

Condo Smarts

Headline: Counting Rentals
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Dear Condo Smarts: Our strata has an interesting problem that relates to rental bylaws. We are 297 units in three buildings and we permit a maximum of 10% rentals at any given time. An owner wishes to rent their unit, but we currently have 35 rentals in the building. The owner requested a hearing and demanded to know how we were keeping the rental inventory and of the 35 which were family rentals, hardship or exemptions from the original disclosure statement. Our bylaw clearly states that all rentals shall be counted as part of the rental limitation, but the owner challenged us and claims that we have to keep a rental inventory to properly administer the bylaw. Our property manager has managed the rentals for us to date, and we were advised that we have no choice but comply with our bylaw, with respects to how we count rentals. Now we have a letter from a lawyer representing the owner contradicting our bylaw and advising that we have to permit his client to rent the unit. Is there a simple way to sort this out? Jack Martens

Dear Jack: Technically speaking a strata corporation may have whatever bylaw they want, but that doesn't make the bylaws enforceable. Section 121 of the Strata Property Act is going to play havoc on your bylaw. A bylaw is not enforceable if it contravenes the Act, the Regulations, the Human Rights Code or any other enactment of law. When Bill 8 came into effect in December 2009, there was a welcomed amendment that clarified how rentals are counted. While your bylaw at some point in history may have been enforceable, it now contravenes Section 142 of the Act, and it's time for legal advice on a new bylaw. The new changes define that a family or hardship rental is not to be considered for the purpose of counting rental limits in a rental bylaw. This means that if

the bylaw contravenes the Act it may in whole or part be unenforceable. This is a serious problem for a strata corporation, especially rental bylaws in that they could limit the rights of an owner to legitimately rent/lease a strata lot. In addition to the rental exemption provisions of family and hardship rentals there is also the question of the owner developer rental disclosure exemption. Based on the information you provided, your strata is only 11 years old and still has 89 first purchasers. The owner developer rental disclosure statement declares that the owner developer intends to rent strata lots 1-297 for an indefinite period, and to convey that privilege on the first purchasers. This is a valid rental disclosure statement and it would also impact your rental count as the rental bylaw does not apply to your first purchasers until at which time they convey their strata lot. Because rental disclosures vary in language and interpretation, strata corporations should first obtain a copy of the rental disclosure statement from the Superintendent of Real Estate, and then contact their lawyer if they have any doubts about the interpretation of the statement. For those new strata plans filed after December 1, 2009, the exemption now applies to the strata lot and the specific statement expiry date. For any strata with a rental restriction bylaw, you are absolutely going to have to maintain an inventory of rentals and the type of rentals. As some bylaws also limit the period of time that the unit may be rented, you will also need to record when the rental started and the expiry date of the permission set out in the bylaws. It would be almost impossible for Jack's strata to deny the request for the rental unless they have an accurate inventory of the status of rentals. It is quite possible that a number of the 35 rentals are likely family and rental disclosure exemptions, and with three hardship rentals, the numbers are questionable.

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