

Condominium owner liable for costs due to tenant's misconduct

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Many condominium units are purchased as investment properties with the owners leasing out the units to tenants. This may result in a condominium building that has numerous landlords who don't live in the building, and tenants who are unconcerned with the impact of their detrimental conduct towards the property and other residents. A recent decision of the Ontario Superior Court of Justice demonstrates the limitations faced by a condominium and unit owner to evict a tenant from the building, and the consequences to a unit owner for the destructive conduct of her tenant.

In *MTCC No. 1025 v. Hui*, 2021 ONSC 5839 (CanLII), a condominium owner leased her unit in May 2021. Shortly thereafter, the tenant began to engage in "bizarre and threatening behaviour," including threatening the condominium's security guard with a knife, exposing himself, and enabling an individual to deal drugs on the condominium premises. He caused physical damage to the condominium building and disturbed other residents.

The condominium corporation advised the unit owner of the incidents and the unit owner agreed to pay the cost of an additional security guard to specifically monitor her tenant.

In June 2021, the owner delivered to the tenant a N7 Notice to End the Tenancy for Causing Serious Problems in the Rental. The owner applied to the Ontario Landlord and Tenant Board for an urgent hearing. However, the Board denied the request for an expedited eviction hearing.

On 8 August 2021, the tenant was arrested. The police advised the unit owner that the tenant was not to be allowed back into the building. However, there was no prospect that an eviction hearing would be conducted any time soon given the Board's decision.

Accordingly, on 30 August 2021, the condominium took matters into its own hands and brought an application for an order directing the respondent tenant to comply with the condominium's rules and section 117 of the *Condominium Act, 1998* (the "Act"), which provides as follows:

No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

The condominium also sought an order directing the unit owner to take all reasonable steps to ensure that her tenant complied with the Act and the condominium's rules. The unit owner was cooperating with the condominium's efforts but the tenant did not attend the hearing.

There was little question that the tenant had damaged property and caused injury. The tenant had broken the window in his unit and carved his initials in the doors of other units. The tenant had also threatened other residents and the security guards. "Injury" in section 117 of the Act includes any psychological harm: *Metropolitan Toronto Condominium Corporation 747 v. Korolekh*, 2010 ONSC 4448, at para. 71.

The tenant had also contravened the condominium's rules. As a general rule, a court will enforce the rules established by a condominium and "exceptions will be rare" (para. 29).

The court was therefore satisfied that the tenant was in breach of section 117 of the Act and the condominium's rules.

The court was also satisfied that the condominium was entitled to an order that the tenant was to cease and desist from uncivil or illegal conduct that violates the Ontario *Occupational Health and Safety Act*. In that regard, the condominium had a legal duty to investigate and protect its workers from workplace harassment and violence.

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The court issued a declaration confirming the tenant's breaches and ordered him to comply with the condominium rules and section 117 of the [Act](#) by ceasing to engage in threatening, abusive, intimidating and harassing behaviour.

The court did not make an order evicting the tenant, however, as such orders are subject to the jurisdiction of the Landlord and Tenant Board.

Unfortunately for the unit owner, the court ordered that she pay costs to the condominium for the application notwithstanding her cooperation. The condominium's declaration and rules provided that unit owners would indemnify the condominium for costs and damage to the common elements or other units in the building due to the wilful or unlawful acts of any resident or occupant of the unit.

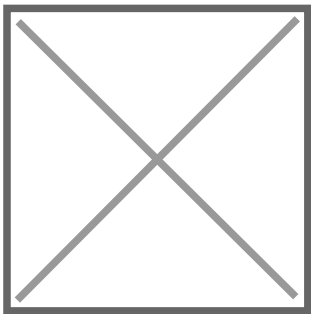
While the court had sympathy for the unit owner's predicament, it noted that the condominium and the other unit owners were also victims and it would not be fair that the other unit owners be responsible for the costs of the application which was required to compel the tenant to comply with the condominium rules: *Chan v. Toronto Standard Condominium Corporation No. 1834*, 2011 ONSC 108 (CanLII), at para. 37.

In the result, the unit owner was ordered to pay costs of \$10,000 to the condominium for the application. The decision demonstrates some of the potential perils of renting out a condominium unit and the consequences that may result. Due diligence on potential tenants should be thoroughly conducted by unit owners before entering into a lease, as eviction proceedings are slow and costly. A condominium will be looking to unit owners to cover the costs and any damages that are incurred before a tenant is eventually evicted. A PDF version is available to download [here](#).

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