

Condo Questions: Window leaks cause damage, create perplexing question

BY ROBERT NOCE, EDMONTON JOURNAL MAY 10, 2015



Floor-to-ceiling windows allow for picturesque views, but can be problematic if they leak.

Photograph by: Water's Edge, Water's Edge

Q: When my condo was built, only my unit and the unit above it had floor-to-ceiling windows, due to the exterior design of the building. These windows were installed with inadequate insulation, and leak into the inside during cold weather. This has not only damaged the woodwork, but has created mould in my unit. I have tried working with the property management company, but they keep trying fixes that are cheap and ineffective. I have also proven that I am not causing any increase to humidity within the unit. I think that the condominium corporation is responsible for fixing the exterior windows. Am I right?

A: The Condominium Property Act sets out the means of determining the boundaries between units and common property by reference to the registered condominium plan. Before September 1, 2000, all doors and windows were part of the units unless otherwise stipulated in the condominium plan. After September 1, 2000, the presumption was reversed by the present section 9(2)(b) of the Condominium Property Act. The Condominium Property Act Regulations contained a transitional provision (open for two years) that allowed owners of existing condominiums (registered prior September 1, 2000) to pass a special resolution to amend the registered condominium plan, making doors and windows part of the individual units.

Helpful Hint: You may want to consult a lawyer to give you an opinion on who is responsible for your windows.

Q: My mother and I received a \$250 fine from our condominium corporation for failure to remove a vehicle from the parking lot on snow removal day. They have provided photo images as proof of violation, but the photos are low quality and not date stamped. We think the photos are fake. We have been told that we need to prove that we were not parked there on the dates alleged. Is this true?

A: The short answer to your question is 'no.' If the bylaws allow a condominium corporation to issue a fine, then they can do so. However, the onus is on the condominium corporation to prove a breach of the bylaws that warranted the fine. This approach is set out in the Condominium Property Act.

Helpful Hint: Condominium corporations require evidence to support a fine, and it is up to the board to decide whether or not to issue a fine.

Q: My condo unit has had water leakage from the deck doors into the indoor living area when it rains. This has occurred over a number of years and, despite my requests, has not been rectified. An engineer completed an evaluation of the problem in July 2014. I have asked for a copy of the report but the information is being withheld. Do I have a right to the information?

A: I am assuming that the condominium corporation hired the engineer to investigate the issue. Unfortunately, you do not have the automatic right to see that report. There may be information in the report that puts the condominium corporation in an awkward position or prejudices their legal position. However, I am hopeful that the condominium corporation will at least explain to you how they plan to solve the problem and why the issues have not yet been dealt with.

Helpful Hint: Condominium corporations often get independent reports which are not necessarily available to the owners.

Q: I live in a condo where the first unit was sold in 2011, and there are still some unsold units today. On March 1, 2015, the developer rented out a unit with part of the rent going toward a downpayment, as a rent-to-own purchase agreement. Our bylaws do not say anything about this. Is this legal in a condo? The developer/owner has unsold units insured as vacant, including this one. The renter has insurance on this unit, but the developer feels that he does not need further insurance. Does the owner require insurance on this unit?

A: There is nothing illegal about an agreement that allows a renter to pay an owner of a unit over time to acquire ownership of the unit. The 'rent-to-own' agreement, as you call it, is legal. With respect to insurance, you have not indicated to me whether this is a traditional or bare land condominium. My answer will vary with respect to the type of condominium it is. If it is a traditional condominium corporation, then the condominium corporation is required to insure the units. The Condominium Property Act does not require individual owners to insure either their units or their unit contents.

Helpful Hint: Don't be afraid to ask your board these questions. Also, just to be extra clear, many owners choose to purchase insurance to protect their property from loss or damage.

Q: Our condo board recently received an estimate to repair a unit with water damage to the interior of the garage ceiling. The homeowner had a roofer inspect the area, and their opinion was that the current roof vents are not appropriate for Alberta's winter weather, allowing snow to enter the building and cause water condensation. The unit is in its original condition as at the time of purchase from the builder. Is the board responsible under the bylaws to repair this unit?

A: The answer to your question lies in your bylaws and condominium plan, which set out who is responsible for the repair.

Helpful Hint: Your bylaws and condominium plan are always a good starting point when trying to determine whether the condominium corporation or the unit owner is responsible for a repair.

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