



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATA CORPORATION VIS2462
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Strata Corporation for an order of possession which was based on a 1 Month Notice to End Tenancy for Cause, issued on July 30, 2013, and to recover the cost of the filing fee from the tenant.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Preliminary Matter

At the outset of the Hearing, the Applicant's agent testified that they are not the owner of the subject property and are not acting on behalf of the owner.

The Applicant's agent submitted that Section 138 of the Strata Property Act conveys them 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*.

Section 44(1) of the Residential Tenancy 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)

Section 58(1) of the Residential Tenancy Act 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)

In this case, the respondents are not the strata corporation tenants. The strata corporation is not acting as agent or on behalf of the owner.

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 11, 2013

Residential Tenancy Branch

