



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax-Kelowna Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, FF, O

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order allowing a reduction in rent, for other relief under the Act, and for recovery of the filing fee.

The parties appeared and at the outset of the hearing, the landlord's agent queried as to whether this dispute fell under the jurisdiction of the Residential Tenancy Act. More specifically the landlord's agent mentioned that the tenancy agreement was on a First Nations letterhead and in the introductory heading, the language mentioned that the provisions of the tenancy agreement were controlled by that First Nations "Residential Premises Law and Regulations."

During the hearing, the tenant said that he was not sure if the Residential Tenancy Branch ("RTB") had jurisdiction; however, the tenant said that he was not requesting a rent reduction as marked on their application, but rather they were seeking a termination of the tenancy earlier than the end of the fixed term due to alleged lack of quiet enjoyment, a breach of a material term.

### Issue(s) to be Decided

Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?

### Analysis and Conclusion

In order for me to make a decision on the tenants' application, I must first decide the issue raised by the landlord, that this dispute is excluded from the jurisdiction of the *Residential Tenancy Act*.

The Residential Tenancy Act derives its authority under provincial legislation which governs residential tenancy agreements within British Columbia. Provincial legislation cannot affect the “use and occupation” of Indian Lands because that authority belongs to the federal government under Section 91 of the Constitution Act.

The tenants are seeking an order ending the tenancy earlier than the end of the fixed term due to the alleged breach of a material term of the tenancy agreement. The tenancy agreement states clearly that this tenancy was within the jurisdiction of the First Nations “Residential Premises Law and Regulations.”

I have also determined that the tenants’ request, ending the tenancy earlier than the end of the fixed term, affects the use and occupation on Indian lands and I therefore decline to accept jurisdiction of the tenants’ application and dispute with the landlord.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

### Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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* and is being mailed to both the applicant and the respondent.

Dated: May 21, 2013

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Residential Tenancy Branch