

Can Condos Charge an Occupancy Fee?

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A [recent article](#) on the CBC website calls into question whether a condominium can charge an occupancy fee.

In this case, the condominium in question passed an occupancy standards by-law in 2003. The purpose of the by-law is to address, amongst other things, overcrowding of units where units have a greater number of occupants than permitted under the Ontario Building Code. As is the case with any other by-law, it needed the approval of the majority of the owners.

As I understand it, additional occupants have been allowed to reside in the unit since the COVID-19 outbreak without such charges. These charges in question, however, predated COVID 19.

These type of daily charges might not be universally popular, but they seem well founded in this case based on the building's concerns about extra use of the common elements and utilities, and the additional wear and tear of the building that results from having extra occupants. The by-law in question provides the authority to charge occupancy fees.

I don't agree with the legal position taken in the [article](#) that charging \$30.00 without "any justification" and "without an invoice" to support the charge is an unreasonable expense. It is very common for condominiums to charge occupancy fees that are permitted under a bylaw that form part of a unit's common expenses, and no invoice is required.

Key Takeaways

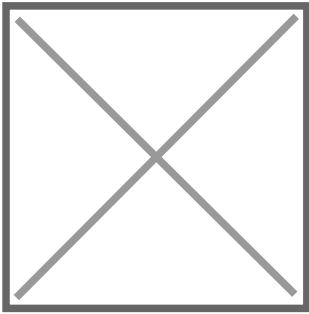
If a by-law permits a building to charge fees for "extra" occupants, then in the absence of a court order saying that the charges are not permitted, owners are required to pay for same.

This doesn't mean that condos and management shouldn't be working with owners and remaining flexible during these very difficult times. But these issues are often much more nuanced than they first appear, and there are often other justifications (legal and factual) that explain why these decisions get made in the first place.

You can read the full CBC article [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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