
Over and Out: When a Strata Lot Sells, Does a Tenancy End?

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Skedaddle Estates is an 80-unit residential strata corporation in Burnaby, British Columbia. Like many strata corporations, Skedaddle Estates passed a rental restriction bylaw limiting the number of permitted rentals in the community to 10 at a time. This past Spring, one of the permitted rental strata lots sold, and the Strata Council questioned whether or not the sale would automatically terminate the residential tenancy. The Council wondered: when the sale is over, must the tenant move out?

The Laws of the Land

It will come as no surprise to strata agents and strata lot owners alike that living in a strata corporation means living under certain laws of the land. The *Strata Property Act*, S.B.C. 1998, c. 43 (the "SPA") is the principal legislation that governs the creation and operation of strata corporations in our province. This legislation operates in conjunction with the regulations made pursuant to the SPA, the strata corporation's bylaws and rules, as well as several other provincial and municipal laws that regulate how persons can use and enjoy their strata properties.

In a kingdom that is a strata corporation, it is the Strata Council (the neighbourhood's proverbial Royal Family), who is first tasked with administering these laws. Strata governance invariably entails regulating all aspects of communal living, from pet noise to drifting smoke, curtain colours, to garden gnomes. Although the SPA is silent on such hard-hitting issues as garden gnomes, it is quite comprehensive with respect to other matters that impact day to day strata living; and in particular, rental permissions and prohibitions.

To Rent or Not to Rent

Subject to obtaining the $\frac{3}{4}$ vote approval of the kingdom, a Strata Corporation can (1) ban rentals of residential strata lots; (2) restrict the number or

percentage of residential strata lots that can be rented; and (3) limit the period of time for which residential strata lots may be rented. However, if there is "an exception to every rule", then the SPA is in turn, no exception. In certain circumstances, the laws of the land do not apply to everyone. For example, the SPA affords special exemptions when renting to a "family member" (as defined under the regulations to the SPA), and when the owner is eligible to rent their property on the basis of hardship. An improperly worded rental bylaw can also render itself unenforceable and give owners a window of new rental opportunities. Lastly, the owner developer can reserve the right to rent any or all strata lots in the community by way of the Rental Disclosure Statement filed at the creation of the strata development. These exemptions are conveniently found in the same statutory neighborhood (sections 141 - 144, SPA), so Councils needn't venture very far to find them. Despite this convenient location, however, determining how and when a residential tenancy ends entails strolling into other laws and examining the tenancy agreement between the parties.

The Ties that Bind

Whether a rental property is in a strata corporation or rental building, the rights and obligations of residential landlords and tenants in British Columbia are derived from two main sources: the law (i.e. the common law and statute); and the contract (i.e. the residential tenancy agreement between the parties).

Although there are many statutes that impact a residential tenancy relationship, the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "RTA") and its Regulations are the chief statutes that govern most residential rental accommodations in our province. The RTA administers all aspects of the residential tenancy relationship: how a tenancy starts; how a tenancy proceeds; and how a tenancy ends. The RTA's purview

over rentals in strata communities cannot be understated. No matter how much the neighbourhood Royal Family may wish to reign over strata lot rentals, the RTA holds the trump card. Indeed, the SPA tips its statutory hat to the RTA by prohibiting a Strata Corporation's ability to interfere with residential tenancies. Unless otherwise permitted under the SPA, Strata Corporations are prohibited from screening tenants, establishing screening criteria, or inserting terms in tenancy agreements (section 141, SPA). The RTA also adds another layer of red tape by restricting a strata lot owner's ability to end the tenancies they enter into.

All Good Things Must Come to an End

While strata lot owners have control over whom they rent or sell their strata property to, the RTA ultimately dictates how the rental comes to an end.

Section 44 of the RTA lists the various ways to end a residential tenancy. For example, the landlord or tenant may each give written notice to terminate the agreement, or they may mutually agree to end the tenancy by way of another written agreement. The tenancy may end by virtue of the fact that the tenancy agreement is for a fixed length of time which requires the tenant to vacate at the end of the fixed term on a specified date. Alternatively, the tenancy may be ended by order of the Residential Tenancy Branch, the administrative tribunal that administers the RTA and decides disputes between landlords and tenants under that legislation. Although the RTA allows strata lot owners to end their tenancies when they sell their strata lot, the legislation adopts various protections for tenants which are intended to cover their ability to continue residing in the rental home even after the sale.

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Move Over

Does the sale of a strata lot automatically terminate the residential tenancy? In a word: no.

Under section 49(5) of the RTA, the strata lot owner is only permitted to end the tenancy if the following criteria are met:

- (a) the landlord enters into an agreement in good faith to sell the rental unit;
- (b) all the conditions on which the sale depends have been satisfied; and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

As part of the 2 Month Notice to End Tenancy, the tenant is also eligible for compensation in an amount equivalent to one month's rent on or before the move-out date. This is typically provided by waiving the last month's rent ordinarily payable by the tenant. Last but not least, the 2 Month Notice to End Tenancy must be issued using the mandatory form published by the Residential Tenancy Branch and available online.

Let's Make a Deal

In the absence of meeting all of the criteria to issue a 2 Month Notice to End Tenancy, it is always open to the landlord and tenant to negotiate an earlier end to their tenancy by way of a Mutual Agreement to End Tenancy. Any agreement to terminate a residential tenancy early must be made in writing and signed and dated by the tenant and the landlord (or the landlord's agent). The address of the rental property must be clearly identified on the agreement, along with both the move-out date and time. A sample Mutual Agreement to End Tenancy is published by the Residential Tenancy Branch and made available for use by landlords and tenants. It is important to note that this sample Agreement only contemplates the voluntary termination of the tenancy, and does not include any other agreements that may be reached between the parties on matters relating to the early termination (such as offering a financial incentive to leave early). So long as the terms of the Mutual Agreement to End Tenancy do not contradict the RTA or conflict with any other governing laws, the landlord is at liberty to make a deal to end the tenancy.

This Land is My Land

Whether or not a residential tenancy ends with the sale of a strata lot depends on a number of factors, including the tenancy agreement, the tenant's willingness to vacate, and the purchaser's intention to live in their new home. Although Strata Councils have a duty to manage their rental restriction bylaws, these laws of the land do not override the rights and obligations afforded to landlords and tenants under the RTA. In short, while strata lot owners may come and go, their residential tenants may be here to stay.

To stay on top of developments in residential tenancy law, strata agents and strata lot owners can visit the Residential Tenancy Branch website.

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