

Headline: The **Case of the Tenacious Tenant**

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What steps can a strata corporation take if a tenant repeatedly contravenes the strata corporation's bylaws? Until recently the answer appeared to be that the strata corporation could give the tenant notice to terminate the tenancy agreement and have the tenant evicted pursuant to section 47 of the *Residential Tenancy Act*.

Section 138 of the *Strata Property Act* which is entitled "Eviction by strata corporation" provides:

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 47 of the *Residential Tenancy Act* permits a landlord, in limited circumstances to end a tenancy by providing a one month Notice to End Tenancy to a tenant. A tenant may dispute the notice and apply to have the Notice to End Tenancy set aside. Section 47 of the *Residential Tenancy Act* provides, in part:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;

...

However, a recent decision of the Residential Tenancy Branch has held that a strata corporation is unable to rely on section 47 of the *Residential Tenancy Act* because the strata corporation is not a landlord within the meaning of the *Residential Tenancy Act*.

In *Ghikermann v. The Owners, Strata Plan NW 1666* the strata corporation provided a Notice to End Tenancy to a tenant. The tenant applied to set aside the notice.

The dispute resolution officer noted that the difficulty with section 138 of the *Strata Property Act* is that even though it appears to allow a strata corporation to give a tenant a Notice to End Tenancy, the *Strata Property Act* does not expressly set out whether the parties are permitted to use the procedures under the *Residential Tenancy Act* and that section 138 of the *Strata Property Act* does not provide authority to a dispute resolution officer to make an Order for Possession under section 47 of the *Residential Tenancy Act*.

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The dispute resolution officer then considered whether the *Residential Tenancy Act* gives a dispute resolution officer the jurisdiction to hear the tenant's application and to grant the strata corporation an Order of Possession. Relying on a previous decision, the dispute resolution officer concluded that a strata corporation is not a landlord within the meaning of the *Residential Tenancy Act*. As a result, the strata corporation is not a party to a tenancy agreement with a tenant and has no right to make an application under the *Residential Tenancy Act*. The dispute resolution officer determined that the *Residential Tenancy Act* does not give a dispute resolution officer the jurisdiction to determine or enforce any rights, obligations, or prohibitions between a strata corporation and a tenant.

In reaching his conclusion, the dispute resolution officer considered that even though the strata corporation was unable to rely on the *Residential Tenancy Act* the strata corporation was not without a remedy. The dispute resolution officer noted that part 10 of the *Strata Property Act* contains detailed provisions relating to the resolution of disputes between a strata corporation and an owner or tenant, although part 10 does not provide for a strata corporation to bring a claim against a tenant using the residential tenancy dispute resolution process. The dispute resolution officer was unwilling to find that simply by including reference to section 47 of the *Residential Tenancy Act* in section 138 of the *Strata Property Act* the Residential Tenancy Branch has jurisdiction to hear a matter initiated by a strata corporation. Based on this decision, it appears that section 138 of the *Strata Property Act* is of no practical use to strata corporations.

The *Ghikermann* decision has a significant impact on the practices of strata corporations. Many strata corporations have terminated tenancies by issuing notice under section 47 of the *Residential Tenancy Act*. In the future, strata corporations that wish to terminate a tenancy will have to rely on arbitration or an application to the Court under part 10 of the *Strata Property Act*.

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