

Condo Water Leaks

Often when there is a leak in a condominium unit, there is an assumption that the leak emanated from the unit directly above. However, this may not necessarily be the case.

In a recent case, [Roa v. TSCC No. 1764](#), a condo unit owner sued the condominium corporation after the corporation registered a lien against his unit (suite 602) for non-payment of repair costs relating to a leak in the unit below (suite 502). The corporation took the position that the unit owner was responsible for these repair costs as he failed to properly maintain his unit, and in particular, the ensuite shower in the unit.

The owner of suite 602 was away approximately 8 months a year since he purchased the unit from the developer about 4 years earlier and as a result, he made limited use of the showers in the unit. The leaks in suite 502 continued after caulking and silicone applications in suite 602 (which was recommended by the corporation's plumbers) and even after the owner of suite 602 stopped using the ensuite shower. The plumbers hired by the condominium corporation indicated that on 2 visits they could not find any leak emanating from suite 602, and did not produce any report detailing the source of the leak and how it was stopped.

The Small Claims Court found that the owner of unit 602 was not liable for the repair costs relating to the leak in suite 502 as the corporation did not provide any "unambiguous and straightforward" evidence as to the source of leak. In arriving at this decision, the judge noted that the parking garage, the gym and other units in the building also experienced leaks.

The plaintiff unit owner was awarded damages in the amount of \$5,958 consisting of:

- the lien amount;
- the amount paid to the corporation's plumbers;
- the plaintiff's legal costs relating to the lien; and
- \$1500 for inconvenience.

The unit owner was also awarded \$1800 for costs and disbursements for the 2-day trial.

Whenever there is a leak that causes damage to the common elements and/or other units, management and the board should be checking the condominium declaration and by-laws to determine if there are provisions in the documents that assign responsibility for payment of damages caused by the leak. In addition, a thorough investigation needs to be conducted to ascertain the cause of the leak and management should obtain a written report from a plumber or other independent qualified professional that clearly spells out the cause of the leak.