



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, ,FF

### Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy dated January 3, 2018. The Notice alleges that there are an unreasonable number of occupants in the rental unit. In the second application the landlord seeks an order of possession pursuant to that Notice, as well as recovery of \$1000.00 of anticipated strata fines.

Mr. D.D. attended the hearing as a representative of the strata corporation. The tenant had named the strata corporation as a respondent. The tenant was in error by doing so. He has no contractual or statutory relationship with the strata corporation and so its name has been removed from the style of cause. Mr. D.D. was however, good enough to remain in the hearing for a short while to participate in settlement discussions and respond to questions from the landlord's representative Mr. D.T.

Both parties attended the hearing, the landlord by his/her representative and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Are there good grounds for the Notice; are there an unreasonable number of occupants? Is the tenant responsible for anticipated strata fines?

### Background and Evidence

The rental unit is a two bedroom "plus den" accommodation according to the landlord. The tenant says it is a three bedroom apartment.

The tenant is a Ph.D. student from another continent. He found the apartment on craigslist where it was advertised as a “3 bedroom, penthouse unit”. The email correspondence that ensued with the landlord was titled “3 bedroom penthouse unit.”

There is a written tenancy agreement. The tenancy started in December 2016 for a one year fixed term at a monthly rent of \$2400.00. At the expiry of the fixed term the tenancy has continued as a month to month tenancy at a rent of \$2440.00.

At the start of the tenancy the tenant’s family was composed of himself, his wife and three children. During the tenancy the tenant and his wife had a fourth child, now six months old.

At some point in late 2017, the strata corporation came to the knowledge that there were a total of six people living in the rental unit. It wrote to the landlord and referred to a strata bylaw that prohibits more than two people living in a one bedroom apartment or four people living in a two bedroom apartment. The strata corporation noted that the landlord had designated the apartment as a two bedroom accommodation.

The landlord provided the tenant with a copy of the letter but neither disputed the allegation of the strata corporation or requested a hearing with it.

The landlord did contact the strata corporation to point out that the rental unit was a 1700 square foot unit whereas the three bedroom units on the floors below were only 1000 square feet. He/she requested that the strata corporation make an exception in this case. The request was not granted.

The strata corporation has now threatened to fine the landlord \$200.00 every week of contravention. The landlord therefore issued the Notice in question.

### Analysis

Arguably, there are two ways the tenant might be seen as having an unreasonable number of occupants in his rental unit. The first is a determination by reasonable standards. The second is by some particular reference or definition in the contractual language of any agreement between the parties.

Unreasonably Number of Occupants by the Reasonableness Standard

Section 47 of the *Residential Tenancy Act*, permits a landlord to evict a tenant where there are an “unreasonable number of occupants” in the rental unit. Having regard to the fact that these premises are, at the least, a two bedroom “plus den” accommodation, it has not been shown that the tenant, his wife and four children compose an unreasonable number of occupants by any reasonable standard.

#### The Tenancy Agreement and the Strata Corporation Bylaw

At the start of the tenancy the tenant received the current bylaws and signed the Form K document required under the *Strata Property Act*, SBC 1998 C. 43.

Clause 4.5 of the bylaws provides:

A resident must not use, or permit to be used, the strata lot except as a private dwelling home and, unless granted prior written approval by the council, a resident must not allow more than two persons to occupy a strata lot originally designated by the owner developer as a one bedroom unit and not allow more than four persons to occupy a strata lot originally designated by the owner developer as a two bedroom unit. For the purposes of this bylaw 4.5, a "person" is defined to include children, but exclude visitors staying for less than 30 days with an owner, occupant or tenant of a strata lot.

The tenant did not know and could not be taken to know that the landlord had designated the apartment as a two bedroom apartment with the strata corporation. As far as he was concerned he was renting a three bedroom penthouse apartment as represented by the landlord. He had no need to be concerned about clause 4.5.

Nothing in the tenancy agreement or the bylaws detract or change that initial representative and I find that it became an implied term of the tenancy agreement. The tenant rented a three bedroom apartment.

The error here is with the landlord's designation to the strata corporation. That error cannot serve as a cause to evict this tenancy and so I find that the Notice in question is without justification.

#### Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated January 3, 2018 is hereby cancelled.

The landlord's application is dismissed. The contradictory act of offering a three bedroom apartment for rent but designating it as a two bedroom apartment with the

strata corporation has led the landlord to be the author of his/her own misfortune. He/she must honour the agreement made with the tenant.

I authorize the tenant to recover the \$100.00 filing fee for his application by reducing his next rent due by \$100.00, in full satisfaction of the fee.

I note that the bylaws permit the strata corporation to grant exceptions to the two person per bedroom provision in its bylaw. In my view the granting of such an exception cannot be unreasonably withheld by the strata corporation. If the facts are truly as they have been alleged in this case, I would suggest the landlord change the designation of the premises or re-enliven the request that an exception be made in this case considering that the apartment is an exceptionally large one and is, at least, a "two bedroom plus den" apartment.

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: March 14, 2018

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Residential Tenancy Branch