

Headline: **When can a Strata Corporation Evict a Tenant?**

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Dealing with problematic tenants can be one of the more frustrating experiences for Strata Council members. Even Strata Corporations where rentals are prohibited can end up with problematic tenants. These tenants can be disruptive and sometimes result in damage to common property. They can also result in a torrent of complaint letters to the Strata Council.

There are a variety of tools that a Strata Council can use to deal with problematic tenants in a Strata Corporation. Fines can be assessed against the tenant or the owner according to the procedure outlined in section 135 of the *Strata Property Act* if a Strata bylaw has been breached. Municipal bylaw enforcement is an option where municipal bylaws have been contravened. Indeed sometimes a mere warning letter from the Strata Council will suffice to make a tenant behave reasonably.

However, there are circumstances where none of these remedies will be effective, where fines are disregarded, or where there is particular urgency.

One option is to encourage the owner of the strata lot to evict the tenant pursuant to section 137 of the *Strata Property Act*:

137 A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot is an event that allows the landlord to give the tenant a notice terminating the tenancy agreement under section 47 [landlord's notice: cause] of the Residential Tenancy Act.

This encouragement can take the form of informal communications or a letter if the owner is cooperative, or assessment of fines against the owner to apply a more direct pressure to the landlord to undertake the eviction of the tenant.

When a landlord is unwilling to evict a tenant or tries and is not successful, the Strata Corporation is empowered to act under the same provision of the *Residential Tenancy Act* section 47, to evict the tenant. Section 137's powers are greater in that a repeated or continuing contravention of a reasonable and significant bylaw or rule is by itself sufficient to result in a notice terminating the tenancy. Therefore, wherever possible, the landlord's cooperation should be sought and the landlord should be encouraged to evict the tenant.

However, when the landlord is not willing, the Strata Corporation may enforce an eviction under section 47 of the *Residential Tenancy Act*, pursuant to an infrequently used section of the *Strata Property Act*, section 138(1):

138 (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.

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In most cases where the disruption to other owners are of a moderate but continuous variety the Strata Council should consider eviction proceedings only after fines and/or other enforcement proceedings have been conducted according to subsection 135 and no satisfactory corrective action has been taken by the landlord or the tenant.

Giving a tenant a Notice to End Tenancy should not be the first step taken by the Strata Council without legal advice to the contrary. Certainly if a tenant is causing risk to the building, presenting a fire hazard, presenting a security threat to other owners and/or tenants or behaving in a criminal manner, legal advice should be sought regarding available remedies.

The Notice to End Tenancy should be in the correct form, must comply with sections 47 and 52 of the *Residential Tenancy Act*, and must specify a date that the tenancy ends that is the last day of the month, a month or more after the notice is received by the tenant.

In either of these eviction scenarios a tenant has the right to dispute the Notice to End Tenancy within 10 days and to require arbitration of the issue under the *Residential Tenancy Act*. Arbitration provides each side an opportunity to present their evidence in the form of documents and testimony, ask questions of the other parties, and make submissions. It is essential to be well prepared, well organized and to have all the original documents and witnesses at the arbitration hearing which are necessary to prove to the arbitrator that eviction of the tenant is appropriate and that all of the requirements of section 138 of the *Strata Property Act* have been fully met.

The first requirement of section 138 is that the bylaw or rule which has been contravened by the tenant is both reasonable and significant. Each situation is different and if the Strata Council has any doubt about what constitutes a reasonable and significant bylaw, legal advice may be of assistance.

The second requirement is that the breach seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets of the Strata Corporation. Therefore, it is inappropriate to attempt to evict a tenant or to provide notice of eviction prior to having received a complaint. It is also required that the complaint be of a serious nature.

The third requirement is that a contravention of the bylaw or rule be either repeated or continuing.

An implied prerequisite of the second and third requirements is that there has been a finding by the Strata Council that there has been a repeated or continuing contravention of a rule or bylaw. Mere allegations of a contravention are not adequate, and nor is a finding of a single contravention which is not continuous.

Appropriate bylaw enforcement procedures and the requirements of section 135 of the *Strata Property Act* exceed the scope of this article, however there are articles on that topic in past issues of this newsletter. For an eviction to be successful, these procedures need to be properly conducted.

Once the Strata Council has satisfied itself that eviction is appropriate, and has completed the foregoing steps and voted to evict a tenant, a Notice to End Tenancy should be completed. Although the forms are designed to be completed by a landlord, the Strata Corporation may use the same form. The forms and more information are available from the B.C. Residential Tenancy Office Website at <http://www.rto.gov.bc.ca/>

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