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Editor:
Andrea Lusk

Owner doesn't have to "clear the deck" in boat parking case

An Nguyen

In [PCC 214 v. Zimmer et al. \(2023 ONCAT 89\)](#), the CAT considered what happens when owners technically breach an invalid rule.

The Zimmers lived at the condo for over 30 years and would take their boat out of storage during the summer months and temporarily park it on their unit driveway for a short time to charge the boat's batteries before going fishing the next day. The driveway is an exclusive use common element. The condo sought to enforce its rules against the Zimmers, prohibiting recreational vehicles and boats from being parked on the property.

The CAT arrived at an interesting conclusion: the Zimmers technically breached the rules of the condo by occasionally parking their boat on the common element driveway, but the condo cannot enforce the rule because it does not satisfy the criteria in s.58 of the Condo Act. Plus, the condo had acquiesced to the Zimmers' longstanding practice and the breach was trivial in contrast to the condo's requested orders. The CAT ordered that the Zimmers be allowed to continue to park their boat on the driveway, provide they continue voluntary safety measures they had undertaken all these years to minimize the impact of their breach.

In arriving at this conclusion, the CAT reviewed s.58 of the Condo Act, which provides that rules must be reasonable and be made for one of the two purposes:

- To promote the safety, security or welfare of the owners and the property and assets of the corporation; or
- Prevent unreasonable interference with the use and enjoyment of units, the common elements or assets of the corporation.

In this case, the condo expressly cited safety as the justification for the rule but could not show how a rule prohibiting recreational vehicles was inherently unsafe. If the rule was aimed at addressing oversized, improperly secured or derelict vehicles, the case may have been decided differently. The CAT also found that the boat did not interfere with any person's ability to use or enjoy units or the common elements. The rule therefore did not satisfy the criteria of s.58 of the Condo Act. The CAT concluded that, while the Zimmers technically breached the rules as written by placing their boat on the driveway, the CAT ordered that the rule could not be enforced against them.

Unlike a declaration, rules must be reasonable and address a valid safety reason or prevent actual interference. Condos can't sleep on enforcement of rules and demand compliance later.

Less Red Tape, Stronger Economy Act, 2023

The Strategic and Condo Policy Unit, Ministry of Public and Business Service Delivery (in case you wanted to know who is in charge of condo law in Ontario) has announced that as part of the *Less Red Tape, Stronger Economy Act, 2023* changes are being made to the Condo Act and its General Regulation to promote virtual processes.

These changes will come into effect October 1, 2023 and will:

- Permit condo corporations to hold virtual or hybrid meetings unless the condo's bylaws provide otherwise.
- Establish that voting (including elections) may be conducted virtually or in hybrid form unless a condo's bylaws provide otherwise.

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Red Tape Act - continued from previous page...

- Facilitate sending notices or other documents by electronic means, as appropriate.
- Require certain information to be in notices of owners' meetings that are held virtually or in hybrid form, such as instructions for attending virtually;
- Require owners' email addresses and other electronic communication addresses to be kept in the corporation's record in certain circumstances, including for delivering notices electronically without an agreement; and
- Permit condo owners to opt-out of electronic communication of notices under the new framework.

The recognition of the value and permanence of electronic meetings, voting and communication as a tool in condo governance and operation is overdue and welcome. The proposed changes help to take some of the guesswork out of practically implementing electronic communications.

Condo Adjacent

Andrea Lusk

GMA maintains a busy and interesting wills, estates and real estate practice, which handles day to day transaction and drafting work, disputes and litigation. Sometimes tidbits from those areas find their way into "condo adjacent":

Rental Housing Enforcement Unit

Ontario's Landlord and Tenant Board ("LTB"), which oversees disputes between landlords and tenants about rent, services, maintenance and other matters. Applications before the LTB are currently backlogged, as is the rest of the court system. At May 2023, the average wait time for applications is approximately 15 months, which has increased since earlier this year.

However, there is also a service available to both landlords and tenants when an offence is or may be occurring under the *Residential Tenancies Act, 2006* ("RTA") – a complaint to the Rental Housing Enforcement Unit.

An offence under the RTA can include illegal entry, preventing entry, withholding or interfering with the supply of vital services, harassment and interfering with a tenant's ability to enjoy living in their rental unit. We see some of these issues crop up in the Condominium Authority Tribunal, with tenants being added as parties by corporations or owners. A tenant can be a party to a proceeding as an "Occupant", but the owner should be added to the application as an "Intervenor".

The Rental Housing Enforcement Unit will take and investigate complaints relating to offences under the RTA (standard termination of tenancy or eviction are not offences and would proceed through the LTB). When a complaint is made, and verified as within the enforcement unit's jurisdiction, a compliance officer will try and resolve the issue by contacting the parties and assisting with or following up on resolution. If resolution is not achieved, the enforcement unit may investigate and if the breaches are serious and unresolved, charges can be laid and prosecuted in the Ontario Court of Justice. A conviction under the RTA can lead to a fine of \$50,000 for an individual or \$250,000 for a corporation and if a conviction occurs, then a publication for all corporate conviction and a publication of names for repeat individual offenders.

The Rental Housing Enforcement Unit may be reached at 416-585-7214 or toll-free 1-888-772-9277, Monday to Friday from 8:30 a.m. to 4:30 p.m. An agent will usually determine whether further action or investigation is warranted within 1-2 business days.

Scattering Ashes

This topic comes up regularly in our estates practice. Can I instruct that my ashes be scattered at my condo garden, my house, my cottage, a landmark?

For private property in Ontario, the permission of the landowner is required. Most "green" space at condos are common elements – either exclusive use or general – and therefore the board's permission is likely required. Ashes can otherwise be scattered on public property on city land and water, provincial land and water as long as it is not occupied and there is no signage prohibiting it. Steer towards established vegetation and stay upwind.

