

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** September 10, 2024

**CASE:** 2024-00387N

**Citation:** Ottawa-Carleton Condominium Corporation No. 585 v. Wicks et al., 2024 ONCAT 138

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Ottawa-Carleton Condominium Corporation No. 585  
Represented by Mitchell Robinson, Counsel

**The Respondents,**

Shane Wicks  
Not Participating

Emma Wicks (Scotchmer)  
Not Participating

Shivam Gupta  
Self-Represented

**Hearing:** Written Online Hearing – August 6, 2024 to August 28, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Shane and Emma Wicks (“the Unit Owners”) are unit owners in Ottawa-Carleton Condominium Corporation No. 585 (“OCCC 585”). Shiva Gupta (“the Occupant”) occupies the unit.
- [2] The Occupant joined the case but did not participate and was not represented. The Unit Owners did not join the case. OCCC 585 submits that it served notice of this case to the Unit Owners on June 21, 2024, July 3, 2024, and July 18, 2024, by way of regular mail. Based on the submissions of OCCC 585, I am satisfied that the Unit Owners received notice of this case. The hearing proceeded in their absence.

- [3] OCCC 585 brings this application alleging that the Occupant has breached the provisions of its governing documents with respect to parking and noise. OCCC 585 submits that since October 2023, the Occupant has created, and continues to create, noise that is a nuisance that disturb the comfort and quiet enjoyment of others in or on the property. Further, the Occupant frequently parks in designated fire lanes and uses the visitor parking, both of which are prohibited by the corporation's rules.
- [4] OCCC 585 further alleges the Unit Owners have failed to comply with their obligations under the corporation's governing documents. OCCC 585 submits that the Unit Owners have not:
- a) Provided the corporation with information (including vehicle information) about the occupant(s) living in their unit, nor
  - b) sought their Occupant's compliance with the corporation's governing documents with respect to its parking and noise rules.
- [5] OCCC 585 seeks orders requiring the Unit Owners and the Occupant to comply with its governing documents. It also seeks orders indemnifying it for the costs incurred stemming from its enforcement efforts, and for the legal costs incurred for participating in the Tribunal proceeding.

## **B. OUTCOME**

- [6] Having considered the uncontested evidence before me, I find the Unit Owners and the Occupant have failed to comply with their respective obligations as required by OCCC 585's governing documents. I will order the Unit Owners and the Occupant to comply with OCCC 585's governing documents.
- [7] I further find it reasonable to make orders requiring the Unit Owners to pay compensation to OCCC 585 for the costs it incurred for its enforcement efforts, and for legal costs incurred for participating in the Tribunal proceeding.

## **C. ISSUES & ANALYSIS**

### **Issue No. 1: Have the Unit Owners and the Occupant breached the noise and parking provisions of OCCC 585's governing documents?**

- [8] Section 4.1 and 9.2 of OCCC 585's declaration sets out the responsibilities of unit owners with respect to occupation and use of units. Sections 4.1 and 9.2 require unit owners who lease their unit to provide a copy of the lease to the corporation. It also requires that unit owners require all residents, occupants and visitors of their

unit to comply with the *Condominium Act, 1998* (the “Act”), its declaration, bylaws, rules and regulations. Section 2 of OCCC 585’s rules state with more detail unit owners’ responsibilities as set out its declaration. Rules 22.1, 22.2, 22.3 outline that no one shall create or permit the creation of noise or nuisance. Rules 25.4 and 25.7 stipulate that no vehicle can park in designated fire lanes and residents of the property are not allowed to park in visitor parking.

- [9] OCCC 585’s uncontested evidence demonstrates that since the Unit Owners purchased their unit in September 2020, they have used the unit as a rental property.
- [10] OCCC 585 has repeatedly contacted the Unit Owners to ask them to provide information about the occupants living in their unit. The Unit Owners did not respond.
- [11] On August 29, 2022, OCCC 585 sent an email to the Unit Owners advising that they did not provide all necessary information about the occupant living in their unit. Specifically, they did not provide a copy of the lease and vehicle information. The Unit Owners only provided a name of a person occupying the unit, which is different than the Respondent Occupant in this matter.
- [12] On May 10, 2023, OCCC 585 sent another email to the Unit Owners advising that they did not provide all the required information about the people occupying their unit. In that email, OCCC 585 also advised the Unit Owners that while they previously indicated one person was occupying their unit, the corporation has observed more than three individuals associated with their unit. OCCC 585 again asked the Unit Owners to provide all required information about the occupants living in their unit. The Unit Owners responded that only the previously named occupant and his girlfriend live in the unit but did not provide OCCC 585 any further information.
- [13] In the May 10, 2023, email, OCCC 585 also advised the Unit Owners of ongoing noise complaints in relation to their unit. The noise complaints consisted of loud music being played at all hours of the day and night. In response, the Unit Owners denied having prior knowledge of the complaints and indicated that had they been advised at the time of the noise complaints, they could have addressed it with their tenants.
- [14] On December 28, 2023, OCCC 585 sent the Unit Owners an email advising that one of their occupants were parking in the visitor parking and on the roadway in a fire route. OCCC 585 reminded the Unit Owners that this was a violation of the corporation’s rules, and the vehicle is at risk of being ticketed or towed. The Unit

Owners did not provide a response in relation to this issue.

- [15] Following the December 2023 email, the occupants continued to park in visitor parking and in the fire routes. On numerous occasions, the occupants' vehicles were ticketed and towed.
- [16] OCCC 585 continued to receive numerous noise and parking complaints with respect to the Occupant and others living in the unit. Some of the complaints indicated concerns that the unit was being used as a rooming house with several people occupying it. OCCC 585 found an online ad for the unit which stated that the Unit Owners rented the unit by the bedroom for university students.
- [17] Given the lack of response from the Unit Owners in addressing the concerns brought to their attention, OCCC 585 engaged the services of their legal representative. On January 23, 2024, OCCC 585's legal representative sent a letter to the Unit Owners. The letter outlines concerns for the number of occupants living in the unit, the unit being used as a rooming house contrary to its rule 19.1, Unit Owners not providing all required information pertaining to the occupants living in the unit, the Occupant's parking violations and ongoing creation of unreasonable noise. The letter reminded the Unit Owners of their obligations under the Act and the corporation's governing documents. The letter further set out deadlines for the Unit Owner to require the occupants to comply with the provisions of OCCC 585's noise and parking provisions, for them to stop using the unit as a rooming house, and to provide copies of the rental leases for all occupants and their vehicle information. In addition, the Unit Owners were made aware of their obligation to indemnify OCCC 585 for the costs it incurred for needing to involve its legal representative in attempts to resolve the concerns. Provisions for indemnification are found in section 8.1 of OCCC 585's declaration and section 1.1 of its rules.
- [18] The Unit Owners did not comply with the directions or respond to the complaints set out in the January 23, 2024, letter. As such, on March 6, 2024, OCCC 585's legal representative sent another letter to the Unit Owners. In this letter, OCCC 585 advised that they conducted an inspection of the unit and confirmed that multiple people were living in the unit. It further advised that the occupants of the unit continue to park in the visitor parking and fire lanes. The Unit Owners were put on notice that should they and the occupants not comply with the Act and OCCC 585's governing documents, it would commence an application with "the Court" to seek an order requiring their compliance. The letter again provided the Unit Owners deadlines for compliance and advised that they were required to indemnify OCCC 585 \$1,469 for the legal fees incurred for enforcement efforts (two letters),

and any future legal fees that may be incurred if further legal action is required.

- [19] As the Unit Owners and the Occupant did not respond or comply with the directions set out in their letters, OCCC 585 filed this application.
- [20] The evidence before me demonstrates that the Unit Owners have disregarded their responsibilities under section 4.1 and 9.2 of OCCC 585's declaration by failing to ensure the Occupant, visitors and/or others living in their unit, comply with the corporation's governing documents. Specifically, the Unit Owners have not ensured that the Occupant, visitors and/or others living in their unit comply with OCCC 585's rules 22.1, 22.2, 22.3 pertaining to noise and rules 25.4 and 25.7 with respect to parking. This was despite having been advised by OCCC 585 of their responsibility to address ongoing noise and parking complaints stemming from the behaviour of the Occupant and others living and/or visiting their unit.
- [21] For these reasons, I find the Unit Owners have breached their obligations under section 4.1 and 9.2 of OCCC 585's declaration and I am making an order that they comply.
- [22] Further, the evidence before me demonstrates that the Occupant of the unit has failed to comply with OCCC 585's rules 22.1, 22.2 and 22.3 by creating unreasonable noise resulting in nuisance for others living in the condominium property. The Occupant has or has allowed others living in or visiting the unit to play loud music during all hours of the day and night resulting in OCCC 585 receiving numerous complaints. Additionally, the evidence demonstrates that the Occupant has breached OCCC 585's rule 25.4 and 25.7 by repeatedly parking in the visitor parking and in the fire lanes located on the condominium property. The Occupant continued to violate the parking rules despite their car having been towed and ticketed. This repeated behaviour demonstrates the Occupant's complete disregard for their obligations to comply with the corporation's governing documents. For these reasons, I find the Occupant has failed to comply with OCCC 585's rules pertaining to the creation of noise causing a nuisance and parking. I will order the Occupant to comply with OCCC 585's rule 22.1, 22.2, 22.3, 25.4 and 25.7.

## **Issue No. 2: Is OCCC 585 entitled to orders for compensation and costs?**

### Compensation

- [23] OCCC 585 has requested an order requiring the Respondents pay it compensation in the amount of \$2,059.99 for the legal costs related to sending the two compliance letters. I note that this amount is inconsistent with the amount

counsel cited in the letter of March 6, 2024. In this letter, counsel stated: “Since the Corporation has been required to involve legal counsel in these matters, the Corporation has incurred additional legal costs in the amount of \$650.00 plus HST (\$734.50). The previous amount set out in my earlier letter of \$650.00 plus HST (\$734.50) has also not been paid. Accordingly, the total amount owing is now **\$1,469.00**”.

[24] OCC 585 also seeks an order for compensation requiring the Respondents to reimburse it the fees (\$284.76) incurred for having the Occupant’s vehicle towed and ticketed.

[25] OCC 585 submits that on the basis of the provisions of section 8.1 of its declaration and its rule 1.1 it is entitled to recover its costs in full. The relevant sections of the corporation’s governing documents read as follows:

8.1 Each owner shall indemnify and save harmless the corporation from and against any loss, cost, damage, injury or liability whatsoever which the corporation may suffer or incur resulting from or caused by an act or omission of such owner, the owner's family or any member thereof, any other resident or occupant of that unit or any guests, invitees, licensees or agents of such owner or resident to or with respect to the common elements and/or all other units, except for any loss, cost, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the corporation.

All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable as such or by such other procedure the corporation elects.

1.1 Any losses, costs or damages incurred by the Corporation by reason of a breach of these Rules by any Owner, his or her family, guests, servants, agents, tenants or occupants of his or her unit shall be borne by such Owner (and added to the Owner’s common expenses) and may be recovered by the Corporation against such Owner in the same manner as common expenses in accordance with the Act and the Corporation’s Declaration. Without limiting the generality of the foregoing, such losses, costs or damages shall include, but shall not necessarily be limited to, the following:

(i) All legal costs incurred by the Corporation in order to enforce, or in attempting to enforce, the Act, Declaration, By-laws or Rules;

(ii) An administration fee in the amount of \$75.00\*, to be payable to the Corporation for any violation that continues after initial notice has been sent,

and further administration fees of \$75.00\* per month, for each month during which the violation continues or is repeated.

[\*NOTE: This administration fee represents actual costs reasonably estimated to be incurred by the Corporation as a result of a violation of the Act, Declaration, By-laws or Rules; and may be reasonably increased, from time to time, by Board resolution.]

- [26] Section 1.44 (1) 3 of the Act provides that the Tribunal can make an order directing a party to pay compensation for damages incurred by another party because of non-compliance.
- [27] I find it appropriate to make an order for compensation under section 1.44 (1) 3 of the Act because the Respondents engaged in conduct that caused OCCC 585 to incur legal costs in attempt to get the Occupant and the Unit Owners to comply with their obligations under the Act and OCCC 585's governing documents. The Unit Owners failed to acknowledge or respond to the complaints when they were brought to their attention which led to OCCC 585 retaining counsel in an attempt to gain compliance with the declaration and rules. Had the Unit Owners engaged with OCCC 585 in trying to resolve the issues, these costs likely would not have been incurred. For these same reasons, I am also ordering the Unit Owner to pay compensation to OCCC 585 for the cost it incurred for towing and ticketing the Occupant's vehicle.
- [28] Accordingly, I order the Unit Owners to pay compensation in the amount of \$1,753.76 (\$1,469 + 284.76) to OCCC 585. These amounts are consistent and in keeping with what OCCC 585 billed the Unit Owners. The Unit Owners shall be solely responsible for reimbursing OCCC 585 this compensation. Ultimately, the Unit Owners had the responsibility to ensure that the Occupant of their unit complied with the Act, and OCCC 585's governing documents.

### Costs

- [29] OCCC 585 seeks an order requiring the Respondents to reimburse it the fee (\$150) paid to file this application, and the legal costs (\$7,520.91) incurred for participating in the Tribunal proceeding.
- [30] OCCC 585 was successful in this matter. Accordingly, in keeping with the Tribunal's Rule 48.1 which states the unsuccessful party will be required to pay the successful party's filing fee, I order the Unit Owners to reimburse OCCC 585 the cost (\$150) of filing this application.
- [31] Regarding OCCC 585's request that the Respondents reimburse it the legal fees

incurred for participating in the Tribunal proceedings, the Tribunal's Rule 48.2 states:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[32] I find it is appropriate that some costs be awarded to OCCC 585. In coming to this conclusion, I considered the Tribunal's Practice Direction: Approach to Ordering Costs, which provides guidance regarding the awarding of costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include the conduct of a party or its representative in the hearing, whether the parties attempted to resolve the issues before the case was filed, the provisions of the governing documents, and whether the parties had a clear understanding of the potential consequences for contravening them. The principle of proportionality is also an important consideration in determining the appropriate quantum of costs.

[33] In determining the amount of legal costs that the Unit Owners will pay to OCCC 585, I find the amount requested is disproportionate to the nature of the issues in dispute, particularly since this is a default proceeding. This means there was no Stage 1 - Negotiation or Stage 2 - Mediation leading up to this hearing. Further the Unit Owners did not join the case, and the Occupant did not participate in the hearing. As such, OCCC 585's counsel did not have to read the opposing parties' evidence, cross-examination did not occur, and there were no delays in the proceeding. The hearing was straightforward and uncomplicated. Weighing the facts in this case, I find it reasonable to award \$3,700 to OCCC 585 for their legal costs. The Unit Owners shall be solely responsible for reimbursing OCCC 585 these costs.

#### **D. ORDER**

[34] The Tribunal Orders that:

1. The Unit Owners shall comply with sections 4.1 and 9.2 of OCCC 585's declaration by taking measures to ensure the Occupant complies with OCCC 585's governing documents. Specifically, the Unit Owners will take steps to ensure the Occupant complies with OCCC 585's rules 22.1, 22.2, 22.3, 25.4 and 25.7.



2. The Unit Owners shall, within 30 days of the date of this Order, pay compensation to OCCC 585 in the amount of \$1,753.76 for the fees incurred for enforcement efforts.
3. The Unit Owners shall, within 30 days from the date of this Order, pay \$3,700 to OCCC 585 for the legal costs incurred for participating in the Tribunal proceedings.
4. The Unit Owners shall, within 30 days from the date of this Order, pay \$150 to OCCC 585 for the fee it paid to file this application.
5. The Occupant shall immediately bring themselves into compliance with OCCC 585's rules 22.1, 22.2, 22.3, 25.4 and 25.7.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: September 10, 2024