



Enforcing Condominium By-Laws

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Abstract

The condominium declaration, by-laws and its rules must be adhered to at all times by condominium owners or its residents. Failure to follow these rules can result in major consequences to condominium owners. As such, should a violation be noted on a Status Certificate, the lender and/or any potential buyer will have notice of the violation which will affect the transaction.

Full Article

In *Durham Standard Condominium Corp. No. 187 v. Morton* a condominium corporation took action against a condominium resident in respect of the resident's infractions of condominium by-laws involving pets and potential property damage caused by the pets resulting from said violation.

The court found that the resident had two dogs weighing more than 20 kilograms each. It was reported by other residents that the dogs had been allowed off their leash numerous times and had jumped at other condominium residents. The behavior of the dogs was said to have scared some of the residents. This was in violation of the condominium corporation's by-laws which stated that residents can have one pet only, it cannot weigh more than 20 kilograms, and it must be on a leash at all times (presumably when in common areas). The resident was notified, but failed to remove the dogs from the building.

Section 117 of the *Condominium Act* ("Act") provides that no one is to allow a state of affairs to exist if it is likely to damage the property or cause injury to the person. Further, section 134 of the Act provides for an application to the Superior Court of Justice to enforce provisions of the Act, the declaration, the by-laws and the rules. The court determined that this dispute belongs in court (rather than in mediation or arbitration) because in addition to concerning the condominium agreement, the dispute also engaged section 117 of the Act.

The resident argued that the condominium board members were selectively enforcing condominium by-laws such that they were picking on him and his infractions, while ignoring the infractions of other residents. While the condominium board noted that other residents had at times violated the by-laws, only these particular dogs caused complaints and safety concerns.



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In reviewing the decisions of the condominium board, the court considered if the condominium board acted reasonably in the circumstances and without capriciousness. In this case, the court found that the condominium board was acting to protect other residents and there was no indication of unfairness or a vendetta against the resident. As such, the resident was ordered by the court to remove his dogs from the premises.