

Condo Smarts November 9th – 12th, 2016

Unfair Enforcement of Bylaws

Dear Tony: We live in a 78 unit townhouse complex that was built in the late 1980's. Each unit has a carport, and without permission, several owners over time have enclosed their carports to function more like a garage or have installed a wall at one end to accommodate shelving and storage units. We submitted a letter to council in August requesting permission to add a wall at the back end of our carport so we would have a place to hang our bikes, kayaks and equipment. The council have responded that they are no longer permitting alterations to the carports, even though the last unapproved alteration was only 6 months ago. Does council get to randomly enforce bylaws against some people and not others? Chuck

Dear Chuck: Under the Strata Property Act, the strata corporation must enforce bylaws. Your strata has two separate problems both of which may be challenged by the owners through the Civil Resolution Tribunal (CRT). It is apparent from the minutes of the council meetings your council were aware of the alterations undertaken and did nothing about bylaw enforcement. For some reason strata councils believe they need a complaint from another party before they address a bylaw enforcement issue. The minutes show: "as there were no complaints about the alterations, the council did not have the authority to enforce the bylaws". This statement is incorrect. If the strata council is aware of an alleged bylaw violation, they may be the complainant and have a duty to start a bylaw enforcement procedure and enforce the bylaws. If they do not enforce the bylaws, owners and tenants may apply to the CRT and request the strata be ordered to enforce the bylaws. The other problem is the unfair application and enforcement of the bylaws. This occurs frequently in many strata corporations. The risk and consequence of unfair enforcement is the strata bylaws or enforcement decisions become questionable. Your strata bylaws stipulate that any alterations to the common property require the written permission of the strata and the undertaking of an alteration agreement before any permission is granted. If the strata decides to ignore 13 strata lots that have made alterations and suddenly enforce the bylaws against an owner and demand conditions or impose restrictions that are not part of the bylaws, the enforceability of the bylaws and the actions of the strata are called into question. An owner or tenant may make an application to the CRT to address bylaw matters that relate to how bylaws are enforced, whether a bylaw is enforceable and complies with the Act, BC Human Rights Code or any other enactment of law, whether a bylaw has been enforced fairly, or whether a bylaw was properly passed by the strata and filed in the Land Title Registry.

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