

Condo Voice

For Northern Saskatchewan

Who Pays After Damage?

November 2008

By: Naheed Bardai

One of the most common questions I get asked is whether or not the condominium must repair damage to the interior of an owner's unit. Unfortunately, all condominiums are different and so there isn't a one size fits all answer. The purpose of this article, however, is to help condominium boards identify the various issues to consider.

1. What are the Unit Boundaries?

As a general rule, unit owners are responsible for the repair and maintenance of the unit, whereas the condominium is responsible for the repair and maintenance of the common property pursuant to section 35 of The Condominium Property Act, 1993 ("the Act"). This general rule will not apply in cases involving insurance but will apply to issues like damage after wear and tear for which there is not normally any insurance coverage. It is for this reason that owners are usually required to replace light bulbs in their unit, whereas the condominium generally replaces light bulbs on the common property.

In order to determine who has the obligation to maintain and repair any part of the property, it is important to know where the unit boundary ends and the common property boundary begins. In order to

determine the boundary lines, it is important to look at the condominium plan and section 8 of the Act which sets out some default rules in the event the boundary is not spelled out in the condominium plan. For instance, for condominiums built after the Act came into force, windows and doors form part of the unit unless the condominium plan says otherwise.

The unit boundary will have a significant effect on the costs that are incurred by the condominium. In some condominiums the unit boundary is the back side surface of the drywall which means that roofs, windows, plumbing, sidewalks, gardens and internal roadways all form part of the common property for which the condominium is responsible. In other instances, the boundary may be the lot line which means that the structure, lawns, gardens etc. will all form part of the unit and the condominium would only be responsible for internal roadways, sidewalks and shared facilities.

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It is important that the common property is properly identified because the condominium corporation must plan for the long term repair and maintenance of the common property, including the preparation of a reserve fund plan. Condominiums will want to make sure that their reserve fund study deals with all of the common property but does not include components within the unit boundary.

2. Who caused the damage?

Although the general rule is that unit owners are responsible for the maintenance and repair of their unit and the condominium is responsible for the maintenance and repair of the common property, where a unit owner causes damage to the common property, the unit owner may still be held responsible.

3. What about Insurance?

All condominiums (other than bare land condominiums) are required to maintain insurance over both the units and the common property pursuant to section 65(1) of the Act. Condominiums are required to have insurance for major perils such as fires, and other perils specified in the condominium bylaws.

Bare land condominiums may but are not required to maintain insurance over bare land units or on buildings or improvements placed on bare land units pursuant to section 65(1.1) of the Act. However, in my experience, the bylaws of most bare land condominiums do require that the condominium maintain this insurance.

What this means is that after a fire or other insured peril, the general rule will no longer apply and instead, it will be the condominium's insurer that will be responsible for the repair of the common property and the unit property (excluding betterments, improvements and the unit owner's contents).

For example, if a unit owner inadvertently causes a fire by leaving the stove on which causes damage to their unit and the hallway, both the condominium's insurer and the unit owner's insurer will be required to respond. The condominium's insurer will repair the unit (to a base standard) and the common property, whereas the unit owner's insurer will pay for the replacement of the contents and any improvements. So for example, if the base standard

was linoleum and the unit owner installed tile, the condominium owner's insurance would pay for the difference between linoleum and tile.

This means that after an insured event like a fire, two insurers will respond and the two deductibles will have to be paid. One deductible would be the deductible under the condominium's master policy while the other would be the deductible under the owners policy

The cost of the deductible under the condominium's policy will be a common expense shared by all owners except where an owner (or person residing in the owner's unit) causes the damage through an act or omission on their part, in which case the deductible under the condominium's policy may be added to the common expenses of the unit owner. In my example, the deductible could be charged back to the owner who started the fire as a result of their carelessness.

It is important that unit owners are made aware of the amount of the deductible under the condominium's policy. In many cases where the unit owner is required to pay the deductible under the corporation's policy, their individual unit insurer will make the payment on their behalf as part of their unit policy. Unit owners should check with their insurer to make sure they have this coverage.

One of the disputes that often arises relates to what is (or is not) included as part of the "standard unit". If the condominium is relatively new, it will be fairly easy to determine what falls within the standard unit and what does not. However, if the condominium is older, it may no longer be that easy to determine what forms part of the standard. More and more condominiums are passing standard unit bylaws to establish the base standard over which they will obtain insurance coverage. That way, if a unit owner buys a condominium unit where the previous owner installed a \$100,000 chandelier, it will be clear that the chandelier is not part of the standard unit. Even in new condominiums this can be an issue because some owners will purchase considerable upgrades from the developer and there will be an issue as to whether the upgrades are part of the "standard unit".

NOTE: Every condominium will have its own insurance policy (with its own exclusions) and its own unique bylaws. Similarly, the rules which apply

to one condominium, may not apply to another (for example a bare lands condominium). You should review the insurance policies, bylaws and plans with your counsel and insurer to make sure your condominium is adequately insured and that you are aware of the policy exclusions.

Tips for Condominium Boards

Every condominium is a little different, therefore, when looking at an issue like damage to a unit, it is important that the board have the following documents with them:

- The Condominium Property Act, 1993 and accompanying Regulations;
- The Condominium Plan (to identify unit boundaries);
- The Bylaws for the Condominium;
- Details about the original construction of the condominium, especially in cases where there is no standard unit bylaw; and
- The insurance policy for the Condominium.

Naheed Bardai is a lawyer with the firm of MacPherson Leslie and Tyerman LLP. He is a past Vice President of the Canadian Condominium Institute (Ottawa Chapter) and currently sits on the Board of Directors of the Canadian Condominium Institute for Northern Saskatchewan. Naheed frequently writes and lectures on Condominium Issues.

This article is provided as an information service by MacPherson Leslie & Tyerman LLP. It is general in nature and does not constitute legal advice.

Letter to the Editor

Following the last CCI Seminar I heard there were complaints about the price that was charged. Perhaps it is time to explain what portion of the membership fees is kept by the local board for operating costs, holding seminars, and publishing the CCI newsletter.

When a condominium corporation joins the Northern Saskatchewan Branch of CCI, sixty dollars of the yearly membership must be submitted to the National board. From the fee for Corporations of six units or fewer the local branch keeps five dollars.

All the board members are volunteers – there is no paid staff. So where and how is the money spent? There are costs related to putting on a seminar such as rent for the facility, rental of audio-visual equipment, and speaker's expenses. Publishing the NSCCI newsletter and distributing it is an important function of the board.

The admission for CCI seminars is very reasonable compared to some other cities and feedback indicates that attendees have found the information provided to be useful.

Lexi Jamieson
Board member
North Saskatchewan Chapter
CCI

We Want To Hear From You

Your letter to the Editor would be welcome. If you have a question or wish to raise an issue with the NSCCI Board, we would be pleased to hear from you. With your permission the letter will be published in this column.

We are also interested to learn what topics for articles would be of interest to you. Call, write or e-mail us and we will make every effort to answer your request.

The article on page four introduces a new column for the newsletter. If you have a question that requires an expert's response, let us know. We will find the appropriate expert to answer your question.

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Ask An Expert

Ask the Lawyer

by Jamie D. Nykolaishen,
Wallace Meschishnick Clackson Zawada

Q: I am thinking about renting my condominium unit. What steps must I take to rent my unit and what are the rights of the condominium corporation if I rent my unit?

A: The *Condominium Property Act, 1993* provides rules with respect to renting condominium units in order to ensure that all unit holders' interests are protected when a unit holder decides to rent their condominium unit. The Act provides guidelines for the owner, renter, and condominium corporation.

Owner's Duty to Give Notice:

The Act provides that before an owner rents their unit they must give written notice to the condominium corporation of their intention to rent. This notice must set out the owner's address for future correspondence.

Once the unit owner has rented the unit the Act states that within 20 days of the commencement of the tenancy the unit owner must give the condominium corporation written notice of the tenant's name. The unit owner must also give written notice of the termination of the tenancy to the condominium corporation within 20 days of the end of the tenancy.

Renters' Conditions of Tenancy:

To ensure the reasonable respect and care of tenants, the Act provides two default conditions of tenancy, which exist despite the lack of or anything to the contrary in the tenancy agreement. Firstly, the Act provides tenants shall not cause damage to the real or personal property of the corporation or the common property or the common facilities, and secondly, the tenant shall not contravene the bylaws of the corporation.

Condominium Corporation Rights:

The Act provides a few rights for condominium corporations to ensure they protect all unit holders' interests. The Act provides three important classes of rights, but it states that the rights do not exist unless the condominium corporation's bylaws either generally or specifically provide for same. The rights are:

1. A condominium corporation can require the owner of a unit who rents the unit to pay to, and maintain with, the corporation a deposit in an amount that does not exceed the maximum amount of a security deposit pursuant to *The Residential Tenancies Act*. This deposit then can be

used by the condominium corporation for the maintenance, repair or replacement of any real or personal property of the condominium corporation or any of the common property or common facilities or any of the common property for which an owner is permitted to exercise exclusive use over, that is damaged, destroyed, lost or removed by a tenant.

If a corporation does collect such a deposit, the following guidelines apply to the use of the deposit. Within twenty days of receiving notice of the termination of tenancy the corporation must either:

- (a) return the deposit to the owner; or
- (b) if the corporation has used the deposit they must deliver a statement of account to the owner showing the purpose, amount used and the balance; or
- (c) if the corporation is entitled to use the deposit but has not yet determined the amount they will use they must provide the owner with an estimated statement of account outlining the amount it intends to use and then within sixty days provide a final statement showing the amount used, for what purpose, and the final balance.

2. A condominium corporation may apply to the Rentalsman, pursuant to *The Residential Tenancies Act*, for an order for possession of a rented unit when the tenant causes excessive damage to the real or personal property of the corporation or to the common property or common facilities, causes excessive noise, or is a danger to or intimidates persons who reside in other units.

3. The condominium corporation also has a right with respect to collecting arrears owed by the owner. Where an owner is in arrears with respect to payments for the common fund or reserve fund respecting a unit that is occupied by a tenant or where the condominium corporation has obtained judgment against an owner to pay a certain sum, the corporation may give written notice to the tenant to pay the rent, otherwise payable to the owner, to the condominium corporation until the arrears or judgment is satisfied.

A review of your bylaws is suggested to ensure that these rights are available to your condominium corporation. If not currently available you may want to look at amending the condominium corporations bylaws to ensure that these rights are included.

Please submit any questions you may have to the CCI North Saskatchewan Chapter at: Box 7074, Saskatoon, SK S7K 4J1 or e-mail NorthSaskatchewan@cci.ca

Annual General Meeting and Seminar

Condo Insurance

Case Studies and Panel Discussion

Panel members:

Naheed Bardai – Lawyer - Moderator

Elaine Pegg - Insurance Broker

Glenn Silliphant - New Home Warranty

T.B.A. - Insurance Adjuster

Thursday, November 20, 2008

7:00 P.M.

Come early for registration

Mayfair United Church – 902 - 33rd Street West

**Cost: Members \$10.00 per person- maximum of \$50.00 per corporation
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