



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and recovery of the filing fee. The party named as the landlord is not the party that entered into a tenancy agreement with the tenants. Rather, the party is the strata corporation that manages the residential property where the rental unit is located (herein referred to as the strata). By virtue of section 138 of the *Strata Property Act*, the strata asserted that it had the right to end the tenancy and request a Monetary Order for unpaid fines.

The strata provided evidence that it served the tenants with notification of today's hearing by registered mail on April 28, 2009. The strata representative testified that the registered mail for one of the tenants was returned but the other was not. Having been satisfied that the tenants were notified of today's hearing and nature of the strata's claims, I proceeded to hear from the strata.

The strata testified that the tenants have vacated the rental unit and an Order of Possession was no longer required. The strata wished to proceed with its request for a Monetary Order for the unpaid fines.

### Issues(s) to be Decided

1. Whether the strata has established a right to recover the unpaid fines from the tenants under the *Residential Tenancy Act*.
2. Award of the filing fee.

## Background and Evidence

Upon serving three violation notices upon the tenants for disturbing other occupants of the residential property, the strata fined the tenants \$50.00 on February 3, 2009. The tenants paid the fine on February 5, 2009. The strata fined the tenants again on February 7, 2009 in the amount of \$100.00; March 1, 2009 in the amount of \$200.00; and, on March 8, 2009 in the amount of \$150.00. On March 26, 2009 the strata issued the tenants a *10 Day Notice to End Tenancy for Unpaid Rent* (the 10 Day Notice) indicating \$450.00 in rent was outstanding. The violation notices and 10 Day Notice were posted on the rental unit door.

The strata provided copies of the violation notices and 10 Day Notice and excerpts of the strata bylaws and section 138 of the *Strata Property Act* as evidence for the hearing.

## Analysis

Section 138 of the *Strata Property Act* provided by the strata is outdated; however, upon review of the current *Strata Property Act*, I find that section 138 states that a strata corporation may give a tenant a notice to terminate the tenancy under section 47 of the *Residential Tenancy Act*.

Section 47 of the *Residential Tenancy Act* provides for ending the tenancy for cause, including unreasonable disturbance and significant interference with other occupants, by serving a tenant with a *1 Month Notice to End Tenancy for Cause*. The *Strata Property Act* does not provide that a strata may end the tenancy for unpaid rent where the strata is not the landlord. The definition of “rent” in the *Residential Tenancy Act* does not include fines. Therefore, I find the 10 Day Notice that was served upon the tenants to be invalid and of no effect.



# Dispute Resolution Services

Page: 3

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The strata has not satisfied me that it is entitled to recover the fines from the tenants under the *Residential Tenancy Act* and I do not provide the strata with a Monetary Order. The strata is at liberty to recover the fines from the appropriate party as provided under the *Strata Property Act*.

In light of the above findings, the strata's application is dismissed in its entirety and I make no award for recovery of the filing fee.

## Conclusion

The strata's application is dismissed without leave to reapply.

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: May 28, 2009.

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Dispute Resolution Officer