REMI

Keeping petty condo disputes out of court

Plus, strategies for minimizing costs when early intervention fails

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By Michael Byers

While there are a lot of great things about condominium living, an unfortunate drawback is the frequency with which disputes arise. In addition to the usual 'people, pets, and parking' issues, disputes also tend to develop over smoking, noise, maintenance, unpaid common expenses, and elections or governance of the corporation.

The high cost of legal services can make it difficult to deal with these disputes in a cost-effective manner. While simply settling may make short-term financial sense, it may not be the best long-term solution, particularly where the type of dispute is likely to reoccur, or where there is an especially combative or litigious unit owner.

Legal framework

The Condominium Act requires that certain disputes be resolved via mediation and arbitration. In practice, these processes are not always used and can be even slower and more expensive than the courts. Many minor condominium-related legal issues end up in the small claims court, which deals with claims up to a limit of $25,000. While the small claims court has a simpler procedure than the Superior Court, justice can still be slow and the costs can still add up. However, there are a few strategies than can be employed to help ensure the costs and risks associated with minor litigation are minimized.

Seek professional advice sooner

Because managers and condominium corporations want to avoid expensive legal bills, they may be understandably reluctant to consult their lawyers about a particular issue or problem before it becomes too late. In some cases, though, it will be much more cost effective to pay for a lawyer to spend an hour drafting a letter that may prevent litigation altogether, rather than paying for that lawyer to spend several hours drafting a defence, only to have the claim settle after that.

Resolve disputes as early as possible

Almost all cases settle eventually. If a condominium corporation is subject to a claim and doesn't have a strong case, it should consider whether it would be appropriate to make a reasonable settlement offer before having to pay a lawyer or paralegal for the cost of drafting a defence. While it often makes sense to file a defence on larger cases in order to enhance one's relative bargaining position, the costs of filing the defence may exceed the tactical benefit if only a small amount is in dispute .

There is also a little-used provision in Ontario's small claims court rules that allows parties to agree to have their dispute resolved at a pre-trial settlement conference if the amount in dispute is less than the legal minimum of $1,500. This is essentially a very short (45-minute) mini-trial that offers a much less expensive alternative to a full trial.

Use costs system advantageously

In small claims court, a successful party who uses a lawyer will usually only be able to recover a very low percentage of their actual legal costs (usually, no higher than 15 per cent of the amount in dispute, although it is usually much less). However, the small claims court rules allow a party to make what is called a "Rule 14 Offer to Settle," which is designed to encourage parties to make reasonable settlement offers.

The rule is somewhat complicated, but it provides that if a party does not accept an offer to settle that they should have (i.e. if they obtain a result at a trial that was the same as or worse than the amount of the offer), the party that should have accepted will be required to pay double the amount of legal costs that it would usually have to pay. It makes good sense to use this rule in a number of situations, especially when dealing with someone who refuses to accept a reasonable settlement offer.

Recognize that not all claims can be heard by the courts

The recent case of Diamantopolous v. MTCC No. 594 shows the reluctance of judges to hear very minor cases. In that case, the condominium corporation had directed that unit owners refrain from certain behavior in the exercise room and put limits on their communications with the board, security personnel and other residents. The court dismissed the owners' application to force the corporation to go to mediation, finding that the issues were so "minor and incidental" that there was nothing to litigate or mediate.

Dealing with minor disputes is part of the cost of doing business for condominium corporations. While resolving these sorts of issues in a cost-effective manner is always challenging, adopting the aforementioned strategies should help condominium corporations and managers stay out of court, or at least minimize the risks and costs associated with litigation if that is unavoidable.

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