

Strata Living

Headline: Subjective Bylaws

Topic: Bylaws

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Dear Tony: Our strata council are having a tough time enforcing our bylaws. We have a rental bylaw that says the following: "subject to the discretion of council, rentals may be permitted". One owner claims this is not an enforceable bylaw, while another owner claims they have used this bylaw for the past 20 years to ensure the tenants in the building are acceptable to our lifestyle. Our greatest problem is the dispute on council as to what terms we can use to establish discretion of council. Are rentals bylaws any different from any other laws? They seem to have as much impact on the rights of individual owners as well as the strata corporation.

Gordon F. Cloverdale

Dear Gordon: It is almost impossible to enforce a discretionary bylaw. Bylaws that leave the discretion of the enforcement or application to council are not really bylaws, but random authority being granted to council. The application will vary dramatically because circumstances are different and strata council members change over time. The Strata Property Act defines that a bylaw is not enforceable to the extent that it contravenes the Act, the regulations, the Human Rights Code or any other enactment or law. Generally speaking your bylaws have the same expectation of enforceability and compliance as other laws. For example, a rental bylaw permits a limit on the number

of rentals or percentage of rentals in a building. It also requires a procedure for how your rental bylaw will be applied. If your bylaw is used to screen tenants, as is implied in your email, that is also a violation of the Act. The Strata Property Act is very clear on this issue. Section 141: "The Strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided..." If you want to avoid lawsuits and conflicts in your strata, clean, enforceable bylaws are a great first step.

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