

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 1, 2021

**CASE:** 2021-00249N

**Citation:** Davy v. Toronto Standard Condominium Corporation No. 2121, 2021 ONCAT 114

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

**Member:** Keegan Ferreira, Vice-Chair

**The Applicant,**

Amanda Davy  
Self-Represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 2121  
Represented by Gary Wine, Condominium Manager

**Hearing:** Written Online Hearing – August 25, 2021, to November 1, 2021

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Amanda Davy (the “Applicant”) is the owner of a unit in Toronto Standard Condominium Corporation No. 2121 (the “Respondent”).
- [2] The Applicant has regularly requested visitor parking passes from the Respondent in order to park a family member’s car that has been occasionally loaned to her and that she is using for her personal use. She does not own a car.
- [3] The Applicant had previously been able to obtain a maximum of two visitor parking passes per week for her vehicle up to June 18, 2021, when the Respondent advised her that it would no longer allow her requests for visitor parking passes for that specific vehicle.
- [4] The Applicant contacted the Respondent’s board about this decision and the board confirmed the decision to deny visitor parking passes to her for her personal vehicle. The Applicant filed this case to contest that decision.
- [5] The Respondent asserts that it is simply enforcing compliance with the condominium corporation’s parking rules. The Respondent submits that it has

faced many parking issues in its 11-year history. The Respondent has 469 units and only has access to 40 visitor parking spaces. This issue is compounded by the fact that the Respondent is located across the street from a busy subway station, and many commuters have parked their vehicles in the visitor parking to avoid paying for parking at other locations.

[6] The Respondent advised that over the last 11 years, it has addressed numerous complaints from owners demanding that management do something about the lack of visitor parking spaces. This has led the board and management to put particular focus on enforcing rules concerning parking.

[7] The issues before me in this case are:

- a) According to the Respondent's rules, is the Applicant entitled to visitor parking passes for her personal use of a vehicle she does not own?
- b) Are the Respondent's rules about visitor parking passes reasonable?
- c) Are the Respondent's rules about visitor parking passes being applied in a consistent manner?
- d) Should the Applicant be awarded costs?

## **B. RESULT**

[8] For the reasons set out below, I find that the Applicant is not entitled to visitor parking passes for her vehicle and must cease parking in the visitor parking. I also find that the Respondent's rules about visitor parking passes are reasonable and are being applied in a consistent manner. I make no order for costs.

## **C. EVIDENCE AND ANALYSIS**

**Issue #1: According to the Respondent's rules, is the Applicant entitled to visitor parking passes for her personal use of a vehicle she does not own?**

[9] The Applicant asserts that she should be allowed to occasionally park a car that does not belong to her in the visitor parking. In support of that assertion, she made several different arguments.

[10] First, the Applicant noted that she does not own a vehicle, and has to occasionally borrow a family member's car, to drive to appointments and for other errands. The Applicant advised that she has recently had a baby and has many appointments to attend, noting that she prefers to do so by car rather than public transit for safety

reasons in light of the COVID-19 pandemic.

- [11] When the Applicant borrows a vehicle, the family member loaning them the vehicle has sometimes dropped it off the night before and parked it in the visitor parking. The Applicant advised that the family member who loans the car does also stay over as a guest.
- [12] In reply to this argument, the Respondent indicated that while the board is sympathetic to the Applicant's situation, the Respondent has an obligation to enforce compliance with the rules to protect the interests of all owners.
- [13] Second, the Applicant argued that there are many spots that are unused and uploaded pictures during the hearing showing the visitor parking area. The Applicant argued that her parking in the visitor parking does not pose a problem and she should be allowed to continue.
- [14] In reply, the Respondent asserted that the visitor parking is often full and that there have been many issues in the past with the use / abuse of the visitor parking. The Respondent asserts that the pictures uploaded by the Applicant are not compelling evidence that there are no issues with access to the visitor parking. I agree with the Respondent that the pictures are not persuasive evidence that the spaces are not occupied at other times or that there are no issues with the use of the spaces generally. Furthermore, the issue here is not whether there are spots which the Applicant could potentially use – the issue is whether the Applicant's use of those visitor parking spots violates the condominium corporation's rules.
- [15] Third, the Applicant noted that she needs to rent her parking space because she depends on the money she receives from its rental. She advised that their family is stressed financially due to pandemic and cannot afford to stop renting their parking space so she can use it when she borrows a vehicle.
- [16] In reply, the Respondent noted that it respects her decision to rent out her parking space, which is her right as the owner of the space. The Respondent notes, however, that it is the Applicant's decision to rent out her space that has led to this issue and is why she now parks in the visitor parking. The Respondent notes that the board of directors has a duty to ensure that the amenities are used in a fair and equitable manner, and to prevent the actions of one owner from negatively impacting the community as a whole.
- [17] The Respondent also noted that it had offered to allow the Applicant to park the vehicle she has been borrowing in the visitor parking for a period of 60 days in order to allow her time to give her parking space tenant sufficient notice to vacate

her parking space.

[18] Fourth, the Applicant argues that parking a borrowed vehicle is not actually a contravention of the condominium corporation's rules. She points to the specific wording of rule 4.20, which reads: "Owners of the building may not be issued with Guest Passes for use of their own vehicles." The Applicant contends that since the vehicle she is parking is not one she owns (i.e., it belongs to the family member from whom they have borrowed it), that she is not in violation of the rule. The Applicant also asserted that it is her interpretation that is the vehicle itself that is the guest, and not the person driving or occupying it. The Applicant argues that the Respondent should not be allowed to conclude that their interpretation of the rules is always right.

[19] In reply, the Respondent noted that in order to park in a visitor parking space, a resident must obtain a guest pass, and that the issuance of the pass is restricted to "guests" only. The Respondent interprets the word "guest" to refer to a non-resident that is visiting a member of the condominium community. In the Respondent's interpretation, neither owners nor vehicles are, or can be, guests. Since the Applicant acknowledges that she is parking the vehicle in the visitor parking even if the owner of that vehicle is not staying in the condominium community, the Respondent argues that she is contravening the rules.

[20] There are at least two other rules of the Respondent which are relevant in this case. Specifically, rule 4.6, which reads: "Owners or residents shall only park in parking spaces either leased or owned by them," and rule 4.7, which reads:

No owner shall park, or permit to be parked, a motor vehicle on any portion of the common elements comprising of a roadway and/or driveway and/or service entrance, visitor parking spaces, or any parking unit which is not either owned or leased by the said owner, or where such parking in the opinion of the manager or the board may pose a safety or security hazard, (caused either by the length of an unattended stay, or the physical condition of the offending motor vehicle), or which may cause damage to the property.

[21] The decisions of the Respondent in this matter are subject to the business judgment rule, which requires that I defer to the judgment of the Respondent in conducting its business provided that they have acted in good faith, that their decision-making process is reasonable, and that the decision they have made falls within a range of reasonable outcomes. This rule is founded on the principle that the Respondent is in the best position to understand and balance the competing needs and interests of the members of the condominium community.

[22] It is clear that the Respondent's rules are intended to restrict the use of visitor

parking to actual visitors / guests (i.e., individuals who do not reside within the condominium corporation). They are being enforced in light of previous issues that the Respondent has had with the use / abuse of its visitor parking spaces over a period of many years.

[23] Based on the evidence before me, I conclude that the Respondent has acted in good faith in enforcing the rules, and that its decision to do so or its decision-making process is reasonable. Accordingly, I find that the Applicant is not permitted under the rules to park a vehicle she is using in the visitor parking, whether or not she is the owner of the vehicle.

[24] Finally, I note that if the Applicant's interpretation of the Respondent's rules were valid, then all residents would be entitled to visitor parking passes for vehicles they do not own (e.g., any vehicles they had rented, borrowed, or leased) without restriction. The result of such an interpretation is clearly contrary to the intent of the rules and would likely result in further issues in the visitor parking.

#### **Issue #2: Are the Respondent's rules about visitor parking passes reasonable?**

[25] The Respondent's rules stipulate that a resident may obtain a visitor parking pass for a guest for 48 hours at a time, up to twice per week.

[26] Under section 58 of the *Condominium Act, 1998*, a condominium corporation may make rules to prevent unreasonable interference with the use and enjoyment of the units and the common elements of the corporation.

[27] As explained above, the Respondent's rules about visitor parking passes were developed and are being enforced in light of issues the Respondent has had in the past with owners and others parking their vehicles in the visitor parking. The Respondent has 469 units and only has access to 40 visitor parking spaces. The Respondent has received numerous complaints from owners demanding that management do something about the lack of visitor parking spaces, and so the board and management have placed a particular focus on enforcing these rules.

[28] The Applicant did not provide specific evidence or arguments as to why she believes the rules themselves are unreasonable; she did, however, dispute the Respondent's interpretation of the rules (which was addressed in Issue #1 above) and argued that they were not being applied consistently (which is addressed in Issue #3 below).

[29] Based on the evidence before me, I find that the Respondent's rules about visitor parking passes are reasonable.

**Issue #3: Are the Respondent's rules about visitor parking passes being applied in a consistent manner?**

[30] The Applicant argues that the Respondent has not been enforcing the rules regarding parking consistently. None of the rules cited by the Applicant are rules related to visitor parking passes but relate to such matters as parking decals (rule 4.2), bicycle storage (rule 1.30), resident identification cards (rule 10.1), and COVID-19 pandemic-related requirements. In reply, the Respondent submitted that management and the board have denied requests from other owners to be allowed to park in the visitor parking in the past. The Respondent asserts that it has been consistent in its decision making and that their refusal to allow the Applicant is neither unique nor novel. The Respondent referred specifically to a situation with one of the condominium corporation's board members, who used to park her nephew's car in the visitor parking. After being advised that this was contrary to the rules, she now rents a parking spot from another owner in order to park the car whenever she borrows it from her nephew.

[31] The Applicant also advised that she understood that her family member's vehicle had been completely banned from the visitor parking even when the family member was actually visiting. The Respondent affirmed the Applicant that their family member is welcome to visit her family as a guest and is free to obtain a visitor parking pass in the future on the understanding that she would remove the vehicle once she leaves the property.

**Issue #4: Should the Applicant be awarded costs?**

[32] The Applicant advised me that if she was successful in the case, she wanted an order requiring the Respondent to reimburse her for her CAT fees. The Respondent did not make any request for costs.

[33] The Applicant has not been successful in this case. Accordingly, I make no order for costs.

**D. ORDER**

[34] The Tribunal Orders that:

1. The case is dismissed.

Vice-Chair, Condominium Authority Tribunal

Released on: December 1, 2021