



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, OPB, O

Introduction

This hearing dealt with an Application for Dispute Resolution for an Order of Possession.

Preliminary Matters

The Applicant is an agent of a strata corporation. At the outset of the Hearing, the Applicant's agent testified that she does not represent the owner of the subject property.

The Respondent's advocate questioned whether a strata corporation has authority under the Residential Tenancy Act to issue a Notice to End Tenancy.

The Applicant's agent submitted that Section 138 of the Strata Property Act conveys on her the authority to give a tenant a Notice to End Tenancy for Cause.

Section 138 of the Strata Property Act states:

Eviction by strata corporation

138 (1) A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47 [*landlord's notice: cause*] of the *Residential Tenancy Act*.

Counsel for the Respondents submitted that there is no corresponding provision in the Residential Tenancy Act for a strata corporation to issue a Notice to End Tenancy. He submitted, in the alternative, that the owner and the Respondents have an Agreement for Sale with respect to the subject property and that no tenancy agreement exists.

Section 44(1) of the Act states:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or **landlord** gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

(vii) section 50 *[tenant may end tenancy early]*;

(emphasis added)

Section 1 of the Residential Tenancy Act defines a "landlord" as follows:

- 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.

(emphasis added)

The Applicant's agent testified that she was not acting on behalf of the owner.

Section 58(1) of the Act states:

Determining disputes

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with **the person's** landlord or **tenant** in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

(emphasis added)

I find that the Respondents are not the strata corporation's tenants.

I find that the strata corporation has no authority to file an Application for Dispute Resolution for an Order of Possession under the Residential Tenancy Act or to issue a Section 47 Notice to End Tenancy for Cause under the Residential Tenancy Act.

The strata corporation's application is dismissed.

Conclusion

The strata corporation's Application for Dispute Resolution is dismissed.

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: October 1, 2010.
