

27. Jurisdiction

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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.

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*¹, 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 Band².

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.

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

² “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.

B. STATUTORY JURISDICTION

The Residential Tenancy Branch's jurisdiction flows from the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*. Specific types of accommodation and agreements are excluded from the Branch's jurisdiction under each Act.

1. Excluded Jurisdiction

The *Residential Tenancy Act*³ provides that the Act applies to tenancy agreements, rental units and other residential property. The definition of tenancy agreement in the *Residential Tenancy Act* includes a license to occupy. Section 4 of the Act contains a list of accommodation and agreements to which the Act does not apply. The Residential Tenancy Branch will therefore decline jurisdiction, and refuse to hear the dispute, if the accommodation or agreement is listed in section 4.

The *Manufactured Home Park Tenancy Act* does not include a license to occupy a manufactured home site in the definition of a tenancy agreement. See [Policy Guideline 9: Tenancy Agreements and Licences to Occupy](#) for information regarding a license to occupy as distinct from a tenancy agreement.

i. Hotel Tenants

Occupancy of a hotel is a license and if occupied pursuant to a tenancy agreement, the *Residential Tenancy Act* assumes jurisdiction and confers power upon the Residential Tenancy Branch over certain hotels and hotel tenants. The Residential Tenancy Branch will therefore hear the dispute if the tenant is a hotel tenant under a tenancy agreement. The Act would not apply to living accommodation owned or operated by an educational institution and provided to students or employees of the institution because they would be excluded by section 4. In addition, a hotel is not a facility in which the owner of that accommodation shares kitchen or bathroom facilities because they are also excluded from the *Residential Tenancy Act* by section 4.

So, for example, if the facility is operated by a university and provided to students of the university, the tenant who is a student of that university may otherwise meet the requirements of the Act, but the Residential Tenancy Branch will likely decline jurisdiction and refuse to hear the dispute. This is because the relationship between the parties has been excluded by section 4. On the other hand, rental accommodation operated by the university but not provided to students or employees of the university would be included in the Act.

On the other hand, if the tenant resides in shared accommodation, which is a license to occupy, the Residential Tenancy Branch will assume jurisdiction and hear the dispute if the tenant satisfies the requirements of section 2.

³ *Residential Tenancy Act*, s. 2

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ii. Travel trailers, Recreational vehicles, and Float homes

Under the *Manufactured Home Park Tenancy Act*, a manufactured home is a structure, other than a float home, whether or not ordinarily equipped with wheels, that is:

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- used or intended to be used as living accommodation.

A travel trailer occupying a manufactured home site may meet the definition of a manufactured home. However, if the site is rented under a licence to occupy, the Act will not apply because the definition of a tenancy agreement excludes a licence to occupy.

Under the *Residential Tenancy Act*, a rental unit is defined as living accommodation rented or intended to be rented to a tenant. A travel trailer, recreational vehicle, or a float home may meet the definition of a rental unit. Furthermore, the definition of a tenancy agreement under the Act includes a licence to occupy.

Whether the Residential Tenancy Branch has jurisdiction to resolve a dispute involving a travel trailer, recreational vehicle, and float home will turn on the particulars of each case.

See sections “B” to “D” of [Policy Guideline 9: Tenancy Agreements and Licences to Occupy](#), for more information.

iii. Vacation Accommodation

The *Residential Tenancy Act*⁴ provides that the Act does not apply to vacation or travel accommodation. However, the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis. For example, a winter chalet rented for a fixed term of one year is not rented on a vacation basis.

iv. Cooperatives

If the landlord is a cooperative and the tenant is a member of the cooperative, the *Residential Tenancy Act*⁵ would not apply to a dispute which arises between them.

v. Tenancy Agreements Exceeding Twenty Years

The *Residential Tenancy Act*⁶ excludes from the Act tenancy agreements with a term longer than twenty years. Two or more agreements which provide for a total term exceeding twenty years may be an agreement exceeding twenty years.

If the landlord complies with the steps set out in the sections referred to above, that does not mean that the *Residential Tenancy Act* applies to the relationship between the parties. It means only that the landlord has complied with the statutory requirements to enter into a

⁴ *Residential Tenancy Act*, s. 4

⁵ *Residential Tenancy Act*, s. 4(a)

⁶ *Residential Tenancy Act*, s. 4(i)

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valid agreement. For historical reasons, the Act does not otherwise apply to residential tenancy agreements with a term exceeding twenty years and the Residential Tenancy Branch will likely decline jurisdiction over any dispute between the parties.

vi. Transfer of an Ownership Interest

If the relationship between the parties is that of seller and purchaser of real estate, the Legislation would not apply as the parties have not entered into a "Tenancy Agreement" as defined in section 1 of the Acts. It does not matter if the parties have called the agreement a tenancy agreement. If the monies that are changing hands are part of the purchase price, a tenancy agreement has not been entered into.

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the Residential Tenancy Branch may again decline jurisdiction because the Acts would not apply.

In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the Residential Tenancy Branch may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser.

vii. Commercial Tenancies

The *Residential Tenancy Act*⁷ provides that the Act 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

Where the premises are used primarily for residential purposes and the tenant operates a home-based business from the premises, this does not mean the premises are occupied for business purposes. The distinction is whether the premises are business premises which includes an attached dwelling unit or whether the premises are residential in nature with a lesser business purpose. The bylaws of a city may be a factor in considering whether the premises are primarily occupied for a business purpose.

For example, if a tenant uses part of the residential premises as an art studio, or operates a bookkeeping business from the home, the Act would apply as the premises are not primarily used for business purposes. However, if the primary purpose of the tenancy was to operate

⁷ *Residential Tenancy Act*, s. 4(d)

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a business, then the Act may not apply and the Residential Tenancy Branch may decline jurisdiction over the dispute. See also Guideline 14 on this topic.

C. CONTRACTING OUT PROHIBITED

The Legislation⁸ provides that the parties must submit to dispute resolution any dispute which is covered by the Acts. Under section 5 of both Acts, the parties may not contract out of or avoid the Acts or their regulations.

If the Legislation does not apply then the parties must pursue their claims in Supreme or Provincial Court.

D. POWER OF THE RESIDENTIAL TENANCY BRANCH

The power and authority of the Residential Tenancy Branch is derived from the Legislation. The dispute resolution process does not create a court and so the Residential Tenancy Branch does not have inherent powers arising under the common law which are possessed by a judge. For example, the Residential Tenancy Branch does not have jurisdiction in "equity" to grant some forms of relief that a court may grant.

Similarly, the monetary limit of the Residential Tenancy Branch's jurisdiction is limited to the same amount as the provincial court, the sum of \$35,000 as of the date of the guideline. A claim for money that exceeds that amount must be heard in Supreme Court. An applicant, however, may abandon part of a claim to come within the jurisdictional limits of the Residential Tenancy Branch. In addition, the Residential Tenancy Branch does have the power to hear a claim for the return of goods the value of which exceeds \$35,000.

The provincial court does not have jurisdiction over residential tenancy disputes except in respect of enforcement of monetary orders issued by the Residential Tenancy Branch. The Supreme Court, however, may by order, assume jurisdiction over a residential tenancy matter, in which case the Residential Tenancy Branch loses jurisdiction over that dispute. If the dispute is linked substantially to a Supreme Court action then the Residential Tenancy Branch may decline jurisdiction.

E. STANDING**a. Strata Corporations**

This part deleted July 31, 2010.

b. Guarantors

If a person guarantees the performance of the tenancy agreement as a signatory to the agreement, the other party may pursue the guarantor on the tenancy agreement by filing an Application for Dispute Resolution against that person. The other parties to the tenancy agreement may be, but need not be, joined in the application.

⁸ *Residential Tenancy Act, s. 58; Manufactured Home Park Tenancy Act, s. 51*

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If, however, the guarantor signs a separate document of guarantee and is not therefore a party to the tenancy agreement, the Legislation does not apply to claims in debt arising under the separate document and therefore outside the tenancy agreement. The Residential Tenancy Branch would not have jurisdiction to hear that claim.

Worth noting is that the *Law and Equity Act*⁹ requires that, to be enforceable, a guarantee must be evidenced in writing and signed by the guarantor.

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

Change notations

am = text amended or changed

del = text deleted

new = new section added

⁹ *Law and Equity Act*, s. 58(6)