

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 21, 2025

**CASE:** 2024-00590N

**Citation:** York Condominium Corporation No. 295 v. Lake, 2025 ONCAT 30

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

**Member:** Laurie Sanford, Member

**The Applicant,**

York Condominium Corporation No. 295

Represented by Katya Ukrainetz, Counsel

**The Respondent,**

Denise Lake

Self-Represented

**Hearing:** Written Online Hearing – December 3, 2024, to February 5, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] York Condominium Corporation No. 295 (“YCC 295”) alleges that Denise Lake, a unit owner, is in violation of its Rules in her use of both her exclusive use common element parking spaces and the non-exclusive use common element driveways in the parking garage. Ms. Lake appeared at this hearing and offered to remove the automobiles that are the subject of YCC 295’s complaints. However, she did not provide any details as to when she would take action, nor did she remove the motor vehicles.
- [2] For the reasons set out below, I find that Ms. Lake is in violation of YCC 295’s Rule 7, which prohibits leaving debris, refuse or garbage on the common elements, including the exclusive use common elements of YCC 295. Ms. Lake is also violating Rule 16 which prohibits parking machinery or equipment of any kind on the common elements. I will direct her to bring herself into compliance with Rules 7 and 16. I am also awarding compensation for damages in the amount of \$1,600 to YCC 295 to reimburse its costs of seeking compliance from Ms. Lake and a further \$200 to reimburse YCC 295 for the amounts it paid the Tribunal to

bring this application.

## **B. ISSUES & ANALYSIS**

[3] The issues in this case may be summarised as follows:

1. Has Ms. Lake violated Rule 7 of YCC 295's governing documents?
2. Has Ms. Lake violated Rule 14 or Rule 16, or both, of YCC 295's governing documents?
3. What is the appropriate remedy?
4. Should an award of costs be assessed?

### **Issue 1 – Has Ms. Lake violated Rule 7 of YCC 295's governing documents?**

[4] Ms. Lake has an exclusive use common element parking space that can accommodate two automobiles. YCC 295 contends that the two automobiles that Ms. Lake stores there are not road-worthy and, in fact, are no longer automobiles. It submits that the automobiles have become debris, refuse or garbage. Therefore, YCC 295 submits that Ms. Lake is storing these vehicles in her exclusive use common element parking spaces in contravention of Rule 7 of YCC 295's governing documents.

[5] YCC 295's Rule 7 provides:

The owner shall not place, leave or permit to be placed or left in or upon the common elements, including those of which he has exclusive use, any debris, refuse or garbage except on days designated by the board or the Manager as garbage pick-up days nor shall he directly carry or place same in any area designated by the corporation as a central garbage depository. . . . .

[6] The Tribunal has the jurisdiction to deal with certain disputes concerning the governing documents of a condominium corporation. Under subparagraph 1(1)(d)(ii) of Regulation 179/17 (the "Regulation") of the *Condominium Act, 1998* (the "Act") this jurisdiction includes disputes concerning "provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes".

[7] Rule 7 addresses the placement or the leaving of debris, refuse or garbage. The question is whether the wording of Rule 7 brings this matter within the Tribunal's jurisdiction as a provision governing the parking or storage of items. I conclude

that it does. While Rule 7 might have been more specifically worded to address this situation, the verb “place” is a broad enough term to include the “storage” of items.

[8] YCC 295’s witnesses testified that:

1. The automobiles do not have licence plates.
2. One of the automobiles has a flat tire and the other has one axle raised on blocks.
3. One of the automobiles has a broken window.
4. The automobiles are both covered in dust and dirt.
5. One of the automobiles has been leaking something from its underside for months.
6. The automobiles have not been moved in two years. There is no evidence that the motor on either automobile has been run during this time.
7. Ms. Lake has been asked repeatedly to remove the automobiles and, although she has repeatedly promised to, the automobiles have not been moved.

[9] Ms. Lake did not contest or dispute any of the evidence of YCC 295. I find YCC 295’s evidence to be credible and cogent. Under Rule 41.4 of the Condominium Authority Rules of Practice, (the “CAT Rules of Practice”), the Tribunal may accept as true any facts in a witness’s evidence that the other party has not clearly disagreed with. I accept YCC 295’s evidence, which included photographic evidence, about the state of the two cars in Ms. Lake’s parking space.

[10] According to the Canadian Oxford dictionary the word “refuse” means “items rejected as worthless, garbage, trash.” “Debris”, another term used in Rule 7, would indicate items scattered about, while “garbage” is a generic description. Refuse would appear to be the most applicable term in this case. The question of when an automobile becomes refuse is a question of fact that must be determined in each case.

[11] In this case, there is no evidence that the automobiles function. They have not been moved in two years and there is no evidence that the engines have been operated during that time. The state of the automobiles is evidence that they are not being maintained. The fact that the automobiles cannot be moved in their

current condition is also an important consideration. The fact that the automobiles lack licence plates suggests that Ms. Lake has no current intention to restore the automobiles to a functioning state, even if that were possible. I conclude that the automobiles currently stored in Ms. Lake's exclusive use common element parking space are refuse. Her storage of refuse in her parking space is a violation of Rule 7 of YCC 295.

**Issue 2 – Has Ms. Lake violated Rule 14 or Rule 16, or both, of YCC 295's governing documents?**

[12] In addition to the refuse stored in Ms. Lake's parking spaces, she has also parked two or three automobiles in the common element driveway of the parking garage. YCC 295 submits that the automobiles are blocking access to its sprinkler room. YCC 295 submits that Ms. Lake is violating its Rule 14 and Rule 16.

[13] Rule 14 states:

The sidewalks, entry, passageways, walkways and driveways used in common by the owners shall not be obstructed by any of the owners or used by them for any purpose other than for ingress and egress to and from their respective units.

[14] Rule 16 states:

No trailer, boat, snowmobile, mechanical toboggan, machinery or equipment of any kind shall be parked on any part of the common elements other than on a designated parking space.

[15] The Tribunal's jurisdiction, under subparagraph 1 (1) (d)(ii) of the Regulation includes disputes about provisions that "prohibit, restrict or otherwise govern an automobile . . . or any other vehicle drawn, propelled or driven by any kind of power . . . in a unit, the common elements or the assets, if any, of the corporation". The wording of this provision is broad enough to give the Tribunal jurisdiction to deal with the question of whether Ms. Lake is in violation of Rule 16. It does not, however, give the Tribunal the jurisdiction to address the question of whether Ms. Lake has violated Rule 14. Nor does there appear to be any other basis for assuming this jurisdiction.

[16] Here again, Ms. Lake does not contest the evidence given by YCC 295, including photographic evidence. YCC 295 witnesses testified that Ms. Lake is parking two, and at times three, automobiles on the common element driveway. Rule 16 provides that no machinery of any kind shall be parked on any part of the common

elements other than on a designated parking space. For these reasons, I conclude that Ms. Lake is violating YCC 295 Rule 16 in parking her automobiles in the common element driveway of the parking garage.

### **Issue 3 – What is the appropriate remedy?**

- [17] Ms. Lake is in violation of Rules 7 and 16 of YCC 295's governing documents. I will direct her to bring herself into compliance with these rules within 30 days.

### **Issue 4 – Should an award of costs be assessed?**

- [18] YCC 295 submitted a bill of costs for both its attempts to enforce compliance with its rules and for its costs incurred during this hearing.
- [19] Reasonable costs of enforcing compliance are frequently awarded in cases where there has been a violation of a condominium corporation's governing documents. Subsection 119(1) of the Act obliges a unit owner to comply with the Act and with the governing documents of the condominium corporation. Under subsection 1.44(1)3 of the Act, the Tribunal may award compensation for damages incurred as a result of an act of non-compliance with the Act. In this case, Ms. Lake's refusal to remove her automobiles was an act of non-compliance with the rules of YCC 295 and, therefore, with subsection 119(1) of the Act. YCC 295's lawyers wrote two compliance letters. The lawyers have submitted a bill of costs in the amount of \$1,600. Ms. Lake has submitted that she will have difficulty in paying any amount.
- [20] Someone will have to pay the lawyer's fees. In balancing the various interests here, I find it more appropriate that Ms. Lake should bear these costs than that the other condominium unit owners should pay any part of them. I will award YCC 295 \$1,600 in compensation for damages incurred as a result of Ms. Lake's non-compliance with YCC 295's rules.
- [21] YCC 295 also submitted legal costs incurred in this hearing. Under Rule 48.2 of the CAT Rules of Practice, the Tribunal will generally not order one party to reimburse another party for legal fees incurring during the hearing. There are exceptions, such as where one party has acted unreasonably or caused a delay or additional expense. I conclude that this is not a case for awarding the costs of this proceeding against Ms. Lake. While she did not participate fully in the hearing, she did not appreciably delay the hearing, nor did she act unreasonably.
- [22] Under Rule 48.1 of the CAT Rules of Practice, the unsuccessful party will ordinarily be required to pay the successful party's Tribunal fees. Applying this rule

here, Ms. Lake will pay YCC 295 the amount of \$200 to reimburse YCC 295 for the fees it paid the Tribunal.

**C. ORDER**

[23] Under section 1.44 of the Act, the Tribunal Orders that:

1. Within 30 days from the date of this Order, Ms. Lake will bring herself into compliance with Rules 7 and 16 of YCC 295's governing documents by:
  - a. removing the two vehicles currently stored in her exclusive use common element parking spaces, and:
  - b. removing the automobiles she is currently parking in the common element driveway and ceasing to use the common element driveway to park any automobile.
2. Within 30 days from the date of this Order, Ms. Lake will pay YCC 295 the following amounts:
  - a. \$1,600 to compensate YCC 295 for the legal costs it incurred in attempting to enforce compliance with its rules; and
  - b. The amount of \$200 to reimburse YCC 295 for the fees it paid the Tribunal in bringing this application.

---

Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: February 21, 2025