

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Headline: **Resolving Disputes between Strata Corporations and Tenants**

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Under the *Strata Property Act*, strata corporations have a variety of different options for resolving disputes with a tenant. Strata corporations can seek relief through mediation, arbitration, court and the Residential Tenancy Office. Sometimes landlords will be named as parties to these disputes and other times the disputes will not directly involve them.

The most common points of conflict between strata corporations and tenants that I am asked about are:

1. an owner has rented his or her suite to a tenant in violation of a rental restriction bylaw;
2. a tenant has a pet and the strata corporation has a bylaw prohibiting or limiting pets; and
3. an owner has a noise complaint about a tenant or vice versa and the building structure is contributing to the problem.

### A. Mediation

If a strata corporation and a tenant are unable to solve a dispute themselves, then they may wish to engage the services of a mediator. Both the strata corporation and the tenant must agree to participate in the mediation as neither party is legally obligated to attend. A mediator does not impose a solution on the parties. A trained mediator will use different techniques to assist the parties in solving the dispute. At the end of the mediation the parties may agree to sign a written contract outlining how the dispute will be resolved. Often times parties are more satisfied with the results of mediation than the results of court or arbitration proceedings, because the parties themselves have total control of how the dispute will be resolved.

### B. Fines and Other Enforcement Procedures

Before commencing any type of dispute resolution process, strata corporations can enforce their bylaws in a number of different ways. Depending on the circumstances, strata corporations can impose a fine on a tenant, remedy a contravention of a bylaw and charge the cost to the landlord or tenant or deny access to a recreational facility.

Fining is the most popular method of enforcing bylaw. Under section 130 of the *Strata Property Act* strata corporations can fine a landlord if a tenant contravenes a bylaw or rule and can fine the tenant. Tenants can also be fined if a person who is visiting the tenant or was admitted to the premises by the tenant contravenes a bylaw or rule. The tenant can also be fined for the actions of another occupant, if the strata lot is not sublet by the tenant to a subtenant. Presumably, if there is a subtenant, the strata corporation can fine the subtenant.

Under section 135 of the *Strata Property Act* in order to properly use a method of bylaw enforcement the strata corporation must:

1. receive a complaint about the contravention;
2. give the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
3. if the person is a tenant, give notice of the complaint to the person's landlord and to the owner.

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If a hearing does not result in the matter being resolved and the parties are still talking to one another it might be time to engage the services of a mediator.

Notice of the strata council's decision, made on behalf of the strata corporation, must be given in writing. However, once a strata council has complied with the above noted procedure with respect to the contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of the bylaw or rule without going through the procedure again. What constitutes a continuing contravention is arguable. For instance, if a tenant has noisy parties every Friday night is that a continuing contravention?

### C. Arbitration

The possible parties to arbitration under the *Strata Property Act* are owners, tenants and the strata corporation. For instance, the strata corporation can bring arbitration proceedings against an owner or a tenant. The arbitration must be commenced using the prescribed forms provided in the Regulations to the *Strata Property Act*. Arbitration is mandatory if one party requests it unless a Supreme Court of British Columbia judge decides otherwise. However, in practice it can be very difficult getting both parties to cooperate with the arbitration procedure. Cooperation is needed, for instance, when an arbitrator requires that both parties sign an agreement to appoint the arbitrator to hear the dispute or the arbitrator requires that both parties provide a deposit. If one party does not cooperate, sometimes it may be necessary to have a judge formally make an order setting out how the arbitration will proceed.

### D. Court Proceedings

The *Strata Property Act* specifically recognizes the right of a strata corporation and a tenant to solve certain disputes that they have with one another by bringing the case before the Supreme Court of British Columbia. Depending on the issues and the monetary amount involved, relief may also be available in Small Claims Court. Prior to commencing arbitration or court proceedings for disputes involving money owing to the strata corporation from a tenant the strata corporation must give two weeks written notice demanding payment and indicating that action may be taken if payment is not made.

### E. Strata Corporations Can Evict Tenants in Certain Circumstances

Under section 138 of the *Strata Property Act* the strata corporation can serve a tenant with a notice terminating his or her tenancy agreement if there is a repeated or continuing contravention of a reasonable and significant bylaw or rule by the tenant. Tenants disputing the eviction can have the matter decided by a residential tenancy arbitrator. When will a residential tenancy arbitrator uphold the eviction notice? In order to read this section consistently with the Residential Tenancy Act an eviction notice will only be upheld for a serious interference with another person's use and enjoyment of a strata lot, the common property or the common assets. For instance, serious damage to common property or frequent and significant noise disturbances may be sufficient grounds to evict a tenant.

It is important to note that the only method upon which disputes between a strata corporation and a tenant will be brought to the Residential Tenancy Board is if the Strata Corporation gives the tenant a notice terminating the tenancy and the tenant disputes it.

At the beginning of this article, I listed rental restriction bylaws, pet bylaws and noise complaints as three common areas of conflict between strata corporations and tenants. A discussion involving how to resolve conflict in any one of these areas could be the subject of an entire article. Please seek the advice of a lawyer for specific information concerning how to resolve a particular dispute.

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