

Condo Smarts

Headline: Owner / Occupant Education is Critical

Topic: Insurance

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Written by: Tony Gioventu

Dear Tony: We had a dreaded flood in our building caused by a defective washing machine where the pump switch failed to turn off. The tenant had started a load of laundry and left to get groceries. By the time she returned we had already needed to access the unit to turn the water off and 5 units below were damaged. She was genuinely apologetic and did not realize the risk. We also experienced an owner 8 years ago running the tub, falling asleep and a wash cloth plugged the overflow – the owner knew nothing until several neighbours woke them up, by pounding on the door and getting the water turned off. No doubt this is going to affect our insurance renewal come November as the emergency response and damages to drywall and flooring of each unit will likely exceed our deductible. As owners and council members in a small high rise we have vigilantly implemented our depreciation report and contributed a significant amount to our contingency fund for planned renewals. We have no pending major upgrades until 2027 but occupant behaviour is destroying our insurance rating. If we have a substantial increase in our insurance because of this incident, are the remainder of the owners in a position to sue the owner of this strata lot because our insurance rating is harmed?

Barry M. Vancouver

Dear Barry: Owner and tenant education on managing and reducing the risk of claims is one of the most valuable actions for strata corporations. An annual checklist outlining the responsibility of occupants will greatly reduce errors that result in claims. While most actions are common sense, it is all too easy for residents to become complacent about daily use and function, and we routinely need reminders of our responsibilities. Appliance failures, water overflows from toilets, tubs

and sinks, home grown alterations and upgrades to taps and faucets, are a frequent cause of claims.

Ultimately the owner of a strata lot is responsible for the actions of their occupants, tenants and guests. In this scenario, in addition to the failure of the defective washing machine, the failure to remain within the strata lot while the appliance was operating was the fault of the tenant.

Your strata corporation is permitted under the *Strata Property Act* and your bylaws to seek recovery of the \$100,000 deductible if a claim is filed. Occupants should never leave a strata lot if there is an appliance or fixtures in use, but we all do at some point and everyone pays the price when the failure is imminent. Running water, washing machines, dishwashers and dryers, should never be left unattended. Had the tenant been home, the water could have easily been turned off avoiding the disruption to 5 other owners and the insurable loss.

In a 2011 BC Provincial court decision, the owner was found responsible for the \$25,000 deductible relating to an overflowing toilet. The eventual cause was flushing the toilet and leaving the unit before the system had cleared, resulting in a continuously flooding toilet bowl. *The court found it is an owner's responsibility to ensure that each time after flushing, the waste cleared properly from the bowl.* The owner was in a position to monitor their proper working condition and to ensure on each use that nothing prevented the toilet bowl from emptying and nothing caused it to overflow. The owner owed a duty to the Strata Corporation and his neighbours to monitor the functioning of his toilet after each flush. Ironically, the amount of time to undertake such monitoring would be consistent with the amount of time it takes to wash one's hands after using the

bathroom. Lisa Mackie, a Vancouver lawyer who deals with strata insurers and liabilities, advises strata councils to closely review their bylaws to confirm they have sufficient language to pursue these novel claims. According to Lisa, “While the *Strata Property Act* opens the door for strata corporations to sue an owner for the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim, there is no automatic window of opportunity to recover increased premiums or damages that result from compromised insurance coverage. While there may be circumstances which support such a claim, it is also important to remember that a “win” in Court does not necessarily translate into actual winnings.” For those communities struggling with repeat offenders, Lisa suggests that there is likely more value in exploring other remedies the *Strata Property Act* has to offer, such as an eviction or forced sale.”