



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LAKE OKANAGAN RESORT (2013)  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 22, 2022. The Tenant applied for an Order of Possession, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision. Not all evidence that was submitted will be summarized. Only evidence which underpins my decision will be referenced.

### Preliminary Issue - Jurisdiction

The respondent raised the fact that the parties have an ongoing proceeding with the Supreme Court of British Columbia (SCBC), which calls into question whether I have jurisdiction regarding this application.

Generally speaking, the parties acknowledged that the Tenant rents a large parcel of land and buildings from the Landlord, much of which is buildings used for vacation and travel accommodation. The lease agreement shows that monthly rent is around \$50,000.00. The Landlord/respondent stated that the Tenant stopped paying rent quite some time ago, and now owes a substantial amount of money, which is why the Landlord sought to terminate the lease in December 2021. After the Tenant received the Notice of Termination from the Landlord in December 2021, they filed a Notice of Civil

Claim at the SCBC in early January 2022, against the party named as the Landlord/respondent on this application.

The parties both acknowledged that there is an ongoing SCBC proceeding, and that it is the result of issues with non-payment of rent, and the right to occupy and/or possess the rented premises. The parties acknowledged that the rental arrears have accrued to a significant amount, but the actual amounts are still in dispute, as is the right to possess and occupy the premises. Both parties confirmed that this entire matter is currently before the SCBC, and the first of several hearings was had last week. The parties are currently in the discovery process, and are in the process of proceeding with their claim at the SCBC.

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.*

It is clear that the present Application pertains to a property that is one of the properties at issue before the SCBC and it involves the same parties as named in the SCBC proceeding. It also appears the issues included in the SCBC process are highly related and overlapping with the matters sought in this application. As such, I find that the tenant's Application is linked substantially to a matter that is currently before the SCBC. Therefore, as per section 58(2)(c) of the *Act*. Consequently, I find that I have no jurisdiction to consider this matter.

### Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: February 22, 2022

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Residential Tenancy Branch