

Condo Smarts

Headline: O Christmas tree
Topic: Christmas trees
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Dear Condo Smarts: Out strata never thought we would be writing and asking for your assistance; however, we also never thought one of owners would do something so stupid and destructive, so it is two firsts for us. On December 8, at 11 pm, one of our residents noticed the lights of the blue spruce tree at the entry of our building had gone out. When he went outside he was horrified to discover that someone had cut the tree down half way down the trunk, and dragged it away. We were about to call the police, but someone noticed the trail of needles going around the back of the building. So we followed it to discover a trail of branches leading to a ground floor unit. The culprit had dragged the tree over the railings of the patio and into the unit. We could see the lights on the tree inside the unit. Council went to the unit and questioned the owner, who refused entry to inspect the tree, and denied any knowledge of the urban clear cut. So if we can't match the tree, or inspect, how do we prove the action, especially as no one witnessed the tree being hacked down? Perhaps you could give us some insight to deal with this person. Oh, and by the way, to add insult to injury, our strata does not permit live Christmas trees in the units. Happy Christmas, Tracy Gaynor

Dear Tracy: In addition to enforcing your bylaws, and taking action to remedy the damages to the strata property, it is damage or destruction to property, and this could still be a valid police complaint. Like any proceedings where allegations of bylaw violations occur, it is most critical for the strata to gather as much evidence as possible and verify any information that you have received. Photographs, material and debris collection, and witness information are all part of the necessary evidence. The strata council, aware of the infraction, files the

complaint in this case, and they proceed with the notice of bylaw complaint and bylaw enforcement procedures. The alleged violator, once having received notice of the complaint has an opportunity to respond to the complaint in writing or request a hearing of council. Council then deliberate and will respond according to the information and materials provided.

Depending on the Schedule of Standard Bylaws, and any bylaw amendments of your strata, there are a number of potential violations. Failure to provide access for inspection by proper notice by council, causing damage to common property in cutting down the tree and scratching the railings, and live Christmas trees for a start are all easy violations. In additions to the penalties permitted in the bylaws or the Standard Bylaws, strata councils often forget they have a hefty remedy under Section 133 of the Strata Property Act. The legislation prescribes that the strata may do whatever is reasonably necessary to remedy the contravention, including doing work on a strata lot or common property, and may require that the reasonable costs of remedying the contravention be paid by the person who may be fined. At this point council can have the tree replaced when the weather permits, and in addition to the fines the violating owner can also be charged for the cost of the replacement and any related damages. These could include the cost of stump removal of the remaining tree, material and labour costs, landscaping costs, and in the event the violator is not responsive or cooperative, and the strata has to retain their lawyer to pursue enforcement and collection, potentially those reasonable legal costs as well. Certainly a nuisance for the strata, and a likely very costly Christmas for the owner.

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