



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

CNC and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing, although the Landlord's representative only remained in the teleconference long enough to ascertain whether the letter from the Landlord's legal counsel, dated July 14, 2010, had been received by the Tenants and the Residential Tenancy Branch.

### Background and Evidence

Legal counsel for the Landlord submitted a letter, dated July 14, 2010, in which legal counsel declared that the rental site is wholly located on Penticton Indian Reserve #1 and that the owners and operators of the park are all members of the Penticton Indian Band. The Tenants submitted no evidence to dispute this position.

In the letter dated July 14, 2010 legal counsel argued that the *Manufactured Home Park Tenancy Act (Act)* does not apply to this rental site as it is located on "Indian Reserves owned and operated by the Locatees on which the mobile home park exists". The Tenants presented no evidence to dispute this position, other than to state that they had been told by employees of the Penticton Indian Band that they must dispute the notice to end this tenancy through the Residential Tenancy Branch.

### Analysis

Section 91 of the *Constitution Act* confers the jurisdiction over federal lands to the federal government. The *Manufactured Home Park Tenancy Act* is provincial legislation. 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. Since a tenancy agreement is an interest in land, any part of the *Manufactured Home Park Tenancy Act* which affects the use and occupation of Indian Lands does not apply to the manufactured home site which is in dispute.

Conclusion

As this rental site is on Indian Lands, I find that I have no jurisdiction in this dispute. On this basis, I decline to consider the Tenants' Application for Dispute Resolution.

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: August 30, 2010.

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Dispute Resolution Officer