Landlord must pay deposit for potential common-area damage

BY ROBERT NOCE, EDMONTON JOURNAL SEPTEMBER 4, 2012

Q: I am a condominium board member, as well as a landlord. Our board has recently implemented a rule that every landlord must put a deposit down for hallway repairs in case a tenant damages the common property. Is this fair, given that anyone moving out, tenant or owner, could damage the common property? Can the condominium corporation enforce this rule if it is not written in the bylaws?

A: The Condominium Property Act does allow a condominium corporation to require owners who rent out their units to pay a deposit that can be used for repairs or replacement of common property that is damaged, destroyed, lost or removed by any person in possession of the unit. The deposit amount cannot exceed one month's rent charged for that unit. If your board chooses to enforce this, you will have to comply and provide proof of the monthly rent amount.

Helpful hint: There are other legal requirements under the Condominium Property Act that the condominium corporation should use when dealing with tenants. An owner who is renting out their unit must provide the address where they may be served with any notice, and advise how much rent is charged for the unit. The unit owner must also give written notice of the name of the tenant renting the unit within 20 days from the start of the tenancy.

Q: Our condo board took over from the developer about a year ago. There were some outstanding deficiencies. We have contacted the developer, who is from another province, and they will not make the repairs. Do we have any recourse?

A: You may have some recourse against the developer, subject to determining whether or not these are developer deficiencies and whether you are within the time limit to bring an action. You need to determine whether the developer is worth pursuing through the litigation process. As well, you may want to look at the New Home Warranty program to determine whether or not there are any opportunities for assistance in this regard. If you do not pursue the developer or if the New Home Warranty does not apply, your only alternative may be to ask owners to contribute to the repairs.

Helpful hint: The onus is on the condominium corporation to pursue these issues against the developer. It is worth retaining legal counsel to analyze whether or not a claim against the developer is worth pursuing.

Q: In 2007, with legal counsel, our condo board developed new bylaws. Ratifying these bylaws has been a challenge, and we have just recently obtained the required number of signatures and the required unit factors. All the signatures are from the current owners, but our property manager believes that given the "age" of the signatures, we should canvass some of the same owners again. Do you agree?

A: If an owner signed the resolution in favour of a bylaw amendment a few years ago and remains an

owner today, I would take the position that the resolution is valid. The owner, at any time, could withdraw his approval, and the onus would be on the owner to do so. There is nothing under the Condominium Property Act that requires you to go back to the owners and seek their approval again. If, however, an owner signed the bylaw amendment a few years ago and that owner no longer lives in the condominium project, then you would need to go to the current owner and ask whether or not they support the bylaw amendments.

Helpful hint: Although there is no legal requirement forcing you to go back to the owners who have approved the bylaw amendments, there is nothing preventing you from seeking a reaffirmation of their position. However, going back to the owners may create issues where none exist today.

Q: Our condominium board has made some major decisions, such as repainting and re-flooring, without owner input. We learned of the flooring decision by way of a one-sheet information bulletin stating that the common area carpeting will be replaced this fall with tiles. Should decisions like these be discussed in advance with the owners?

A: Generally, decisions about improvements or repairs in common areas are the responsibility of the board. I am assuming that the board is following a capital reserve fund study, which has identified these repairs/replacements of property. Funds cannot be removed from the capital reserve fund unless authorized by a special resolution. After the removal of the funds, there must be sufficient funds remaining to meet the requirements of the capital replacement reserve study. You will need to review the capital reserve fund study to determine whether or not the board has complied with the Condominium Property Act.

Helpful hint: The Condominium Property Act sets out a number of steps to follow to access funds through the reserve fund.If a board fails to follow the law, an owner or owners can go to court to challenge its decision. Review your bylaws to determine whether or not owners have the authority to call an extraordinary general meeting to deal with this issue.

Q: I have been on my condominium board for just over a year. Our condominium corporation was in dire financial straits when I joined. Bills were not being paid, and landscapers and janitors were walking off the job. At the last AGM, I was elected treasurer. Having just prepared the budget for the year, I am suggesting an increase of over 14 per cent in condo fees for our operating budget. The biggest increase comes from the reserve fund contributions, which are dictated by our reserve fund study. I have been working hard to get expenses down, but the other board members do not want to make the required contributions to the reserve fund. Two of the three board members are moving at the end of this year and it is in their best interest to keep condo fees low with no assessments. Our losses this year will be over $50,000. Are we required to contribute to the reserve fund study for any given year? Can a board just make a motion to have money paid out of the reserve fund even if it does not relate to anything in the study?

A: Your condominium corporation has a significant problem. Some boards deliberately keep condo fees low to create the illusion that theirs is a cost-effective building. Unfortunately, that approach is short-sighted because at some point in the future, you will be required to make the necessary repairs and/or replacements to property owned by the corporation. Another concern is that your operating budget will

be at a loss if you do not increase your condo fees. Boards are required to act in good faith for the benefit of the condominium corporation. If board members fail to do so, they expose themselves to personal liability. The Condominium Property Act is clear that contributions to the reserve fund should be made so that the money is available when the need arises for the particular undertaking. You cannot take funds from the reserve fund unless authorized by a special resolution. As well, it is against the law to take funds from the reserve fund to pay for items not listed in the reserve fund. Reserve funds are not a “slush fund” for the board.

Helpful hint: In your case, owners need to come together to force the board to make some tough decisions. You may want to hire a lawyer to provide the board with information on their legal requirements. Your situation is no longer sustainable and requires immediate attention.

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