

Neighbour complains about smoke

New tenants or their guests not entitled to light up in landmark Manitoba case

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Two weeks ago, I replied to a question from a reader who was concerned about cigarette smoke entering his unit from another unit.

I suggested that a board would be entitled to prohibit smoking in a unit, if filters and other attempts to prevent the transmission of smoke are ineffective.

In fact, a board may be obligated to do so based upon a declaration or rule provision forbidding conduct that interferes with the enjoyment of units by others and the Condominium Act prohibition of an activity that is likely to damage the property or cause injury to an individual.

I suggested that, for greater certainty, a rule could be passed giving the board the right to prohibit smoking in a unit if reasonably necessary to prevent the transmission of smoke to another unit.

Could a board pass a rule prohibiting smoking in every unit and in the common elements?

A recent Manitoba case involved a rental building and not a condominium.

The building owner advised the tenants that effective Oct. 1, 2006, the building would have a no-smoking policy. Existing tenants would be "grandfathered."

They would be allowed to smoke for as long as they remained tenants in their present units. New tenants or their guests would not be entitled to smoke.

The question was whether the prohibition was reasonable as required by The Residential Tenancies Act of Manitoba. That Act defined "reasonable" to include a provision intended to "promote the safety, comfort or welfare of persons working or residing in the residential complex" and which "applies to all tenants in a fair and reasonable manner" and which is sufficiently clear that tenants will know what they must do or not do.

The court held that the non-smoking policy met the requirements of the statute.

The requirements in the Condominium Act for a valid rule are similar to the statutory requirements considered by the court in the Manitoba case. A rule must be reasonable, consistent with the Act, the declaration and bylaws.

It must promote the safety, security or welfare of the owners and the property or be for the purpose of preventing unreasonable interference with the use and enjoyment of the property or the common elements.

An Ontario court may be prepared to uphold a rule that bans smoking in condo units and common elements but probably only if it includes a grandfather clause.

Of course, such a rule will not solve the problem of smoke transmitted from the unit of the grandfathered smoker.

<http://www.thestar.com/article/196651>

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