



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE OWNERS, STRATA PLAN BCS3836
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution, made on May 17, 2018 (the “Application”). The Applicant sought the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order of possession for cause; and
- an order granting recovery of the filing fee.

The Applicant was represented at the hearing by A.K. legal counsel, who was accompanied by J.C. and T.L. The Respondent attended the hearing in person and was represented by A.C., legal counsel.

Preliminary Issue – Jurisdiction

As a brief background, the Applicant issued a One Month Notice to End Tenancy for Cause, dated December 7, 2017 (the “One Month Notice”), pursuant to section 138 of the *Strata Property Act* (the “SPA”). The Respondent confirmed receipt of the One Month Notice on December 11, 2017. J.C. advised there is a history of issues with this Respondent, resulting in fines being issued to the owners, but that the owners are not acting to end the tenancy.

Section 138(1) of the SPA states:

- (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.

(2) An eviction under subsection (1) does not affect any rights of the landlord under the tenancy agreement.

[Reproduced as written.]

On behalf of the Applicant, A.K. acknowledged the Applicant was not acting on behalf of the owner when it issued the One Month Notice. However, A.K. submitted that section 138 of the SPA explicitly confers on a strata corporation the ability to issue a notice to end tenancy for cause under section 47 of the Act. She also noted that the definition of landlord as set out above uses the word “includes” and is therefore not exhaustive. Further, A.K. submitted that the strata corporation falls under subsection (c) of the definition of landlord because the strata corporation is entitled to possession of the rental unit and may exercise the rights of a landlord under section 138 of the SPA. A.C. disagreed and suggested subsection (c) was intended to address subletting.

On behalf of the Respondent, A.C. submitted that the Residential Tenancy Branch does not have authority to consider the Application. He submitted that the Applicant does not meet the definition of “landlord” found in section 1 of the Act, which states:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement, or*
 - (ii) 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);*

- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

(d) a former landlord, when the context requires this;

[Reproduced as written.]

A.C. also referred to section 58 of the *Act*, which authorizes a person to make an application to the director in relation to a dispute between a landlord and tenant, not between a strata corporation and a tenant.

Although not binding on me, included with the Respondent's documentary evidence were copies of previous decisions of the Residential Tenancy Branch in which jurisdiction was refused in these circumstances. The Respondent also included an excerpt from the BC Strata Property Practice Manual, which states: "it is doubtful that the Residential Tenancy Branch has jurisdiction to make an order evicting a tenant at the request of the strata corporation if the strata corporation is not the owner of the strata lot" as there is no provision in the *Act* that corresponds with section 138 of the *SPA*.

After careful consideration of the submissions of counsel, I find the definition of landlord found in section 1 of the *Act* does not include a strata corporation acting independently. A strata corporation is not entitled to possession of the rental unit. Therefore, I find the Applicant is not a landlord as defined by the *Act* and the Residential Tenancy Branch has no jurisdiction to consider the Application. The Application is dismissed, 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: July 16, 2018

Residential Tenancy Branch