

Condo Smarts

Headline: Rental bylaw court challenge section 141 (3)

Topic: Rental Bylaws

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Written by: Tony Gioventu

Dear Tony: How does a strata corporation legally enforce a rental bylaw when they don't have an inventory of rentals and one knows how long units have been rented by different owners? Our strata council have taken the view point that once you are granted permission to rent your unit, you can rent it until you sell it; however, we only permit 10 rentals in our building and have at least 25 from the information we have gathered. We have requested permission to rent, but have been told we are on the waiting list. We have asked for a copy of the current rentals but council claim they have no such list, so how can there be a waiting list for rentals when there is no list for rentals? Any help would be appreciated. *AJH, Burnaby*

Dear AJ: The *Strata Property Act* sets out very specific requirements for rental bylaws, including a mandatory requirement that the bylaw must set out the procedure to be followed by the strata corporation in administering the limited number of rentals permitted in the bylaw. The procedures stipulates conditions such as: how applications are managed, who is on the priority list, how lists are maintained, what happens to your status if your tenancy terminates, how much time you have to rent your unit if permission is granted. The intention is to provide a fair and transparent process allowing all owners equal access to strata lot rentals under a restrictive bylaw. A court decision in December 2014, *Carnahan v. The Owners Strata Plan LMS522*, deemed the strata corporation did not have a procedure within their bylaws that establish the method for application and administration of rentals, resulting in the bylaw being essentially rendered unenforceable. The Act, "requires that the Strata Corporation set out the procedure it is obliged to follow when it administers the limit. If the Strata Corporation has not complied with [s. 141\(3\)](#), then the rental restriction bylaw is unenforceable pursuant to [s. 121](#) of the [SPA](#) and the applicants are entitled to rent the Strata Lot.

" In the view of The Honourable Mr. Justice N. Brown, "[s. 141\(3\)](#) intends to benefit both strata owners and prospective strata owners by ensuring

they both have at hand information that clearly states limitations on a strata owner's ability to rent their strata lot. [Section 141\(3\)](#) creates two obligations for a strata corporation purporting to restrict the number of strata lots that may be rented: (1) the strata corporation must have a procedure for administering the limit; and (2) that procedure must be set out in the strata corporation's bylaws. However, merely because the legislature did not set a particular procedure to follow does not leave a strata corporation with unfettered discretion to decide the content and scope of that procedure. By obliging a strata corporation to set out the "procedure," [s. 141\(3\)](#) requires it to establish a process for administering the rental limit that is clear and logical, not ambiguous or arbitrary. A strata corporation must do more than set out a single step in the process. Rather, the procedure must be detailed enough that a strata owner, or a prospective strata owner, who reads the bylaws can clearly see how the strata corporation decides which strata owner is entitled to lease their strata lot when the rental restriction limit is not reached, and how a strata owner can attain that right. Such a requirement protects strata owners from the application of an informal and arbitrary procedure. Moreover, the bylaw's procedure must not itself allow the strata corporation to administer the rental limit arbitrarily".

This is a significant decision as it also challenges the long held claim of strata corporations that they may impose subjective conditions on bylaws, or enforce subjective bylaws. If the bylaw does not set out the application procedures, the council is not granted defaulted authority to randomly decide how a bylaw is being applied. Start the new year with a good look at your strata bylaws, and how they are administered and plan for amendments in your coming general meetings in 2015. The cost of legal service for writing enforceable bylaws is marginal compared to a court action or ongoing disputes.

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