

Fur flies over pets ; In the condo world, there's scarcely a more contentious issue than animal ownership; [1 Edition]

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A 16-year-old, partially blind cat left a lasting mark on this city, this province.

Sure, he was Fluffy but he was also a legal heavyweight for apartment dwellers and there are many who feel his case should have set the standard for condominium owners, too.

But first, the facts behind the fluff(y). In 1989, the Ontario Supreme Court upheld the eviction of a disabled East York couple who were forced from their apartment because their feline, Fluffy, contravened a no-pets clause.

The fallout was, well, cat-astrophic for tenant pet owners.

Thousands in Toronto and area were issued with eviction notices, the Toronto Humane Society was inundated with orphaned dogs and cats and heartrending separation stories surfaced regularly in the media.

The resultant caterwauling eventually led to then-attorney general Ian Scott amending the Landlord and Tenant Act in 1990. The new bill essentially protected all pet-owning tenants from eviction unless a landlord could prove the pet was a nuisance, or presented a danger, or caused other tenants to have a severe allergic reaction.

The Harris government has not tampered with the rights of tenants to have pets, which is all well and good if you have a pet and you rent your apartment.

If you own it, that's a different story.

Condo owners with pets can't count on the Fluffy precedent to protect them if they live in a building that outlaws animals. (That includes renters of units in such buildings).

And nothing in the current condominium act, or the new one expected to be proclaimed this year, deals specifically with pets or protects the rights of owners to have them.

With few exceptions over the years, Ontario courts have consistently ruled against condominium owners who have challenged building rules governing pets. (According to lawyer Audrey Loeb, who does a lot of work with condominiums, pet restrictions are normally dealt with in a building's rules, which are set out by a board of directors.)

Loeb, of the firm Morris/Rose/Ledgett, says one particular Ontario Court of Appeal decision from a couple of years ago seems to have set the pace. A unit owner had challenged his building's rule that a pet could not weigh more than 25 pounds. But the court held that the corporation's rule was valid and enforceable. Essentially, Loeb said, the court ruled that regulations set out by condominium boards of directors are deemed to be reasonable (and enforceable) unless a unit owner can prove that they're not.

In other words, boards of directors can prohibit any and all animals (with the exception of seeing-

eye dogs) or issue any restrictions about numbers allowed, weight, etc.

But the court rulings don't sit well with a lot of condo pet owners who aren't about to just roll over.

When Condo Living recently asked readers for their comments on the issue of pets in condominiums, dozens of letters poured in. The mail ran heavily in favour of all condominium owners being allowed to have pets, as long as they were not proven to be nuisances or dangerous. Many were incensed that they could rent an apartment and keep their pet, but if they bought a unit in a building that banned animals, they'd have to give it up.

"I just cannot see any justification for people who rent their homes to be permitted pets and those of us who are trying to become homeowners cannot keep pets," said Cathy Best in an e-mail.

Another reader, Kathy Jacob, expressed a similar sentiment. "Why should renters be given more rights than owners? It's ludicrous to think that one group is more responsible than the other, and if problems do arise, the board of directors and property management would be there to rectify them.

"Legislation should be enacted, and indeed the new Condominium Act should reflect that condo owners be allowed to own an apartment- type pet as long as all noise and hygiene regulations are adhered to."

Best's and Jacob's comments were representative of many of the pro-pet readers.

However, other readers in the opposing camp, like one woman who lives in a downtown building but who didn't want her name used, said pet owners forget that their animals have an impact on others.

While she likes dogs, this reader said she doesn't feel they're suited to the condominium lifestyle. Not only do they bark, she says, but sometimes they "urinate in the carpeted hallways," and in the elevators, and "drop fleas on carpets in the summertime."

Dogs, she feels, because they must be exercised and go through common areas, are more of a nuisance and put more strain on the property than other pets that never leave units. Plus, people who don't like dogs or are allergic to them are nevertheless forced to share common element areas with them, she says.

Her sentiments are backed up by Gerrit Roosenboom, who serves on the board of directors of a Richmond Hill condominium, and feels quite strongly that if you have a pet you shouldn't buy into a no- pet building.

It's up to buyers, he says, to check all of a building's documents to see if there are any restrictions about animals.

"Don't buy a lifestyle that is not suitable and don't expect the majority of the prior residents in a condo building to give up their preferred lifestyle to accommodate a new entry into the building," says Roosenboom.

It all sounds simple enough - do your research and if there are pet restrictions in a building's documents and you have a pet, don't buy.

But, if you'll excuse some animal analogies, there seems to be a recurring fly in the ointment,

according to the many people who contacted The Star. A lot of the boards of condos that are officially "no pet" seem to be trying to close the barn door after all the horses are gone - or after the dogs and cats have moved in.

In other words, these boards pussyfoot around the pet issue for years, virtually turning a blind eye to people who have them. Then, after someone files an official complaint, the boards have no choice under the condominium act but to enforce the rules, forcing people to give up their pets or give up their suite.

It makes for messy, painful battles that have destroyed the community spirit in some buildings and forced many owners to suffer emotionally, when they have to give up animals they've had for years, or financially, if they decide to sell - as usually the notice to get rid of pets is 30 days or less.

Lawyer Loeb agrees that "unfortunately it is not uncommon for some boards not to enforce the pet restrictions and it does cause problems later." In those cases, she suggests boards "grandfather" existing pets but with a "fairly rigorous registration procedure so that the corporation can really know what pets are grandfathered."

Larry Holmes, president of the Association of Condominium Managers of Ontario, believes that boards should have the ability to ban pets but that if there is a no-pet rule, or restrictions, they should be enforced right from the start "equitably and uniformly," not haphazardly or occasionally.

At the same time, he thinks it's smarter to focus on the behaviour of an animal and whether it's a nuisance and whether the owner is taking responsible care of it.

Restrictions like a 25-pound limit can be a nuisance to condo managers, he says. "What happens if a dog gains two pounds? You don't want to walk around with a weigh scale and say, can I weigh your dog?"

Glenn McClocklin lives in a lakeshore condominium which has a one-pet, 25-pound weight restriction. One owner with a heavier dog took the board to court over the rule and won. However, the board appealed the decision and recently, about five years after the initial decision, it won. In the interim, many people had moved in with heavier dogs and nothing was said to them, says McClocklin.

"People got together and tried to grandfather or change the rule to 40 pounds but met with a great deal of opposition from the board and some residents," says McClocklin. "When it was finally put to a vote after some very ugly debates it was turned down and residents were given five days to remove their pets or put their unit up for sale and be out within 90 days."

McClocklin himself has a 4-year-old cocker spaniel that weighs 22 pounds. After the decision to oust the heavier dogs, someone mistakenly told the board that his dog exceeded the limit. McClocklin says he ended up spending \$1,700 in legal fees before the board would accept a document (signed by a vet) that stated his dog was 22 pounds.

And even though his dog is within the allowed limit - and he jokes about having to watch her weight - he feels sorry for those people who had to move out and doesn't understand the mentality behind the rule.

"There were a lot of things said then, like larger dogs put more wear and tear on carpets," says McClocklin. "So, does that mean that anyone who's over 200 pounds should move out? Or, they said, 'if you have a dog over 25 pounds, you couldn't carry it down a stairwell if there was a fire.'

Well, what about handicapped people - could they be carried down a stairwell? It doesn't make sense. This whole affair was disgusting."

A similar scenario played out at another Richmond Hill condominium.

One woman, a senior who still lives there, said pets had been living in the officially no-pets building for years before the rule suddenly started being enforced and there had been no problems. She says that at a condo board meeting a few years back, the board president said pets were not a problem and could stay.

Another woman, who had two cats at the same building and was forced to sell and move early this year, told The Star that when she moved in six years ago, there was even a sign in a common area reminding tenants to scoop up after their animals. She had looked at many units in the building before buying one and they all had cats. Also, her sales agent told her pets were allowed.

The problem started with a barking dog - in the latter part of 1998. All residents got letters stating that all pets, including goldfish, had to be removed from their units within 30 days. Both women said that some of the unit owners couldn't find homes for their animals in time and had to pay the board's lawyer \$2,200 because they missed the deadline, even though their units were already up for sale or were sold.

When the board refused to grandfather the existing pets, the women said some owners started a petition but were told by the board to stop. The woman who moved out, said she still visits friends in the building and one has to hide her goldfish bowl under her bed when maintenance is being carried out in her apartment.

"It's a terrible way for people to have to live," she says, adding that there are children in the condo and of course, it's not legal to ban them despite the noise they can sometimes cause. But a silent goldfish has to go if anyone finds out about it.

It's not easy, but some condo owners with "outlawed pets" have fought back and, despite the odds, have won the right to keep them.

George Wang lives in a three-building lakeshore condo complex in the west end with his 80-odd-pound Golden Retriever. Each building has its own board of directors and all three allow one pet per unit, although a 30-pound limit was long ignored, says Wang.

After a couple of complaints about dogs (not related to their size) last year, the boards decided to enforce the weight rule. Two of the three boards voted to "grandfather" all the existing pets and enforce the weight rule for new owners. But the building Wang was in refused the grandfathering option and went for enforcement, no exceptions.

Wang and seven other owners got together, retained a lawyer, and circulated a petition, getting enough signatures to force the board to hold a vote on grandfathering the pets over 30 pounds last November. They also collected proxy votes from all unit owners who supported them.

It took hours of work from everyone involved but Wang says it was worth it and it became obvious that most unit owners didn't agree with the board members' position.

"We won by a landslide and the grandfathering for the existing owners of a second dog or a dog over 30 pounds was approved," says Wang.

"Looking back I can't help but register a bit of cynicism with condo politics, but I'd rather focus on the positive.

"If you're willing to work and fight for something important, you can beat seemingly daunting odds."

[Illustration]

Caption: TORONTO STAR FILE PHOTO / MEOW MESS: Richard and Marian Ryll found themselves in the eye of a legal storm when they were evicted from their East York apartment in 1990 rather than give up their ailing cat, Fluffy. They later moved into a co-op.; JOHN MAHLER / TORONTO STAR / SOMETHING'S FISHY: A room divider in one of the converted lofts at 347 Sorauren Ave. features an aquarium, but some buildings ban all pets - including fish.; VINCE TALOTTA / TORONTO STAR / CONDO DOGS: George Wang, right, and other owners at a lakeshore condo campaigned to have dogs over 30 pounds "grandfathered." "If you're willing to work and fight for something important, you can beat seemingly daunting odds," Wang says.

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