

Condo Smarts

Headline: Who pays the insurance deductible?

Topic: Insurance

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Written by: Tony Gioventu

Dear Tony: Our high rise building has had a number of waters leaks over the past year relating to toilets, showers, shower enclosures and fridge water lines. Our strata council have issued notice to owners that a plumber will be on site in 2 weeks to inspect our strata lots and will be making recommendations for maintenance to strata lots to ensure we don't have any future problems. As a result of the leaks our insurance deductible has increased to \$50,000 and several owners are disputing the strata claims to pay the insurance deductible. We have a bylaw that requires an owner to pay for the deductible if they have been negligent or contributed in any way to the claim. I am concerned about our bylaw after the plumbing inspections. Will the strata be able to hold us to a higher level of liability because of the report?

Kyle D. Burnaby

Dear Kyle: The *Strata Property Act* sets a reasonable condition of liability as responsibility. If the owner is responsible for the claim, the strata corporation may commence a claim in the courts, arbitration or through the Civil Resolution Tribunal to obtain a decision for the amount of the claim. The term "responsibility" has been interpreted by the courts as a basic test of those conditions within the strata lot that are the obligation of the strata lot owner to maintain, repair or within their direct control. If my dishwasher fails and the pump causes a flood, or my shower enclosure is not maintained causing a leak into other units, or I plugged my toilet and neglected to respond and left the unit while it was running, or my newly installed fridge with water lines and an ice maker fails and floods, you can rely on the general rule of thumb that I am responsible and the strata has a reasonable likelihood of recovering deductible cost.

The real complication arises when a strata corporation adopts a standard of negligence. If your strata has adopted this bylaw it will require the strata corporation prove the owner was negligent, not simply responsible. While the inspections may identify risks or deficiencies, what happens to those risks that are not identified? Negligence is a much higher test that imposes a much higher standard of failure or action by the owner.

Your email is perfect timing as a decision from the Civil Resolution Tribunal posted last week goes directly to the issue of negligence. In the decision the Owners, *Strata Plan BCS 1589 v. Nacht et al*, 2017 BCCRT 88, the adjudicator found as a result of the strata bylaws, that "*proof of negligence on the part of the owners is required for the strata to recover its insurance deductible from the owners*". If an owner does not act with a reasonable standard of care for the maintenance and repair of their strata lot and the components within their strata lot, the standard set by the *Act* is more than sufficient for the strata corporation to recover a deductible. A bylaw that imposes a higher standard will only result in all of the owners incurring the cost of the deductible amount for claims.