

Condo Smarts

Headline: Hardship Exemptions from Bylaws

Topic: Hardship

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Dear Condo Smarts: I serve as the secretary of a strata council in Coquitlam. The strata complex is 75 units and we have a bylaw that only permits five rentals. With the exception of hardship rentals, family rentals and three units still exempting the original purchasers, all five rental spaces are taken. We have had few problems with tenants over the years, but we are faced with an unusual problem. Council has received several complaints about a tenant in a unit who has had loud parties, and we have discovered this tenant is not exempt from our bylaws, or at least so we thought. When the matter came up for discussion at the council meeting in November, the property manager informed us that this was a hardship rental. The council had never authorized a hardship exemption for this unit, and when the manager was pressed, he admitted to having granted the hardship on his own. There is no documentation to prove the hardship was evident and now the owners want us to get rid of this tenant. Please help. How can the strata council have this tenant evicted and prevent this situation in the future? Moira LK

Dear Moira: It is important for all readers to first understand that a hardship exemption is only a provision that is granted for rental restriction bylaws. We receive many emails and calls from strata owners wanting to be granted a hardship exemption from other bylaws. For example, a pet or an age issue that limits their ability to occupy a strata lot or to have a cat or dog. The strata council does not have the authority to grant a hardship exemption for any category other than a rental restriction. There are circumstances however, when a strata council may have to make special accommodations or provisions for owners or tenants who have legitimate, documented conditions. For example, a person with a certified assistance pet, may be

permitted to maintain their working companion in their residence, resulting in a non complying use of a strata lot. Some of these conditions may be necessitated by the requirements of the BC Human Rights Code.

An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner. They must make the application in writing, and it must state the reason the owner thinks an exemption should be made, and whether the owner wishes a hearing. Once the strata council receives the application they must respond in a limited time period stating whether the application is granted or not, and whether there is a limitation to the exemption. If the strata does not respond within two weeks of a written application, or hold a hearing within four weeks after the date the application is given to the strata, or give the response to the hearing within one week of the hearing, or give the response in writing, the exemption is automatically granted.

The strata council may request very specific and personal information that relates to the request. For example, if the hardship exemption is based on a financial reason, the strata is entitled to request all of the personal financial documents of the applicant. This is where the process can be quite tricky and strata councils get into trouble. Any information received from an owner is protected under the Personal Information Protection Act, and they must treat the information with absolute confidentiality and discretion. A hardship exemption is only a decision that can be made by council. Besides, what would have occurred if the applying owner had requested a hearing of council? Even the owners within the strata corporation are not

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permitted, under section 27 of the Strata Act, to direct council whether an owner should be exempted by hardship from a rental bylaw. The decision is left to the sole discretion of the council. The Act stipulates that the strata council must not unreasonably refuse to grant an exemption. The implication is that the strata council cannot impose undue or extreme circumstances to a hardship.

In the specific case of Moira's strata, where the strata manager granted the hardship exemption, the manager did not have the authority to grant the exemption. Standard bylaw 20 of the Act, which applies to virtually every strata in the province, does not permit council to delegate the power to determine bylaw enforcement, fining, the amount of a fine, or denied access to recreational facilities. Very few, if any, of the strata corporations have repealed this section of the bylaws when undertaking amendments. The manager is potentially in violation of the Rules under the Real Estate Services Act, if they have acted outside of their scope of authority given by the client. This is potentially both a contractual matter with the strata brokerage and a disciplinary matter with the Real Estate Council if the strata council were to file a complaint. However, the strata manager is an agent of the strata corporation, and it is reasonable that the applicant could rely on the approval and exemption granted by the manager, as an agent

of the corporation. Unfortunately the manager has exceeded their scope of authority and granted the exemption, where one may not have even existed.

A strata corporation is permitted to proceed with an eviction process of a tenant for repeated, continuing contraventions of bylaws that result in a serious interference with another person's use and enjoyment of a strata lot, the common property or the common assets. It is critical for strata corporations to fully document and notify the tenant and the landlord of every infraction of the bylaws, prior to imposing a fine or penalty. Police incident reports, owner claims, photographic evidence of damages, and any evidence that the strata corporation assembles will all be important to an eviction process. With respects to an eviction of a tenant and the unauthorized action of the agent, I would recommend that a strata corporation talk to their lawyer about their options before proceeding. There may be a possibility that there was a time limitation imposed on the rental exemption and that the strata corporation has the ability deny a renewed application. Don't forget, whatever notices you provide to the tenant you must also provide to the landlord. In the event there are fines, penalties, damages and costs related to the tenant, the landlord eventually becomes responsible for the costs incurred by the tenant.

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