



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding STRATA VIS 1343  
and [tenant name suppressed to protect privacy]

## DECISION

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### Introduction

This hearing was set to deal with a landlord's application for an order to end a tenancy early and obtain an Order of Possession under section 56 of the Residential Tenancy Act. ("the Act").

Both parties appeared and/or were represented at the hearing and the parties were affirmed. I confirmed the applicant emailed the proceeding package and evidence to the respondent and the respondent received the materials.

### Preliminary Issue – Jurisdiction

The applicant is a strata corporation under the *Strata Property Act*. It is agreed that the named respondent is an owner of the unit identified in the application.

My jurisdiction to resolve disputes is conveyed upon me by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act*.

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides the following information with respect to applications involving a strata corporation. Under part 9, it states, in part:

#### **9. Strata Corporations**

Section 138 of the ***Strata Property Act*** allows a strata corporation to evict **a tenant** of a residential strata lot for a repeated or continuing contravention of a reasonable and significant bylaw or rule if the contravention seriously interferes with another person's use and enjoyment of a strata lot, the common property, or

the common assets. This provision allows the strata corporation to issue a Notice to End Tenancy under section 47 (landlord's notice: cause) of the RTA.

The definition of "landlord" in the RTA sets out what that term "includes" in relation to a rental unit. The definition can also include persons who are not listed. Thus, it can include a person to whom the Legislature has given the powers of a landlord in another statute, such as the Strata Property Act. The strata corporation can be a landlord under the RTA but only for the purposes of issuing a notice to end tenancy under section 47 of the RTA, defending any application disputing that notice, and seeking an order and writ of possession in relation to that notice.

Once a strata corporation issues a Notice to End Tenancy under section 138 of the Strata Property Act, the director has statutory authority to cancel the notice or uphold the notice and grant an order of possession.

**Under an order of possession, the rental unit must be returned to the strata lot owner's possession**, but pursuant to section 62(3) of the RTA, the director can also order that the strata corporation is permitted to file and enforce the order of possession at the BC Supreme Court under section 84 of the RTA.

Notes:

- As per section 64.5(c) of the RTA, the director may order that the strata unit owner/landlord be given notice of a dispute resolution proceeding and an opportunity to be heard in the dispute resolution proceeding if, in the director's opinion, the strata unit owner/landlord will be or is likely to be materially affected by the resolution of the dispute.
- The director does not have jurisdiction to determine whether a strata bylaw or rule is legally valid. The Civil Resolution Tribunal has jurisdiction to decide disputes about strata bylaws and rules. If there is a challenge to the bylaws before the Civil Resolution Tribunal, the director may adjourn the dispute resolution hearing concerning the Notice to End Tenancy until the Civil Resolution Tribunal has made a decision.
- The Civil Resolution Tribunal cannot cancel an order of possession or change the director's decision about ending a tenancy; only the BC Supreme Court may do so on a petition for judicial review.

[My emphasis added]

The Strata Property Act defines a “tenant” to mean a person who rents all or part of a strata unit. In this case, the “landlord” is seeking to evict and obtain an Order of Possession against a person who is an owner, not a tenant.

I do not have jurisdiction to evict an owner from a strata unit and I decline to hear this matter further.

The applicant is at liberty to pursue its available remedies against the owner through the appropriate forum such as the Civil Resolution Tribunal.

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: June 02, 2023

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Residential Tenancy Branch