

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution submitted by the strata council for an order of possession.

The hearing was conducted via teleconference and was attended by the strata council's agent/legal counsel.

The agent testified that the notice of this hearing was served to the tenant personally on April 14, 2010 by a process server. I accept the tenant was served with notice of this hearing.

### Issues(s) to be Decided

The issues to be decided are whether the strata council is entitled to an order of possession for cause; and to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The applicant strata council submitted into evidence a 1 Month Notice to End Tenancy for Cause issued on February 24, 2010 with an effective vacancy date of March 31, 2010 citing the reasons for cause to be that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The strata council's legal agent testified the 1 Month Notice was served on the tenant on February 24, 2010, by posting it to the rental unit door and sliding a copy under the rental unit door.

The agent testified that Section 138 of the *Strata Property Act* gives the strata council the authority to give the tenant a notice terminating the tenancy agreement under

Section 47 of the *Residential Tenancy Act*. He further testified that he had been in discussions with the owners of the unit, the landlords, and the landlords do not support this notice.

### Analysis

Section 44 of the *Residential Tenancy Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives notices to end the tenancy in accordance with one of the applicable sections under the Act, such as Section 47;
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders that the tenancy is ended.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or the residential property, or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

This section also allows a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in an illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property.

A landlord is defined under the *Act* as:

- a) The owner of the rental unit, the owner's agent or another person who on behalf of the landlord permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- b) The heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a); or
- c) A person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.

I find the strata council has no standing under the tenancy agreement or the *Residential Tenancy Act* to act as a landlord or the landlord's agent to issue a Section 47 Notice to End Tenancy for Cause.

### Conclusion

As a result of the findings above, I dismiss the strata council's Application for Dispute Resolution in its entirety, 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 31, 2010.

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Dispute Resolution Officer