"This Owner Never Lived in Mr. Rogers' Neighbourhood"

One of the themes that has been consistent in my articles over the years in this magazine is how condominium living brings together people of all different races, personalities, classes, etc. into one condominium community, where they have to live together under the same roof, rules and restrictions. Eventually there are going to be owners that will not want to comply with these rules and restrictions and will simply take the position that their home is their castle and they will do as they please.

In most cases, the condominium corporation will take steps to force this renegade owner to comply. Usually that means the board will utilize the enforcement provisions set out in the *Condominium Act, 1998* (the "**Act**") and they will head to mediation and arbitration in their attempts to get the rebellious unit owner to comply with the rules and declaration. However, there will sometimes be that unique situation where the board is faced with the unit owner "from hell". A situation where the board is confronted by an owner that crosses the line and doesn't just ignore the rules and Declaration but actually violates the Act to the point where the board has no choice but to seek the most extreme of all remedies, to force the unit owner to sell their unit. This remedy was recently granted in the case of *Metropolitan Toronto Condominium Corporation No. 747 v. Korolekh*.

This was an application by the condominium corporation seeking an order forcing the unit owner to sell her unit as a result of alleged persistent harassment and violation of the rules by this unit owner against fellow owners.

It is alleged by the condominium corporation that for years Ms. Korolekh, the owner, terrorized the neighbours with racial insults, violence and the maintenance of a large Rottweiler that created constant fear amongst the neighbours. According to the condominium corporation's evidence, the dog was estimated at a weight of 150 pounds and was used to frighten and intimidate other neighbours, and in one instance it was alleged that the dog was lunging at a neighbour while the owner would shout orders to her dog to "get it, get it". The other owners

made numerous complaints and the condominium corporation had no choice but to take action. In addition to the dog complaints, the condominium corporation also presented a lengthy shopping list of complaints against this particular owner which included accusing the owner of egging homes, poisoning a neighbours' plants, throwing gravel and stones and even striking a male resident in the throat. In addition, it was alleged in the affidavit evidence that on several occasions this owner was highly intoxicated, blasted loud music at night and, incredulously, climbed walls to stare inside other units for extended periods of time. The complaints also included allegations of the use of offensive language, racial slurs and screaming obscenities, mostly about her disdain about homosexuals.

After reading that paragraph, doesn't it make you thankful for the neighbours you have now.

As stated earlier when there is a dispute between the condominium corporation and the unit owner, the parties would proceed to mediation and arbitration. However, in rare circumstances, the mediation provisions can be bypassed in favour of a compliance application to the Court. In particular, the Corporation can avoid mediation and proceed straight to court in situations where there is a violation of the Act as opposed to a violation of the Declaration, by-laws or rules. Under section 134 of the Act, the Corporation can seek an order forcing the unit owner to comply with the Act, declaration, by-laws or rules. In addition, the court may grant an order that is "fair and equitable in the circumstances". Under section 117 of the Act, "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." In this case, the condominium corporation felt that the only solution was for the court to order the sale of her unit. Mr. Justice, Michael Code, who heard the application was entirely convinced that this was the only proper remedy. Specifically he wrote "Ms. Korolekh's behavior is extreme in a number of senses……This broad array of misconduct is carried out in the devious, persistent and vindictive manner….This case was a "perfect storm" where the misconduct is serious and persistent, where its impact on a small community has been exceptional and where the respondent appears to be incorrigible or unmanageable...(the Owners) are entitled to the security of an order that removes Ms. Korolekh from their condominium corporation." In addition, he

further wrote "...it would be unwise to try to reintegrate Ms. Korolekh into a community that fears her and that she has persistently tried to intimidate….Ms. Korolekh has irreparably broken the bond with her community and an effective order cannot be made that would force these parties to now join together again." As a result, he specifically ordered the owner to sell her home within three months. In addition to this, she was also ordered to pay $35,000.00 in legal costs to the condominium corporation.

The overriding element of this case is very simple and that is the idea of the unit owner taking the law into her own hands and saying that "this is my home, I will do exactly what I want regardless of what everybody else says" and looking at the extreme circumstances as to where that can lead one. In this case, it is obvious that mediation and arbitration was not going to be a useful tool and that there were other options open to the condominium corporation. Indeed, this was that one situation where this rare remedy was granted.

While many of you may think that this was a harsh response and very draconian in nature, one has to understand that the essence of condominium living is that of a community and that all of the unit owners have to live in the same community under the same roof, rules and regulations and, therefore, this compliance is not something that can be taken lightly or easily disregarded.

From a litigation standpoint, the key to the condominium corporation's success here was the paper trail provided by the Corporation. It was the careful documentation of each and every incident that convinced the Judge that the behaviour of this owner was out of line to the point where the only solution was the sale of her unit. This can only be attributed to the very capable job done by the security personnel and property management company that kept detailed records and incident reports. These reports formed the basis of the evidence used in the court case and contributed to the decision rendered by the Judge. I always recommend to the condominium boards and security companies that these incidents, regardless of how trivial or minor, must be recorded and documented. Therefore, in those situations where a court proceeding is necessary, the Corporation has the necessary backup to prove its case in court. If the condominium corporation, in the case above, did not have this paper trail against this owner, the Judge would

never have rendered such an order. It was only granted after he reviewed the substantial evidence presented before him.

It is clear from this case, Mr. Rogers won't be singing to this neighbour, "Won't you be my neighbour" very soon.