



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding APA HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

**Dispute Codes**      FFL OPUM-DR

### **Introduction**

The matter originally proceeded by way of an *ex parte* Direct Request Proceeding on July 22, 2019, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent.

On July 25, 2019, the tenant was granted their application for review consideration, and the Decision and Orders dated July 22, 2019 were suspended until the Review Hearing scheduled for September 24, 2019. The tenant filed the application for review consideration on the grounds that the landlord had committed fraud by failing to disclose to the Adjudicator in the *ex parte* Direct Request Process that this tenancy was currently before the Supreme Court on matters that were substantially linked, and related to the same tenancy.

KD appeared as agent for the landlord in this hearing. Both parties attended this Review Hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the landlord’s evidentiary materials were not served to the tenant in accordance with section 88 of the *Act*, the landlord’s evidence was excluded.

### **Issue(s) to be Decided**

Should the Decision and Order granted on July 22 ,2019 be confirmed?

### **Preliminary Issue – Jurisdiction**

The tenant testified that both parties are currently before the Supreme Court of BC in relation to matters of unpaid rent and a previous Order of Possession that was granted on December 16, 2018,

The landlord did not dispute that both parties were currently before the Supreme Court of BC in relation to this tenancy and matters of unpaid rent, but pursuant to an Order made on April 18, 2019 the matter was still pending since the landlord was still waiting for the tenant to agree to a date.

### **Analysis**

Section 58 of the *Act* states the following, in part:

*(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless...*

*(c) the dispute is linked substantially to a matter that is before the Supreme Court.*

*(4) The Supreme Court may*

*(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and*

*(b) on hearing the dispute, make any order that the director may make under this Act.*

This current application relates to the landlord's application for an Order of Possession for the tenant's failure to pay rent. It is clear that the matters before the Supreme Court of BC are related to issues involving this same tenancy, and matters of unpaid rent. As such, I find that the landlord's Application is linked substantially to a matter that is currently before the Supreme Court of BC as per section 58(2)(c) of the *Act*, and I decline jurisdiction to hear this matter.

### **Conclusion**

The decision and order issued on July 22, 2019 are both cancelled as I find this matter substantially linked to matters before the Supreme Court of BC. I decline jurisdiction to hear this matter.

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: September 25, 2019

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Residential Tenancy Branch