

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 200-008

Headline: **Enforcing Rental Bylaws Against the Landlord**

Publication date: Summer 2002

Publication: CHOA Journal

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When it comes to enforcement of rental bylaws by a strata corporation, section 145(1) of the SPA contains a new and serious constraint. It states that the tenant is not in contravention of a bylaw that limits or prohibits rentals if an agreement for the rental of a residential strata lot contravenes the bylaw. In other words, if a strata corporation denies an owner the right to rent on legitimate grounds and the tenant occupies the strata lot in any event, then the strata corporation may not be able to compel eviction of the tenant on grounds that the tenant occupies the strata lot in violation of the bylaw. The scope and extent of this statutory provision has yet to be tested in the Courts. However, a plain reading of the provision leads one to conclude that the strata corporation cannot enforce rental bylaws against the tenant – only the landlord.

Under the provisions of the *Condominium Act*, the Strata Corporation was able to take proceedings on behalf of the owner to terminate the tenancy agreement and to terminate the tenancy on grounds that the tenant was in contravention of the bylaws of the Strata Corporation. This remedy is no longer available where the tenancy agreement contravenes a bylaw that prohibits or limits rental.

Tenants must comply with the bylaws of the strata corporation and are required to sign a Form K, Notice of Tenant's Responsibilities. However, the tenant may not be required to comply with the rental bylaw, even if the tenant had knowledge of the contravention prior to taking possession or entering into the tenancy agreement. Many strata councils will be surprised by this unusual statutory exception to the Form K.

The tenant is granted new and additional rights under the *Act*, while the strata corporation's rights appear to be curtailed. The tenant may end the tenancy agreement without penalty within 90 days of learning of the landlord's contravention by merely giving notice to the landlord and the landlord must pay the tenants reasonable moving expenses to a maximum of one month's rent. However, if the tenant elects not to do so, then the tenant may continue to occupy the strata lot without fear of reprisals from the strata corporation.

The undesired practical result of the application of the legislation may well be that the landlord will be encouraged to rent the strata lot in contravention of the bylaws if he or she believes that the worst case scenario is a fine from the strata corporation. If the fines are not onerous enough to exceed the amount of rent collected from the tenancy, then based upon cost/benefit analysis the landlord may prefer to simply endure the fines and collection harassment. The maximum permitted fine for contravention of a rental bylaw is currently \$500.00 per week. It is recommended that all strata corporations amend their bylaws to provide for this maximum fine. The law is clear that fines cannot form the subject of a lien. As a result, collection proceedings will likely need to be taken to Small Claims Court or the Strata Corporation may wait until the strata lot is sold and attempt to collect the fines on completion pursuant to the Form F.

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If the only remedy for violation of a rental bylaw is against the landlord, then what can the strata corporation do to ensure that the sanctions and remedies against the landlord are so onerous that they will act as an effective deterrent? It is recommended that a bylaw be enacted which provides full indemnity for any reasonable legal costs incurred by the strata corporation to enforce a contravention of the rental bylaw. The bylaws should also require an owner to enter into a contract if an owner is either granted permission to rent on grounds of hardship or if the bylaws limit the period of a rental.

The contract may state:

- (1) that the owner/landlord will ensure that all tenancy provisions comply with the bylaw and any legitimate conditions attached to permission to rent; and;
- (2) the landlord will pay contractual damages in a specified amount (i.e. \$500.00 per day) to the strata corporation until such time as the default is remedied.

There is a difference between contractual damages and the levy of a fine. This being the case, the strata corporation may be granted additional remedies if a contract was in place. Legal advice from a qualified lawyer should be sought prior to drafting a bylaw of a contract dealing with this complicated issue.



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