



# Civil Resolution Tribunal

Date Issued: August 23, 2018

File: ST-2018-005498

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 4207 v. Dhaliwal*, 2018 BCCRT 467

**B E T W E E N :**

The Owners, Strata Plan BCS 4207

**APPLICANT**

**A N D :**

Parmjit Dhaliwal

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This is a summary decision of the Civil Resolution Tribunal (tribunal) on a jurisdictional matter that arose at the time the tribunal received the applicant's request for resolving a claim about enforcing the eviction of a tenant under section 138 of the *Strata Property Act* (SPA). Only the evidence and submissions relevant to this decision are referenced below.

2. In its application for dispute resolution, the applicant strata corporation, The Owners, Strata Plan BCS 4207 (strata) requests that the tribunal enforce an eviction notice the strata issued under section 138 of the SPA against a tenant of the respondent, Parmjit Dhaliwal (owner). Tribunal staff advised the applicant that the strata's claim to enforce a *Residential Tenancy Act* (RTA) notice to end a tenancy was not within the tribunal's jurisdiction. The strata has requested reasons for the tribunal's decision to refuse to accept the claim and has provided submissions.
3. The applicant is represented by a strata council member. The respondent is not represented as the tribunal has not yet accepted the applicant's claim.

## **JURISDICTION AND PROCEDURE**

4. These are the tribunal's formal written reasons. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. Under section 6 of the Act, the tribunal must give an initiating party an initiating notice (also known as a dispute notice) if, on initial review, the claim appears to be within the jurisdiction of the tribunal, the request for dispute resolution appears to disclose a reasonable claim, and the claim meets all other requirements under the Act. If the tribunal decides not to give a dispute notice, the tribunal must notify the

initiating party and, on request, give reasons. These are the reasons requested by the strata.

7. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

## **ISSUE**

9. The sole issue before me is whether the tribunal has jurisdiction to enforce an eviction notice issued by a strata under section 138 of the SPA.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. At the end of July or early August 2018, the tribunal received a request for resolution from the applicant asking the tribunal to enforce an eviction notice it had given to the owner's tenant.
11. In its request, the strata describes bylaw infractions by the owner's tenant since 2015 that lead to it issuing an eviction notice to the tenant under section 138 of the SPA on July 12, 2018. I do not find it necessary to summarize those infractions for the purposes of this decision.
12. Section 138 of the SPA permits a strata corporation to give a tenant notice terminating the tenancy agreement for cause under section 47 of the RTA. If the tenant's repeated or continuing contravention of a reasonable and significant bylaw or rule interferes with another person's use or enjoyment of a strata lot or common property.
13. In an August 3, 2018 email to the applicant, the tribunal stated that it did not have jurisdiction to enforce an eviction notice issued pursuant to the RTA, which, as I

have noted, includes an eviction notice under section 138 of SPA. The tribunal also stated enforcement of the eviction notice must be pursued through the BC Supreme Court.

14. Also in an August 3, 2018 email, the applicant requested the tribunal provide reasons as to why it does not have jurisdiction to “order the end of a tenancy pursuant to s. 138 of the [SPA]” and provided a submission as to why it believes the tribunal does have jurisdiction to decide such a claim.
15. On August 16, 2018, the applicant’s request for reasons was referred to me.
16. Generally speaking, the tribunal’s jurisdiction for strata property claims is derived from the Act and the SPA. As earlier noted, the tribunal has jurisdiction over strata property claims as set out under section 3.6 of the Act. Section 3.6(1) lists the tribunal’s fairly broad jurisdictional criteria. Section 3.6(2) lists provisions of the SPA that expressly fall outside the tribunal’s jurisdiction. Section 3.6(3) lists other areas of legislation for which the tribunal does not have jurisdiction that includes: Part 5 of the RTA, the *Arbitration Act* if the parties agree, and other prescribed claims excluded under the Act’s regulations, of which there are currently none.
17. The strata submits section 3.6(1) of the Act permits the tribunal to determine whether a tenant can continue to use or enjoy a strata lot (3.6(1)(c)), and to enforce the decision of the strata to end a tenancy under section 138 of the SPA (3.6(1)(e) and (f)).
18. I agree the tribunal has jurisdiction to determine whether a tenant’s repeated actions seriously interfere with another person’s use and enjoyment of a strata lot, common property, or a common asset. Therefore, I find the tribunal may determine if the strata has sufficient grounds to issue an eviction notice under section 138 of the SPA. In other words, as the strata suggests, the tribunal has the authority to decide if the tenant can continue to use and enjoy a strata lot. However, this is not the matter before me, as the strata has already issued the eviction notice under section 138 of the SPA and section 47 of the RTA.

19. I do not agree the tribunal has jurisdiction to enforce an eviction notice issued under section 138 as suggested by the strata. The SPA is clear that such a notice must be issued under section 47 of the RTA, which allows a landlord to end a tenancy by giving notice for cause. I find that for the purposes of section 138 of the SPA, a strata corporation steps into the position of, or is deemed to be, the tenant's landlord under the RTA in order to issue the eviction notice. If the eviction notice is issued and the tenant refuses to vacate the strata lot, it follows that enforcement of the eviction notice must also be governed by the RTA.
20. Contrary to the strata's submission, I find enforcement of the eviction notice given by the strata falls under Part 5 of the RTA, which is expressly outside the tribunal's jurisdiction under section 3.6(2)(3) of the Act.
21. The strata's suggestion that the method of ending a tenancy under section 4 of the RTA is not expressly excluded from the tribunal's jurisdiction is misplaced. Section 4 sets out how a residential tenancy can be ended (including a section 47 notice as referenced in section 138 of the SPA), but all remedies available to enforce a section 47 eviction notice fall under Part 5 of the RTA, which I have already noted is expressly outside the tribunal's jurisdiction. Put another way, the tribunal does not have enforcement powers.
22. Further, it does not make practical sense for the eviction of residential tenant to be governed one way if notice is given by a strata corporation and another way if notice is given by the tenant's landlord.
23. If the tribunal did accept the strata's claim by issuing a dispute notice, and the issue came before me for adjudication, I would be forced to refuse to resolve the claim for lack of jurisdiction under section 10 of the Act.
24. For these reasons, the tribunal should refuse the strata's request to enforce an eviction notice issued under section 138 of the SPA. As that appears to be the entirety of the strata's dispute, I find the tribunal must refuse to issue an initiating notice under section 6 of the Act, given the lack of jurisdiction.

25. As for the tribunal's statement that the matter must be brought before the Supreme Court, I acknowledge that the Residential Tenancy Branch has, in one case, determined the RTA does not apply to SPA section 138 evictions. Therefore, the Supreme Court is the next available court that may determine the issue, given the limited jurisdiction of British Columbia's Provincial Court in strata property matters.
26. Nothing in this decision restricts the strata from making application to the Supreme Court or to the Residential Tenancy Branch for enforcement of its eviction notice.

## **DECISION AND ORDERS**

27. I direct the tribunal to refuse to issue an initiating notice for the strata's claim to enforce an eviction notice it issued under section 138 of the SPA. The applicant's tribunal dispute will therefore not proceed and I direct the tribunal refund the applicant their filing fees.

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J. Garth Cambrey, Vice Chair