

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 22, 2021

CASE: 2021-00035N

Citation: Essex Condominium Corporation No 25 v. Hornick, 2021 ONCAT 54

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

Member: Nicole Aylwin, Member

The Applicant,

Essex Condominium Corporation No. 25

Represented by Sean Doyle, Agent

The Respondent,

Duane Hornick

Self-Represented

Hearing: Written Online Hearing – May 10, 2021 to June 16, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case pertains to the enforcement of provisions of the declaration, by-laws or rules of a corporation that prohibit, restrict, or otherwise govern parking.
- [2] The Applicant, Essex Condominium Corporation No. 25 ("ECC 25") asserts that the Respondent, Mr. Duane Hornick, who is a unit owner in ECC 25, is parking in the visitor parking lot in breach of the Corporation's governing documents, specifically its rule 2.18 ("visitor parking rule"), which restricts the use of the outdoor parking lots to visitors. ECC 25 has brought this case to the Tribunal to enforce its rules and has asked the Tribunal to decide two issues:
1. Does the parking of Mr. Hornick's truck in the outdoor visitor parking area violate the declaration, by-laws and rules of the ECC 25?
 2. Should Mr. Hornick be allowed to park his truck in the visitor's parking area?
- [3] Despite having joined the case, Mr. Hornick did not participate in this Stage 3 - Tribunal Decision hearing. ECC 25 provided evidence that the Summary and

Order produced at the end of Stage 2 - Mediation had been sent to Mr. Hornick by email and regular mail. Mr. Hornick was also contacted by Tribunal staff at the outset of this Stage 3 hearing and confirmed that he was aware of the case and his responsibility to participate. Nonetheless, Mr. Hornick offered no arguments or evidence for the Tribunal to consider in this matter.

- [4] For the reasons set out below, I find that there is insufficient evidence before me to determine if Mr. Hornick is in violation of the condominium rules. Thus, I order that this application be dismissed. In dismissing this case, I recognize that there is a real dispute over the rules around visitor parking and a real need to resolve these issues. However, there is insufficient evidence, in this case, for me to decide the issues.

B. ANALYSIS

- [5] In its submissions ECC 25 notes that according to the *Condominium Act, 1998* ("the Act"), the Corporation has a responsibility to ensure that unit owners are complying with the Act and the Corporation's own declaration, by-laws and rules.
- [6] They further note that under s.58 of the Act the Corporation is allowed to make rules that "promote the safety, security or welfare of the owners and of the property..." and rules that "prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation". They assert that rule 2.18, which governs visitor parking, is one such rule.
- [7] Section 2.18 of ECC 25's Rules and Regulations provides that:
- The parking lots at the front and rear of the building are reserved for visitors and guests only. Condominium residents are expected to park in their designated spaces in the parking garage. Vehicles remaining in the parking lot longer than 24 hours should be registered with the Resident Manager. Unauthorized vehicles are subject to towing at the owner's expense. The driveway and parking area on the west side of the building is reserved for delivery vehicles and moving vans. The Resident Manager should be notified if this area is to be occupied longer than fifteen minutes.
- [8] In its submissions, ECC 25 explains that they have received "several complaints from owners demanding the board take action to enforce the ECC 25 [parking] rule" and that the parking of Mr. Hornick's vehicle in the visitor lots violates the visitor parking rule. To support its position, ECC 25 provided a copy of its Rules and Regulations as well as its Declaration. They provided no further evidence.

[9] I have no reason to doubt ECC 25's claim that they have received complaints and calls to enforce the visitor parking rule. Nor do I question ECC 25's position that rules that define condominium living are "usually used to help owners get along with one another" and that ECC 25 has a duty to enforce those rules. Based on the evidence provided, ECC 25 does have a rule that governs visitor parking and reserves that parking for visitors and guests. The rule also states that condominium residents are expected to park in their designated spaces in the parking garage.

[10] However, ECC 25 has brought this case against a particular unit owner, Mr. Hornick, and the onus is on ECC 25 to demonstrate, on a balance of probabilities, that Mr. Hornick, specifically, has breached the rules of the Corporation. They have not done so. While ECC 25 may have demonstrated that there is a rule that governs who may park in the visitor parking area, and while they have asserted that the Corporation has an obligation to enforce its visitor parking rule, this is not enough. To decide on the issues in front of me there must be evidence to suggest that Mr. Hornick is parking in visitor parking lots in violation of the rule. There is no evidence in front of me that establishes this fact. Without sufficient evidence to suggest, one way or the other, that Mr. Hornick is parking in visitor parking, I cannot determine if Mr. Hornick has breached or is breaching the rules of the corporation, thus, I order that this application be dismissed.

C. ORDER

[11] For the reasons set out above, the application is dismissed. No costs are awarded.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: June 22, 2021