

Court Orders Access to Condominium Unit

In a recent case, [YCC No. 922 v. Lu](#), the owners of a condominium unit were ordered by the Ontario Superior Court of Justice to permit the condominium corporation to enter the unit for the purpose of inspecting and repairing damage to the unit and the common elements caused by flooding in the basement of the unit.

After the emergency cleanup on the day of the flood and an initial inspection, over the course of the next eight months the owners refused to allow the corporation's contractor access to the unit. Ultimately access was provided and in the course of carrying out the repair work, the contractor discovered mould in the unit which also needed to be remediated. From that point onward, the owners again refused access.

In their dealings with the condominium corporation the owners' conduct appeared to be deliberately obstructive, as they made many escalating demands of the condominium corporation as a condition of permitting access, such as:

- Asking for confirmation that the contractor had the requisite WSIB clearance certificate and licences for its crew;
- After refusing to accept the contractor's mould remediation qualifications, requesting that another mould specialist attend and then demanding confirmation of that specialist's licence number;
- After the corporation retained legal counsel to send a demand letter to the owners, insisting on proof that the legal counsel had in fact been retained by the corporation and was authorized to deal with the owners. Upon being provided with a copy of the retainer letter, questioning its authenticity.
- Once any information was provided, the owners then required additional information.

After several demands for access were made by the corporation's legal counsel, the corporation commenced an application for a court order compelling the owners to permit the corporation and its contractor access to the unit.

The Court determined that the owners' refusal constituted a breach of section 117 of the [Condominium Act](#), 1998 (the "Act") as the unremediated mould in the unit was likely to cause damage to property or cause injury to an individual. The owners were also found to be in breach of section 119 of the Act as they failed to comply with their obligations as the owner under the Act and the condominium documents to repair damage to the unit and then failed to allow the corporation to carry out the repairs that were not undertaken by the owners. For these reasons the Court ordered the owners to allow access to the condominium corporation and its contractors for the purpose of inspection and repair.

In each of the four demand letters from the corporation's legal counsel, the owners were warned that if access was not provided, the corporation would commence legal proceedings and would seek costs from the owners. The owners were also ordered by the Court to pay costs in the amount of \$12,000 to the condominium corporation.

“The respondents not only ignored warnings, they demanded unnecessary and superfluous information with respect to the proper authority, licensing and qualifications for the contractor, mould specialist and counsel. It was solely the actions of the respondents and their conduct that caused the issuance of this application and the delay in effecting the necessary repairs.”

In this case it was the unit owners who acted unreasonably in refusing to provide the condominium corporation with access to the unit. As a result, the corporation had to commence legal proceedings and the unit owners were then held responsible for paying the corporation’s legal costs. In a case that we previously blogged about ([Balland v. YCC No. 201](#)) it was the condominium corporation that did not act reasonably in its dealings with the unit owner to obtain access to the owner’s unit and the condominium corporation was on the losing side in that litigation. These cases illustrate that it is incumbent on both the condominium corporation and the unit owner to act reasonably and cooperatively when access to the unit is required by the corporation.