

Condo Smarts May 4th-7th, 2017

When Is It Time To Stop Imposing Fines And Seek An Order?

Dear Tony: We noticed in the financial report at our AGM last month that our strata is owed almost \$13,000 in unpaid strata fines. Our strata lot does not permit dogs, unless they are required for special circumstances. A new owner moved in July 2016 and brought 2 dogs. Her comment was no worries, I'll pay the fines so I can keep my dogs. The president of the council agreed as it the amount would offset the increase in strata fees each year. The strata has been imposing \$200 a week for each dog, so \$1,600 a month. The owner has not paid as she was quoted in an email a flat rate of \$200 per month by the council president. It's pretty clear the bylaw is not being enforced and unlikely the strata is not going to collect the claimed amount of money. How do we stop this crazy cycle? Our owners are very unhappy about the "deal" and we want to remove the 2 dogs which are constantly barking and deal with our president who is acting like a cowboy. How do we fix this? RJ and the council members.

Dear RJ: It is not only a bad idea for a council to make a deal on bylaws, but owners cannot buy their way out of complying with bylaws. Bylaws must be enforced against all owners and tenants fairly. Under the Strata Property Act, "the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules." If your strata corporation permits an owner, for a fee, to violate the bylaws, the owner is still in violation of the bylaws, and the strata still has a duty to take reasonable steps to enforce the bylaws. Court decisions have provided some valuable insight into the obligations of a strata corporation, and with the introduction of the Civil Resolution Tribunal strata corporations no longer need a 3 / 4 vote of the owners at a general meeting to obtain an order to make owners, tenants and occupants comply with the bylaws. A strata council can now seek a decision through the tribunal that may order an owner, tenant or occupant to do something, stop doing something, or to pay for something. If your strata council doesn't not exercise its obligations and duties, any owner or tenant may apply to the Tribunal to obtain a decision ordering the strata corporation to enforce the bylaws. So if the strata does not enforce their bylaws, the owners and tenants can take action to make them enforce their bylaws. In the 1999 decision Kok vs Strata Plan LMS463, the court noted, "the imposition of fines does not serve to correct, remedy or cure violations of the bylaws, but rather their purpose is to discourage violations of the bylaws." In a later decision with the same strata corporation the court reduced fines from \$28,754 to \$2,500. The down side of long term fining without the next step of enforcement is the likely hood the courts or the tribunal may discharge excessive fines and you are back to square one. The Standard Bylaws of the Act retained by most strata corporations, including yours, do not permit the enforcement of bylaws to be delegated to any single party. The council must determine whether a person has contravened a bylaw or rule, whether they should be fined and the amount of the fine, and whether a person should be denied access to a recreation facility. Convene a council meeting and have the council vote on what happens next. For more information on starting a claim go to www.civilresolutionbc.ca.

Sincerely, Tony Gioventu, Executive Director
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