

## Condo Smarts November 23<sup>rd</sup> – 27<sup>th</sup>, 2016

### Who Pays for Strata Lot Damages?

Dear Tony: our strata has just discovered a ventilation problem where the bathroom fans were not connected and simply blew into a wall cavity between two rooms in our townhouse complex. We have corrected the problem by having a contractor complete the venting through common property to the exterior, but several units that did not have the connections have a significant amount of moisture damage and mold. The owners are insisting the strata pay the bill and we have had advice that we are not responsible. How do we solve this conflict? Fran

Dear Fran: The issue of damage to a strata lot is a major struggle for every council. There is no simple answer because every strata, their bylaws, and their strata plans are different; however, there are a few indicators that will help resolve the issue. In most strata corporations, and under the standard bylaws of the act, an owner is responsible to maintain and repair their strata lot. This includes damages that occur for an insurable claim if the amount of the claim is below the deductible. A typical scenario is the owner above has had a toilet overflow caused by the owner, and the ceiling has watermarks. The owner of the strata lot below is responsible for their own repairs to their ceiling area. This is one of the many reasons why home owners should carry their own strata lot insurance to cover these types of damages. It becomes more complicated when the strata corporation neglects its duty to maintain and repair common property resulting in damages to a strata lot. A good example is a roof that is leaking and the strata refuses to replace the roof and continues patch. Eventually the roof leaks cause damages to a strata lot, and while the owner is still responsible for repairs to their strata lot, they may sue the strata or consider an action in the Civil Resolution Tribunal to recover the cost of the damages. If the strata is not negligent, and the matter is purely an unknown defect, it is much more difficult to hold the strata liable for a loss they had no knowledge of and as a result could not take action. The other part of this issue goes to the very heart of the authority of a strata council. Unless a strata corporation has a bylaw where the strata takes responsibility for the maintenance and repair of a strata lot or part of a strata lot, or there is a judgement or order, or in the case of major repairs the owners have passed a 3/4 vote resolution, the strata does not have the authority to spend the strata corporation's money on repairs to a strata lot. With the introduction of the CRT it is now feasible for owners to make an application for the damages, and if the strata is responsible the order will include the compensation or repairs and give the council the authority it needs to spend the money. Strata corporations are volunteers and manage the business of their communities. We are all sympathetic to the misfortune of an owner when damages are caused to their strata lot; however, without an appropriate bylaw, order for repairs or settlement for costs, the strata corporation does not have the obligation to repair or maintain a strata lot or pay for the costs.

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