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## Fur flies in courts over pet bans



### Animals face losing battle against condo restrictions

*But apartment buildings are virtually powerless to prohibit pets*

Why is it that pets can be prohibited in condominium buildings but not in apartment buildings?

Under the Tenant Protection Act, a clause in a residential lease prohibiting the presence of animals in an apartment building is void. By comparison, building rules made under the Condominium Act can prohibit household pets if they are reasonably worded and reasonably enforced. In addition, a pet restriction in a condo declaration is presumed to be valid, whether or not it is reasonable, unless there is a human rights violation.

This results in the strange situation where pets cannot be prohibited in an apartment building, but they can be prohibited in an identical condo building next door, even if it is occupied entirely by tenants.

Since 1989, a number of Ontario pets have made legal history by appearing in published court cases involving their right to live in condominiums in this province. The pets include a 16-year-old Siamese cat in St. Catharines, a "hearing-ear" dog in Waterloo, a 15-pound East York poodle, as well as a wheaten terrier and an Afghan, both of whom lived in the Palace Pier project in Toronto.

Of the five animals in these cases, three were evicted and two were allowed to stay by Ontario courts. The hearing-ear dog was allowed to stay based on the owner's disability and the protections in the Ontario Human Rights Code. Similarly, the Siamese was not evicted because the board had failed to enforce the no-pets rule for at least eight years.

The latest case to hit the law reports involves Simon, a greyhound dog who lived in a Waterloo condominium owned by Johanna Theresa Weidner.

In May, 2001, Weidner and her greyhound moved into a condo she had bought on Hugo Cres., Kitchener. Before closing, Weidner was given a status certificate indicating that no animals were permitted in the building.

Eventually the condominium board issued an eviction notice against Simon. When Weidner failed to remove it from the building, the matter wound up before Justice Patrick Flynn in the Ontario Superior Court of Justice.

Weidner argued that she needed Simon because she was suffering from stress and depression, and that her right to keep the dog in her unit was protected by the Ontario Human Rights Code. She argued that the condominium declaration should accommodate persons with identified disabilities.

Finally, she claimed that the condo corporation had delayed so long in enforcing its rights that it should be prevented from proceeding against her.

In June of this year, Justice Flynn ruled that a condominium declaration cannot be attacked as unreasonable. All owners are bound by the declaration, and it is "vital to the integrity of the title" of each unit owner.

In any event, Flynn ruled, there was no evidence that a total ban on pets in the building was unreasonable. He added that there was no violation of the Human Rights Code and the board's delay in enforcing its rights did not prevent it from evicting Weidner's dog. She employed both a real estate agent and a lawyer, and had ample opportunity to be informed about the prohibition from them.

Simon was ordered evicted.

Different standards apply if the condominium declaration is silent on pets but its rules contain a no-pets prohibition. Under the Condominium Act, a condominium board may make rules for "the safety, security or welfare of the owners and of the property" or "for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of the other units."

The only limitation on the nature of these rules under the Condominium Act is that the rules must be "reasonable" and "consistent" with the legislation.

Several years ago, the board at the Palace Pier condominium in Toronto passed a rule stating that pets in the building must not exceed 25 pounds.

Both Portia, a wheaten terrier, and LuLu, an Afghan, were over the weight limit. Their owners eventually wound up at the Court of Appeal, after a trial judge allowed the dogs to stay.

In 1997, three justices of the Court of Appeal reversed the trial decision and evicted the dogs. They said the 25-pound dog rule was not an "unreasonable interference with the use and enjoyment of the common elements and of the other units." Even though the Palace Pier rule may not have been the best rule or the least arbitrary, it wasn't necessarily unreasonable.

Tenants don't have these problems. Animals and their owners can only be evicted if the pets cause a disturbance, trigger a serious allergic reaction in the landlord or another tenant, or are a breed that is inherently dangerous to public safety.

Should the same rules that apply to tenants be forced on condominium owners? Should the law be changed so that all condo owners would be allowed to have pets just like tenants can?

