

Condo Smarts

Headline: Who is responsible for damages to common property?

Topic: Repair & Maintenance of Common Property

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Dear Tony: Our strata corporation has an owner who has caused damages to a number of areas in our townhouse complex. Over the past 8 years they have backed into their garage door, broken a front window, damaged the siding with their barbeque, and driven over an apple tree. Every time we approach them to discuss the issues it becomes a hostile confrontation. Our townhouse complex is only 38 units and we are self-managed, so council handles everything. The owners in our complex are now fed up with having to tolerate the rogue owner's behaviour and have petitioned for a Special General Meeting to direct council to start a court action against this owner. Our bylaws are silent about owners causing damages and repairs. We were hoping this person would just sell and we would collect the accumulated costs at that time.

Kerry M.

Dear Kerry: It is not necessary for bylaws to make owners responsible for damages because the *Strata Property Act* gives the corporation the authority to do work on a strata lot or common property if it is reasonably necessary to remedy a contravention of the bylaws or rules.

In addition to the bylaws your strata corporation has adopted, the Schedule of Standard Bylaws still apply. Your strata corporation will be enforcing the bylaws under "Use of Property". An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets, or those parts of a strata lot which the strata corporation is must repair and maintain under the bylaws or insure under section 149 of the Act.

Strata councils struggle with the sequence of decisions that are necessary, which makes bylaw enforcement difficult. For example, the owner has backed into their garage door which is common property. The strata council receives a complaint or has identified the damage and has

evidence identifying who caused the damages. The strata corporation issue a notice of complaint to the owner and the owner is entitled to respond in writing or request a hearing with council. If the strata corporation has credible evidence, they may proceed with bylaw enforcement as a majority vote decision of council after they have determined the owner is responsible. This may include fines under the bylaws and it may include repairs to the garage door, plus charge reasonable cost of the repairs back to the owner.

As a strata council it is critical that you maintain records of your communications and the evidence. If the owner voluntarily pays, problem solved. If the owner refuses you will be required to make an application to the courts or the Civil Resolution Tribunal for a decision on the penalties and/or damages. You cannot include damages on a Form F Payment Certificate when a person sells their unit unless you have a judgement or decision from the Civil Resolution Tribunal or the courts.

As a result of the *Limitation Act*, strata corporations only have 2 years to collect money owing from owners, unless the owner has acknowledged the debt. Considering strata councils and management companies frequently change it is unlikely a strata corporation would still have reliable evidence or documents after two years.

The message to all strata corporations regarding damages is to gather evidence quickly and enforce your bylaws immediately. Even with a reasonable notice of complaint and hearings or responses it is possible 2-3 months may pass before your strata council is in a decision-making position. If your decision is challenged or you find it necessary to proceed to the courts or the CRT, reliable evidence is critical.