

Condo Smarts June 17, 2020

Rental Violations During Covid-19

Dear Tony: We found out an owner has a tenant without permission as required by our bylaws. It's unfair to the other owners who are patiently on the wait list waiting for their turn. As a council, we understand that we can still take steps in the bylaw enforcement process, including levying fines, but to what end? Some council members want to apply the maximum fines possible including a fine every seven days but other members suggest we shouldn't be so heavy handed since the owner can't evict their tenant even if they wanted to given the ban evictions during the COVID state of emergency in place. Any advice will be appreciated. Diana R.

Dear Diana: It is the responsibility of an owner to comply with the bylaws of a strata corporation. During the Covid-19 restrictions or a time of crisis, the last measure anyone wants is the eviction or removal of a tenant or owner from their residence, and while that consideration is being generously applied by strata corporations, owners who ignore their bylaws are still subject to the consequences of bylaws and penalties. Strata corporations are permitted to adopt bylaws that limit or restrict rentals. There are 3 possible exemptions that may apply to an owner if their strata corporation has reached the limit of rentals. An owner may rent to a family member, who is a parent or child of the owner or owner's spouse, they may have been granted an exemption as the first purchaser from the owner developer or by an owner developer exemption created for strata corporations since 2010, and in the event they have hardship, such as a job loss during this period requiring them to rent their unit, they may apply to the strata corporation for an exemption from the strata bylaws. Each of these 3 exemptions are excluded from the strata corporation's count of total rentals, allowing for the continued application of the rental bylaws. In every rental of a strata lot, the strata lot owner must provide the tenant with a copy of the strata corporation's bylaws and rules and must provide a copy of a signed Form K, Notice of Tenant's Responsibilities, to the strata corporation. If a tenant has not been informed by the landlord of the bylaws of the strata corporation, they are still bound by the bylaws and rules of the strata corporation, but may within 90 days of learning of the landlord's failure to comply with the bylaws, end the tenancy agreement without penalty by giving notice to the landlord and the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent. The consequences are significant for the landlord who faces penalties from both the tenant and the strata corporation; however, the tenant is not in contravention of the bylaw. Ultimately the burden is on the landlord to comply with the bylaws or pay the consequences. There have been several incidents where owners have attempted to avoid bylaw compliance, claiming Covid-19 circumstances at the expense of fellow owners. Closely review your bylaws to determine what penalties may be applied if the strata corporation has determined this is a violation. Before you impose fines or penalties, issue proper notice of a complaint to the owner giving them the opportunity to respond in writing and an opportunity for a hearing if requested. Yes, it is the obligation of the strata corporation to enforce its bylaws and administer your rental limits; however, with the rapid loss of jobs placing many owners in financial stress, there may be a significant number of owners who have been placed in a genuine hardship situation. You must act reasonably. With application from an owner, these conditions could be considered, and the strata corporation may grant a hardship exemption for a limited period of time. For an owner who ignores their bylaws, the penalties may be costly, and a strata corporation may file a claim with the Civil Resolution Tribunal to order the owner to pay the fines. Join CHOA June 23 at noon for a Webinar on Rentals, Air BnB and administering rental bylaws during the Covid-19 restrictions. Go to www.choa.bc.ca to register.

Tony Gioventu, Executive Director CHOA

Covid-19 Notice: As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

Tuesday Lunch & Learn Live with CHOA: CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at: <https://www.choa.bc.ca/seminars/>