CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 21, 2022
CASE: 2021-00408N
Citation: Douglas v. Simcoe Condominium Corporation No. 148, 2022 ONCAT 20

Order under section 1.44 of the *Condominium Act, 1998.*

Member: Michael Clifton, Vice-Chair

The Applicant,
Sahlu Douglas
Self-Represented

The Respondent,
Simcoe Condominium Corporation No. 148

Hearing: Written Online Hearing – December 28, 2021 to March 15, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] This case concerns the parking of a commercial-use vehicle in a condominium parking lot, allegedly contrary to the condominium's rules. I find that the condominium's rules are ambiguous and cannot be relied on to prohibit parking of a commercial vehicle on the condominium property. I also find that the condominium must therefore reimburse the Applicant for expenses incurred specifically due to the condominium's enforcement of its interpretation of its rules. I award both a reimbursement amount and costs in favour of the Applicant.

[2] Although informed of this case and reminded several times by Tribunal staff to participate in it, and having acknowledged such communications, the Respondent did not at any time take part in these proceedings. This lack of participation continued despite a change in the Respondent's management provider from the one whose conduct and communications are impugned in this decision – MJS Property Management ("MJS") – to Larlyn Property Management, and despite communications from Tribunal staff with both management providers. This decision is therefore made without the benefit of any submissions or evidence having been provided on behalf of the Respondent.

B. BACKGROUND

[3] The Applicant is the owner of a residential unit of the Respondent condominium. The Applicant leases the unit to tenants. The tenancy relevant to this case commenced on or around November 15, 2021. At that time, information about the tenant's vehicle, pets, and other personal details, were registered with the Respondent in accordance with its policies and procedures.

[4] On November 25, 2021, MJS sent an email to the Applicant demanding that the tenant remove their vehicle from the property, since it was identified as a commercial-use vehicle. In that email, the manager stated, "parking of commercial vehicles is not permissible anywhere on the property."

[5] Based on the photographic evidence submitted in this case, the vehicle in question is a white van covered prominently in boldly coloured decals advertising a pet care company, its phone number and email address. There is no reasonable basis for questioning that the vehicle has a commercial use, at least as a mobile advertisement for that business.

[6] The Applicant also confirms that the vehicle was used by the tenant while providing services related to the advertised business; however, the Applicant explained that the vehicle was also the tenant's personal-use vehicle. The Applicant's position is that, regardless of whether the vehicle was used commercially (exclusively or in part), the rules of the condominium do not actually prohibit commercial vehicles from being on the property, contrary to the manager's correspondence.

C. ISSUES & ANALYSIS

ISSUE 1: DO THE CONDOMINIUM RULES PROHIBIT PARKING OF COMMERCIAL-USE VEHICLES?

[7] The Applicant provided a copy of the rules of the condominium. The relevant clause is found in Rule 11, which states:

> No motor vehicle other than a private passenger automobile, station wagon, light duty van or light duty pick-up truck shall be parked on any of the common elements (including any part thereof, of which any owner may have the exclusive use).

I agree with the Applicant that the rule does not expressly prohibit commercial-use vehicles from parking on the property.

[8] I infer from the condominium manager's correspondence included in the Applicant's evidence, that the Respondent's view is that the phrase "private passenger" inherently prohibits commercial-use vehicles of all kinds from being on the property. However, the phrase does not unambiguously carry that meaning. In particular, it is not clear that a vehicle that is used for both personal and commercial purposes should not still qualify as a "private passenger" vehicle.

[9] In addition, the rule lists four types of motor vehicle that are permitted on the property: "a private passenger automobile, station wagon, light duty van or light duty pick-up truck." While the ordinary person might consider that station wagons, light duty vans and light duty pick-up trucks all fall within the category of "automobile," it is reasonable, based on the construction of the sentence in question, to conclude that the drafter of this rule intended "automobile" to mean a type of vehicle other than one of the three types listed after it. Therefore, there is also a reasonable basis for uncertainty – or, in other words, ambiguity – about whether the descriptor, "private passenger," should apply only to the term "automobile" or severally to each of the terms, "automobile, station wagon, light duty van or light duty pick-up truck." I note that the tenant's vehicle in question is best described as a "light duty van".

[10] Ambiguity undermines reasonableness. While condominium boards are entitled to some deference regarding the exercise of their discretion, such deference cannot be relied upon to allow enforcement that is based on arbitrary interpretations of ambiguous wording in their rules. Following usual reasoning in similar legal matters, such ambiguity should be resolved in favour of the person against whom the rule is to be enforced. To avoid this, the condominium could take steps to ensure ambiguous language is corrected or clarified through appropriate amendments to the rules. Otherwise, unit owners and residents may be subject to a constant state of uncertainty and insecurity about the meaning of, and their ability to comply with, those rules. I find that the Respondent's Rule 11 is sufficiently ambiguous as to make the actions taken in this case to enforce a prohibition against parking of the Applicant's tenant's vehicle unreasonable.

ISSUE 2: IS THE APPLICANT ENTITLED TO REIMBURSEMENT BY THE RESPONDENT?

[11] The Applicant described its efforts to negotiate with the condominium manager (MJS) about this situation, but states that the manager was "uncompromising and rude." The manager, acting on behalf of the Respondent, had the tenant's vehicle ticketed and threatened that it would be towed (on the same day the threat was made) if it remained on the property. As a result of such actions and threats, the

tenant decided to terminate their tenancy on December 6, 2021. The Applicant notes that although the condominium management provider was soon replaced, “the damage had already been done” as it was too late by then to prevent the termination of the tenancy or avoid the related expenses incurred by the Applicant.

[12] On review of the evidence provided by the Applicant, which included some correspondence from the tenant, I find on a balance of probabilities that the enforcement and threats of further enforcement of the Respondent’s interpretation of its rules were the reason for the tenant’s decision to terminate her tenancy. I find that but for such enforcement and threats, the tenancy was likely to continue. Instead, the Applicant was pressed into the position of letting the tenant terminate the tenancy significantly prior to its expected termination date, and of then investing additional time, effort, and money in finding a new tenant as quickly as possible in order to minimize its losses. I find that such losses would not have been incurred but for the conduct of the Respondent.

[13] Section 1.44 (1) 7 of the Act permits the Tribunal to make an order directing “whatever ...relief the Tribunal considers fair in the circumstances.” I find it fair in the circumstances of this case that the Applicant be awarded reimbursement of its expenses resulting from the erroneous and unreasonable application of its rules by the Respondent.

[14] The Applicant provided evidence of the following expenses incurred because of the termination of tenancy:

1. Return to the tenant of pro-rated rent for December 2021 in the amount of $2022;

2. Return of the tenant’s last month’s rent deposit in the amount of $2100;

3. Reimbursement of the tenant’s parking ticket in the amount of $35;

4. Fee for re-listing the unit for rent by Citysites Realty, totaling $2,429.50, including HST;

5. Utility invoices (hydro and gas) and HVAC rental for the period following the termination of the tenancy until a new tenancy commenced, totaling $94.97;

for a total claim of $6,681.47. I am satisfied that the amounts claimed are genuine and accurate; however, I find that the Applicant is entitled to be reimbursed for only some of these amounts.

[15] I find that the Applicant is entitled to reimbursement by the Respondent for the fee for re-listing the unit for rent by Citysites Realty and the utility costs incurred for the period following termination of the tenancy before the new tenancy commenced. The last month's rent deposit was appropriately returned to the tenant and was not money that the Applicant was entitled to retain in any event, having agreed to the early termination of the tenancy and having received payment for the December rent. In regard to the return to the tenant of the pro-rated portion of the December rent and payment by the Applicant of the tenant's parking ticket charge, I recognize that both these expenses are directly related to the Respondent's actions, however it is not evident that it was necessary for the Applicant to pay these amounts to the tenant, but that the Applicant decided to do this of his own volition out of sympathy for the tenant's circumstances. The Applicant's voluntarily generosity to the tenant is commendable, but not something for which the Respondent should be obligated to pay. Therefore, the total amount that the Respondent is ordered to pay as reimbursement to the Applicant is $2,524.47.

ISSUE 3: IS THE APPLICANT ENTITLED TO COSTS OF THESE PROCEEDINGS?

[16] In accordance with Rule 48.1 of the Tribunal's Rules, the Applicant is entitled to reimbursement of his costs of these proceedings in the amount of $150. (This is lower than the usual costs associated with Stage 3 proceedings, since the Applicant proceeded directly from Stage 1 to Stage 3 due to the non-participation of the Respondent.)

ORDER

[17] It is the Order of this Tribunal that, within 30 days of the date of this Order, the Respondent shall pay to the Applicant the amount of $2,524.47 as reimbursement of expenses arising on account of the Respondent's actions, and costs in the amount of $150.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: March 21, 2022