

21. Repair Orders Respecting Strata Properties

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with situations where an application is made for an order¹ requiring the landlord to make repairs to the rental unit, and the rental unit is a strata lot.

In a strata development, individual owners own their units, called strata lots, but they jointly own the common areas outside their lots. Where the rental unit is a strata lot, situations may arise where repairs are needed to the strata lot, but the source of the problem lies in the common areas of the development which are administered by the strata corporation. Typically this would arise in the case of a “leaky condo”.

The *Strata Property Act* sets out the duties of the strata corporation and the owners in respect of the property. Section 72(1) requires a strata corporation to “repair and maintain common property and common assets”. Section 72(2) permits a strata corporation, by by-law, to make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use.²

The *Strata Property Act* contains standard by-laws which set out the responsibilities of owners and of the strata corporation for repairs and maintenance. A strata corporation cannot pass a by-law which conflicts with its responsibility for repairs to the common property. However, owners could be made responsible for repairs on common property which has been allocated for their exclusive use, or where the use has been limited to one or more strata lot owners. In any event, the by-laws should always be examined.

An owner has no power to do work on the common areas of the development, save and except for areas of exclusive use common property or limited common property as required by the by-laws. The dividing line between the strata lot and the common areas is usually the mid point of the exterior walls of the strata lot. Any repairs such as the repair of water leaks originating in the common areas is the responsibility of the strata corporation.

Where repairs are required because of a defect originating in the common area, an order that the necessary repairs be done will not be made against a landlord who is the owner or lessor of a strata lot as the owner or lessor has no authority to make the repairs. The owner or lessor is required to ensure that the strata corporation is aware of the problem and take reasonable steps to ensure that the repair is made in a timely manner.

Generally, repairs to the interior of the strata lot are the responsibility of the owner or lessor. Where the strata corporation may be liable for the cost of the repair, the landlord may make a claim against the strata corporation in the appropriate forum.

¹ *Residential Tenancy Act*, s. 61; *Manufactured Home Park Tenancy Act*, s. 58

² Or other common property, as permitted by the Regulations. There are no regulations under this subsection at present.



21. Repair Orders Respecting Strata Properties

Jan-04

Even though the defect may originate outside of the strata lot, if the tenant's use and enjoyment of the premises is adversely affected by a problem originating in the common areas, the tenant may be awarded an abatement of rent or damages.