

Condo Smarts

Headline: Complicated Collections

Topic: Collections

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Written by: Tony Gioventu

Dear Condo Smarts: We have a landlord who has chronically bad tenants. There are constant bylaw violations, damages to the building and now we have an insurance claim for fire and water damages, with a \$5,000 insurance deductible. We have talked to a lawyer but found out we can't lien for these costs, and our only alternative is to proceed to court. With the insurance deductible the total costs have risen over \$12,000 dollars. So what are strata corporations supposed to do? We can't lien, he continues to have bad tenants, and the strata is paying the bills until we can collect. There must be something we can do, before the next disaster that ends up with all of us losing our homes. JP Rogers, Cloverdale

Dear JP: The problem that strata corporations face with collecting fines is that they are excluded from those items for which a lien may be filed. Fines may be the result of an allegation of wrong doing, not a provision of the legislation or a judgement. In a way, the limitation ensures that correct procedures of enforcement, notice, and the right of owners to dispute the claim is protected.

It is critical for the strata corporation to be able to collect costs that come directly from their pockets, and to remedy chronic bylaw violations, but it is also imperative that the rights of owners are respected in the enforcement of the same allegations. Within the last week we have assisted 2 owners, who on requesting Form F payment certificates, much to their surprise discovered that a charge was added without their knowledge, and without their ability to dispute the claim. After assisting the owners, we discovered that in both circumstances, the penalties were added by either a council member or a manager, who made a discretionary charge, without the decision or knowledge of the strata council. The strata council cannot delegate the enforcement of bylaws, including the decision to impose fines or penalties, to any party. Strata corporations who just add fees at the last minute are placing their strata owners in jeopardy of court disputes and their related costs.

Think of your strata council like a simple court system. Someone files a complaint with council alleging their

neighbour has broken a bylaw. Before the council can impose any fines or penalties they must first notify the owner, or in the case of the tenant, the tenant and the owner, that a complaint has been filed against them, the particulars of the complaint, and give the parties the opportunity to respond in writing to the complaint/allegation or demand a hearing to address council. Once the strata council as a body have made a decision on proceeding with enforcement, the fines that are applied are still just a claim of the violation. That is a reason why they are not lienable. The owner still retains the privilege to proceed to court or arbitration to dispute the claims.

That's the owner's perspective, but what about the strata corporation who has just incurred the \$5,000 deductible, caused by the tenant, or a chronic noise maker, creating a major nuisance, or an owner gaining revenue from rentals contrary to the bylaws? Provided strata corporations comply with the process of Section 135 of the Strata Property Act for the enforcement of bylaws, and provided the decisions are undertaken by council in accordance with their bylaws, fines are enforceable, and in most cases collectible. Yes, it may require a court action to collect the costs. The strata corporation may also wait until the owner requires a payment certificate (form F) for a transaction or to re-mortgage, and before the transaction can take place, they are provided either with the fees, or receive an undertaking from the lawyer or notary processing the transaction. Depending on how a claim is made, when a strata corporation goes to court they could be suing for the amount of the claim based on the bylaws, or they may be suing for damages, such as unauthorized alterations, breach of contract, or an insurance deductible. Don't forget, that as the strata corporation, you require a 3/4 vote of the owners at a general meeting before you can proceed to BC Supreme Court, commence an arbitration or consider Provincial Court (Small Claims). The strata may also have a bylaw permitting an action in Provincial Court without the need for a further 3/4 vote.

This week's Supreme Court decision of *NW391 vs Forsberg* is an interesting example of the enforceability of bylaws, collection of fines, and the duty of the strata

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corporation to ensure they comply with the procedures. The strata sought a claim of \$43,500 for fines against the owners, for the alleged violation of the rental bylaws, from a period of February 2006 to November 2007. While the strata corporation at one point did not grant a hearing in a reasonable time period, affecting some of the claim; in the end the court awarded the strata corporation the sum of \$38,000 representing the fines for such a breach. The outcome is an important message for both strata owners and the corporation. Owners must comply with the bylaws, the strata corporation must comply with the enforcement procedures of the Act, and as a strata corporation you can collect legitimate fines and penalties. Seminars on bylaw enforcement and procedures are now posted on the CHOA website: www.choa.bc.ca

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