

Does an OC have the power to remove a troublesome lot owner?

An OC's power to cause the removal of a troublesome tenant is well founded.

In *Leonard and Pekar v Tein and Cheng* [2002] VCAT 729 the tribunal found that that the tenant, through the conduct of her children at the rented premises at 16 Talbot Avenue, St Kilda, had caused an interference with the reasonable peace, comfort and privacy of other occupiers. The tribunal went further, declaring that the landlord had failed in her obligation to take reasonable action to prevent her tenant from interfering with the reasonable peace, comfort and privacy of the occupiers of the neighbouring premises. The landlord was forced to make an application for possession under s.249 of the *Residential Tenancies Act 1997*.

But is there an ability to forcefully remove a lot owner?

In 2012 the Supreme Court of British Columbia in Canada determined that s. 173 of the *Strata Property Act (Act)* permits the court to order the forced sale of a private strata lot if it is the only practicable way to force an owner to comply with strata corporation's by-laws and the Act.

Section 173 states that on application by the strata corporation, the Supreme Court may do one or more of the following:

(a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;

(b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;

(c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b)

Under the section the court can make an order that an owner perform a duty under the Act or by-laws, or stop contravening the Act or by-laws.

The section does not explicitly provide that the court can order a strata property owner to sell its property however the court found this power in s. 173(1)(c).

To date, the power has only been exercised when an owner has failed to comply with a prior order.

In *The Owners Strata Plan LMS 2768 v. Jordison*, 2012 BCSC this “enhanced enforcement mechanism” was used to force compliance with the strata corporation’s by-laws and the Act.

In *The Owners, Strata Plan NW 1245 v. Linden*, 2017 BCSC 852 [*Linden*] the court said that an application for forced sale under s. 173(1)(c) is “essentially a motion for contempt.”

The relevance to Victorian managers is this: under s.165(1) of the *Owners Corporations Act 2006* the tribunal, in determining an owners corporation dispute, may make any order it considers fair. That power is even wider than the power conferred on the British Columbian Supreme Court.

And that ties in serendipitously with the principle in *Owners Corporation PS514657D v Strong* (Owners Corporation) [2011] VCAT 877 that intermittent but repeated breaches are still a breach.

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