intended to be rented to a tenant. This means a travel trailer, recreational vehicle, or a float home could be rented pursuant to a tenancy agreement under the RTA. For example, if someone rented out their float home for a fixed term of 6 months, the RTA may apply.

### **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 is residential, the RTA will apply. For example, if a tenant rents a house to live in, and the house has a detached garage which the tenant runs a small yoga studio out of, the RTA probably applies.

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

An arbitrator may consider municipal by-laws 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](#)

## **2. TRANSFERRING OWNERSHIP**

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

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

## **3. CO-SIGNERS AND GUARANTORS**

A co-signer is a person who signs a 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 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.

#### 4. DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being 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 Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes.

However, if Tenant A is renting residential property (like a house) from their landlord that has more than one rental unit (like an upper suite and a lower suite) and Tenant A rents out the lower suite to Tenant B, the RTA may apply because Tenant A may meet the definition of a landlord. The director may take jurisdiction in these matters.

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. Visit [civilresolutionbc.ca](http://civilresolutionbc.ca) for more information.

#### CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
A, 1	am	Amended pursuant to Sechelt decision	2013-08-19
8	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	2019-1-7

Change notations

am = text amended or changed

del = text deleted

new = new section added