

***Westmorland County Condominium Corporation No. 85 v. Carol Forde & Donald
Albert 2026 NBKB 164***

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

MM/217/2025

BETWEEN:

**WESTMORLAND COUNTY CONDOMINIUM
CORPORATION NO. 85,**

– and –

CAROLL FORDE & DONALD ALBERT

DECISION

BEFORE: Justice J. Danie Roy
AT: Moncton, New Brunswick
DATE OF HEARING: February 19, 2026
DATE OF DECISION: August 12, 2026
APPEARANCES: Nicholas O'Toole for the Applicant
Hugh Murphy for Carol Forde
Donald Albert, per se

ROY, J.

INTRODUCTION

- [1] The Applicant, Westmorland County Condominium Corporation No. 85, is a Condominium Corporation incorporated pursuant to the ***Condominium Property Act***, chap. C-16.05.
- [2] The Applicant takes issue with the Respondents' practice of renting or leasing part of their unit to a non-family member while, at the same time, they continue to reside therein on the basis that it contravenes Article IV(1) a) of its Declaration.
- [3] The Respondent Forde is a unit owner and has other people stay in her unit while she continues to reside therein. Between June 2022 and March 2024, she had about 30 Ukrainians stay in her unit at different times for periods ranging from about two weeks to as long as six months. Since May 2024, foreign students reside in her unit, while she continues to reside therein.
- [4] The Respondent Albert is also a unit owner. Since the year 2014, he has had a "roomer" stay in his unit from September to April each year, while he continues to reside therein. Today, he says this same individual is no longer a "roomer" but is a "guest" or a "friend."

- [5] The Applicant brings this Application for a determination as to whether its Declaration permits the Respondents' units to be rented or leased by a non-family member while they continue to reside therein, and if not, an order prohibiting them from this activity.
- [6] The Respondents deny they are in breach of the Declaration and By-Laws. They say the Declaration allows leasing of the units and further Article XII at clause f) of the By-laws of the Corporation permits a unit owner to have as many as two persons occupying their unit in addition to themselves.

THE RECORD

- [7] The evidentiary Record consists of Affidavit evidence and no oral evidence was tendered. The Record consists of the following affidavits:

1. Affidavit of John Pearson, filed on August 11, 2025
2. Affidavit of Paul Mazerolle, filed on August 11, 2025
3. Affidavit of Christopher Jackson, filed on August 11, 2025
4. Affidavit of Carroll Forde, filed on November 7, 2025
5. Affidavit of Donald Albert, sworn to on November 1, 2025

FACTS

- [8] The Applicant is a Condominium Corporation incorporated pursuant to the **Condominium Property Act**, chap. C-16.-05. It is a condominium complex comprised of 36 condominium units situated at Adelie Lane and McNutt Lane in

Moncton, New Brunswick. The units are spread across 17 buildings; 15 duplexes and 2 triplexes.

- [9] The Declaration and By-laws of the Condominium Corporation were accepted for registration on March 30, 2007.
- [10] The Respondent Carol Forde bought the condominium unit at 26 Adelie Lane in July 2021. Her unit is one of three units in one of the two triplexes. She is single and has no children. Her unit has two bedrooms and a partially finished basement.
- [11] Between June 2022 and March 2024, a total of about 30 Ukrainians stayed in her home at different times for periods ranging from about two weeks to as long as six months. Some of the Ukrainians who stayed in her unit arrived alone and some arrived as families or members of a family.
- [12] As the last of the Ukrainians who stayed with her left, she realized that she missed having someone else in her home. Since around May 2024, she has begun to take in foreign students, including from Haïti, Ghana and Bangladesh.
- [13] The Respondent Albert has lived at 24 Adelie Lane since July 2013. He is single. Beginning in 2014, he took in, as per his own description, a “roomer”, a university professor who rents a room from September to April each year. The professor has a permanent residence in Montreal, Quebec, but has been renting a room during the

academic year. Today, he says the professor is no longer a “roomer” but is a “friend” or a “guest.”

- [14] As the Respondent Albert spends winters in Mexico, the professor is the only occupant of the unit during this time.
- [15] John Pearson owns and resides at 29 Adelie Lane, Moncton, New Brunswick, which is one of several condominium units included at Westmorland County Condominium Corporation No. 85. He is the President and Director of the Condominium Corporation.
- [16] John Pearson has witnessed people residing at Carol Forde’s unit. He says he has become aware that she was renting and/or leasing a portion or portions of her unit to non-family members while continuing to reside in it. He has received complaints from other unit owners about this activity occurring in their community. He also says Ms. Forde has confirmed to him she is doing this activity. He asked her to stop this practice.
- [17] He also says he is aware that the Respondent Albert is renting and/or leasing a portion or portions of his unit to a non-family member while continuing to reside in it. He says Mr. Albert has confirmed with him that he is doing this activity. He has also asked the Respondent Albert to stop renting or leasing a portion of his unit to a non-family member while he continues to reside there.

- [18] The issue of renting rooms was raised at the Condominium Corporation board meetings on October 3, 2024, and November 21, 2024. The board of directors did not come to any resolution on the issue.
- [19] At the board meeting on October 3, 2024, the Respondent Forde is indicated to be present and secretary. She did not attend the November 21, 2024, meeting. She says this meeting was not properly constituted.
- [20] On March 31, 2025, a Special General Meeting of the Condominium Corporation Association was held, and 35 of the 36 condo owners were represented. The Respondent Albert, was not present but was represented by his son-in-law. The Respondent Forde was present with her lawyer.
- [21] John Pearson's evidence is that it was ultimately decided by a majority of the board to involve legal counsel for the purpose of helping the Condominium Corporation to deal with Ms. Forde and Mr. Albert's practice, which seemed to be in breach of its Declaration. The following motion was passed and reads as follows in English and in French:
- Since nothing has been resolved (in the matter of renting rooms), that the Board proceed with mediation and subsequent steps, with going to court as a last resort, to bring resolution to this issue.
- Vu que rien n'a été résolu (dans la situation de location de chambres), que l'association passe les étapes qui devrait suivre jusqu'à ce qu'un avocat aille en cour.*
- [22] The Respondents received a letter from the Condominium Corporation's lawyer, dated June 13, 2025. They were notified as follows:

We represent Westmorland Condominium Corporation No. 85. ("WCC85") We understand:

(...)

2. you rent at least one bedroom from that Unit to a non-owner who is also a non-family member. While doing so, you continue to reside in the Unit.

This activity is in breach of the WCC85's Declaration and Bylaws. There are several provisions contained in WCC85's Declaration and Bylaws which indicate this activity is prohibited. Perhaps the most salient provision comes from WCC85's Declaration at Article IV(1) a). That provision says:

"Each Unit shall be occupied and used only for residential purposes, as a single family residence, and for no other purpose."

The term 'single family is not defined. Having said that, the term seems self-explanatory and would exclude people who are not members of your family. This would restrict you from renting a bedroom of the Unit while you continue to reside in the Unit because you and the Tenant are not members of a 'single family'.

(...)

[23] Following this, by letter dated June 20, 2025, the Respondent Albert, advised John Pearson he no longer has a "roomer" staying in his home. He has since invited the professor to return. He says he is now staying as a guest or a friend.

[24] The Respondents also received a letter from John Pearson, dated November 1, 2025, advising as follows:

In the general meeting of the condo residents on October 27, 2025, you were told and made publicly aware of the following financial implications of renting rooms, after the judgement that you demanded is granted.

This personal notice is to clarify, that you need to be aware, and to notify your renters, that if a judgement is granted, we will back date fines and costs to November 17, 2025.

This rate of \$800 monthly will be applied if the rental of rooms continues, once the judge has ruled.

This option of fines was discussed way back in September of 2024 to stop continued violations of our condo Declaration and By-Laws.

- [25] John Pearson says he is concerned renting rooms will have an effect on the Condominium Corporation rate of insurance, which he understands will increase.
- [26] He also says he has not received a covenant or agreement signed by any tenant under seal for the renting of the Respondents' units pursuant to Article V (1) (b) of the Declaration.
- [27] Paul Mazerolle owns and resides at 33 Adelie Lane, in Moncton, New Brunswick. He is the Treasurer and a Director of the Condominium Corporation. To his knowledge, renting to non-family members, while the owner continues to reside in their unit, is in breach of the Condominium Corporation's Declaration.
- [28] His evidence is that both Respondents have confirmed with him that they are renting to non-family member individuals while they themselves continue to reside in their units.
- [29] Christopher Jackson is a fire prevention officer employed by the City of Moncton's Fire Department. He is also appointed and authorized by the Province of New Brunswick Department of Justice Fire Marshal's Office as an agent of the fire marshal to act as a fire investigator and fire prevention officer pursuant to the **Fire Prevention Act**, RSNB 1973, c. F-13. As part of his duties, he is often charged with

inspecting residences for the purposes of ensuring bedroom windows meet egress requirements.

[30] Mr. Jackson attended Ms. Forde's unit on July 24, 2025, to investigate whether it meets the City of Moncton's fire prevention and safety standards.

[31] He says that when he entered the basement, it was obvious that renovations had occurred, which created a bedroom containing two single beds and at least one dresser. There were no windows in that room. The room was not permitted to be used as sleeping quarters based on insufficient egress. Also, people would not be permitted to sleep in the only other livable room contained in the basement because of insufficient egress, based on the size of the only window in that room.

[32] The Respondent Forde says that while she had Ukrainians staying with her, she received support and encouragement from neighbors and other condominium owners, and she did not receive any complaints. She says:

- Verna Clements loaned her a bed, and her sister gave her a donation of money to help pay for groceries.
- A Ukrainian couple staying with her, married in her living room. A neighbor, Marcella Plourde, brought a wedding cake and decorations for the wedding ceremony.
- A neighbor, Claudette Spencer, gave a three-year-old girl a tricycle while the Ukrainian family lived with her.

- Her neighbor Henri helped Vitalii, a Ukrainian electrician, by giving him advice on how to obtain certification in New Brunswick, how to join the electrician's union and the best ways to find an electrician job.
- John Pearson came to her home at different times to give advice on tax planning to two Ukrainian families who were staying with her.

[33] When she began to take in foreign students, she learned of complaints about their presence. She says there was never any complaint about their behavior. No person, while living in her home has, to her knowledge, behaved in a disruptive, offensive, or disrespectful manner.

[34] The Respondent Albert says that, in September 2022, he had open heart surgery. During his convalescence at his home, his children coordinated among themselves to stay with him. During that time, the room usually occupied by the professor was not available to him because of the presence of his children. As the professor could not stay in his unit, John Pearson offered to let him stay with him and his wife.

[35] The Respondent Forde asked John Pearson and the board members to see the current insurance policy. She has not received a reply to her inquiry. The Respondent Albert asked Paul Mazerolle, the treasurer of the Condominium Corporation, for a copy of the insurance policy and the name of the insurance company, which request he says has been refused.

- [36] The Respondents both say they know of no provisions in either the Declaration or By-laws for imposing a fine on a unit owner.

THE POSITION OF THE PARTIES

- [37] Article IV (1) a) of the Declaration provides that “Each Unit shall be occupied and used only for residential purposes, as a single-family residence, and for no other purpose...”.
- [38] The Applicant’s interpretation of its Declaration is that “single-family residence” means that unit owners are prohibited from renting or leasing their units while they themselves continue to reside in the unit; otherwise, the unit is not being occupied as a “single-family residence.”
- [39] The Respondents request the Application be dismissed.
- [40] The Respondent Forde says the Application is ill-conceived and better described as a crusade or vendetta, where the behavior of John Pearson and Paul Mazerolle towards the Respondents, colors the motivation for the Application.
- [41] The Respondents say the Declaration permits the leasing of units and further that Article XII at clause f) of the By-laws of the Corporation permits a unit owner to have as many as two persons occupying their unit in addition to themselves.

ISSUES

- [42] Does the Condominium Corporation's Declaration permit the Respondents' units to be rented or leased by a non-family member while, at the same time, the Respondents continue to reside therein?
- [43] If not, should the Court prohibit the Respondents from renting or leasing their units to non-family members while continuing to reside therein?

LAW AND ANALYSIS

- [44] Unit owners are required and expected to adhere to the Condominium Corporation Declaration and By-laws pursuant to paragraph 23 of the ***Condominium Property Act***, chap. C-16.05.
- [45] Pursuant to paragraph 32(5) of the ***Act***, the By-laws shall be consistent with the ***Act*** and the Declaration.
- [46] The term "single-family residence" is not defined in the Declaration or the By-laws.
- [47] The Declaration of the Condominium Corporation provides as follows:

IV-Occupation and use of units

1.General Use

The occupation and use of the Units shall be in accordance with the following restrictions:

(a) Each Unit shall be occupied and used only for residential purposes, as a single family residence, and for no other purpose, provided however, that the foregoing shall not prevent the

Declarant from maintaining Units as models for display and sale purposes, and otherwise maintaining displays and signs until Units have been sold.

(...)

V-Leasing of units

1.Notification of Lease

(a) Where the Owner of a Unit leases his or her Unit, the Owner shall notify the Corporation before the commencement of the Lease that the Unit will be leased and shall provide to the Corporation the Lessee's name and address;

(b) In addition, no Owner shall lease his or her Unit unless the Lease is for a period of at least One (1) year and he or she first delivers to the Corporation a covenant or Agreement signed by the Tenant under Seal to the following effect:

"I acknowledge and agree that I, the members of my household and my guest from time to time will in using the Unit rented by me and the Common Elements comply with the Condominium Property Act, the Declaration, the By-Laws, and all rules and regulations of the Condominium Corporation during the term of my tenancy and will be subject to the same duties imposed by the above as if I were a Unit Owner except for the payment of Common Expenses, unless otherwise provided by the Condominium Property Act."

(...)

VII-Insurance

2.General Provisions

(...)

(c) The master policy for any insurance coverage shall be kept by the Corporation in its offices and be available for inspection by an Owner or Mortgagee on reasonable notice to the Corporation and copies thereof shall be available to any Owner or Mortgagee on payment of reasonable duplicating costs.

(...)

[48] The By-laws of the Condominium Corporation provide as follows:

Article XII

Provisions respecting the use and occupation of units

In addition to the provisions of the Declaration, the use and occupation of the Units shall be in accordance with the following restrictions and stipulations:

(...)

f) Not more than two persons shall occupy any part of a Unit under circumstances where such person or persons is or are being charged for occupation or board, or otherwise, and at no time shall such charges be levied on a commercial or profit-making basis, but this provision shall not prevent the leasing of the whole of such Unit;

(...)

The General Framework that Governs Condominium

[49] In ***Westmorland County Condominium Corp No 29 v. Estabrooks***, 2012 NBCA 26, the New Brunswick Court of Appeal provides the following helpful comments with respect to the general framework that governs condominiums:

49. The term "condominium" connotes a regime of separate ownership of individual units in a multiple-unit building, co-ownership of common elements and management of the overall arrangement through a body corporate, the condominium corporation....

50. While condo units are real property for all purposes, the **Act** imposes limits on the freedom of choice that commonly accompanies ownership of real property. Those limits are designed to reflect the communal nature of condominium ownership and living...

51. As indicated, the **Act** imposes upon a unit owner the duty to comply with its provisions, the declaration and the condominium corporation by-laws and rules. Moreover, the legislation accords each unit owner the right to compliance by fellow owners....

52. Importantly, the condominium corporation is itself duty bound to take all reasonable steps to enforce compliance with the **Act**, the declaration, as well as its by-laws and rules. Needless to say, chaos would be courted if a condominium corporation were derelict in respecting that fundamental obligation....

53. In sum, if an individual fails to comply with duties arising from his or her ownership and/or occupation of a condo unit, fellow unit owners are entitled to expect the condominium corporation will take reasonable remedial steps and, in turn, the corporation may rightfully expect the court to lend its hand in ensuring performance of those duties...

- [50] The Respondent Forde says the Application is a result of a crusade or a vendetta. In support of this argument, the Respondents say John Pearson, and other unit members, had been aware of the Respondents' activity, seemingly condoning the activities now the subject of dispute.
- [51] They say they have made requests to see the insurance policy, but this has been ignored, and excluding and withholding information shows a lack of objectivity.
- [52] They also say the letter John Pearson sent to both Respondents advising that if the Condominium Corporation is successful, fines of \$800/month would be levied against both, is acting in bad faith. It makes up the concept of a fine as a means of harassing or intimidating the Respondents.
- [53] The Condominium Corporation is duty-bound to take all reasonable steps to enforce compliance with the **Act**, the Declaration, as well as its By-laws and rules. While there may have been knowledge of the activity now complained of, recall that it is after a motion passed at the special general meeting of March 31, 2025, where 35 of the 36 condo owners were represented, that formal legal steps were undertaken.
- [54] The Condominium Corporation's Declaration does provide the master policy of insurance coverage shall be available for inspection by an owner on reasonable notice and copies shall be available on payment of reasonable duplicating costs. The Respondent Forde says she asked to see the current policy but received no

reply. The Respondent Albert says he asked for a copy of the policy and the name of the insurance company, and his request was refused.

[55] And neither the Applicant nor the Respondents identified a provision in the Condominium Corporation or By-laws providing for imposing a fine on a unit owner in the circumstances of the present matter.

[56] Still, in my view, the issues that have been raised by the Respondents do not amount to a crusade or vendetta on the part of Mr. Pearson or Mr. Mazerolle. It may be an indication of a conflict or mistrust, not of a crusade or vendetta. On the contrary, with the motion passed at the special general meeting of March 31, 2025, for the *“Board to proceed with mediation and subsequent steps, with going to court as a last resort, to bring resolution to this issue,”* owners were entitled to expect the Condominium Corporation would take the agreed upon steps to bring resolution to the matter. The filing of the Application on August 11, 2025, is in line with the Condominium Corporation’s duty to take all reasonable steps to enforce compliance with its Declaration and By-Laws.

The Corporation’s Interpretation of its Declaration and By-Laws

[57] In the decision ***Kapoor v Toronto Standard Condominium Corp No 2450***, 2019 ONSC 3461, Justice O’Brien opined that, in reviewing a Condominium Corporation’s interpretation of their Declaration, the standard of review is one of reasonableness and stated as follows in paragraph 14:

14. In reviewing the Condominium Corporations' interpretation of their declarations, the standard of review is one of reasonableness. Although the Unit Owners argued that deference is not owed on the question of whether rules are inconsistent with a condominium corporation's declaration, the Court of Appeal has stated directly that a reasonableness standard applies. Specifically, in **London Condominium Corp. No. 13 v. Awaraji**, 2007 ONCA 154, 221 O.A.C. 240, the Court of Appeal stated at para. 6:

Moreover, we consider that it is for the Condominium Corporation to interpret its Declaration and By-laws and that so long as its interpretation is not unreasonable, the court should not interfere.

[58] Also, in **Cottage Advisors of Canada Inc v Prince Edward Vacant Land Condominium Corp No 10**, 2021 ONSC 1203, Justice Schabas made the following comments with regards to the Corporation being owed deference in their interpretation of their Declaration and By-laws and should not be interfered with unless unreasonable:

15. By-laws and other rules passed by the condominium corporation or established by its board of directors must be reasonable. In this regard actions of a corporation, or its board, in passing by-laws and rules are owed deference, including their interpretation of their Declaration and by-laws, and should not be interfered with unless unreasonable: **London Condominium Corporation No. 13 v. Awaraji**, 2007 ONCA 154 at para. 6. As the Court of Appeal noted in **3716724 Canada Inc. v. Carleton Condominium Corporation No. 375**, 2016 ONCA 650 at paras. 52-53:

The **Act** provides that the directors are the ones responsible for managing the affairs of a condominium corporation: s. 27(1). They are also required to act honestly and in good faith, and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances: s. 37(1). Like their counterparts in corporate statutes, these provisions suggest that courts should be careful not to usurp the functions of the boards of condominium corporations.

Therefore, to summarize, the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a

complainant under s. 135 of the **Act** against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.

16. In **Kapoor v. Toronto Standard Condominium Corporation No. 2450**, 2019 ONSC 3461, at para. 14, O'Brien J. applied this deferential standard of review in considering whether a condominium board's rule was inconsistent with its Declaration. A rule prohibiting transient uses of units had been passed under a Declaration which provided that there were "no restrictions on the minimum or maximum length of lease of a residential unit," and that "each residential unit shall be occupied and used as a private, single-family residence and for no other purpose." In the face of these seemingly contradictory statements, O'Brien J. held that it was reasonable for the board to interpret its Declaration to prioritize how units were used, and that they were not intended to permit a "hotel-like operation."

- [59] I adopt the rationale in **Kapoor** and **Cottage Advisors of Canada Inc.**, where, in reviewing the Corporation's interpretation of their own Declaration and By-Laws, the standard of review is one of reasonableness. So long as the Condominium Corporation's interpretation is reasonable, the court should not interfere. I undertake my analysis with this background.
- [60] The Condominium Corporation's says that, pursuant to Article IV (1) a) of its own Declaration, owners are prohibited from renting or leasing their unit while they themselves continue to reside in the unit.
- [61] Article IV (1) a) provides that each unit shall be occupied and used only for residential purposes, as a "single-family" residence, and for no other purpose. For the Applicant "single-family residence" means that unit owners are prohibited from

renting or leasing their units while they themselves continue to reside in the unit; otherwise the unit is not being occupied as a “single-family residence.”

[62] Respondents contend the Applicant’s interpretation ignores the tenor and tone of the Declaration and By-Laws as they say the Declaration permits the leasing of units. Further, they say that Article XII at clause f) of the By-laws of the Corporation permits a unit owner to have as many as two persons occupying their unit in addition to themselves.

[63] I conclude the Applicant’s interpretation of its own Declaration and By-Laws is reasonable. Here are my reasons.

[64] The Applicant’s interpretation of “single-family residence” is consistent with jurisprudence.

[65] In ***Nipissing Condominium Corp No 4 v Kilfoyl***, 2009 CanLII 46654, Justice Strong described “one family residence” as follows:

34. A "one family residence" is a basic social unit which involves more than merely sharing short term temporary sleeping quarters and shared facilities on a rental basis as is the case here.

[66] The decision was affirmed by the Court of Appeal in ***Nipissing Condominium Corp No 4 v Kilfoyl***, 2010 ONCA 217, which made the following comments at paragraph 7:

7. The evidence below consisted solely of that provided by the NPCC No. 4. The appellants filed no responding material. The evidence showed that the appellants rented their units to students who were not living together because of some familial connection. It also showed that when the appellants purchased the units, the status certificate showed that they could not be leased to multiple tenants but only to single families.

[67] In ***Ottawa-Carleton Standard Condominium Corp No 961 v Mezies***, 2016 ONSC 7699, Justice Beaudoin comments courts have defined “family” as follows:

48. In the absence of a definition in the condominium documents of what constitutes a “single family”, the courts have defined a “family” as a “social unit consisting of parent(s) and their children, whether natural or adopted, and includes other relatives if living with the primary group”.

[68] Counsel for Ms. Forde says ***Nipissing Condominium*** has a different factual underpinning and has no relevance. I agree the factual backgrounds differ. Also, “family” was defined in its Declaration. But the court went on to provide additional comments on the meaning of “one family residence.” I find it relevant to consider those comments as part of my analysis.

[69] The Respondents says that Article XII, clause f) of the By-Laws permits unit owners to have as many as two persons occupying their units in addition to themselves.

[70] In written submissions, the Respondent Forde says there is nothing contrary to the Declaration or the Bylaws if any unit owner wants to have a non-family member in their unit on a permanent basis as a boarder or roomer.

- [71] In his written submissions, the Respondent Albert says Article XII at clause f) of the By-Laws permits unit owners to have one or two boarders or residents, but under no circumstances may the fees charged to boarders or residents be of a commercial nature or intended to generate a profit.
- [72] In my view, neither of the Respondents submissions are sufficient to conclude the Applicant's interpretation is unreasonable, even in the face of a seemingly contrary provision, being Article XII at clause f) of the By-Laws. The Applicant's interpretation of its own Declaration focuses on the nature of the use of the Unit, with consideration to Article IV-*Occupation and use of units*, of the Declaration and the interpretation of "single-family residence" in the jurisprudence. This is reasonable.
- [73] Recall as well that, pursuant to paragraph 32(5) of the **Act**, the By-Laws shall be consistent with the **Act** and the Declaration.
- [74] It is also consistent with the evidence of John Pearson and Paul Mazerolle. Mr. Mazerolle's evidence is that, to his knowledge, renting to non-family members, while the owner continues to reside in their unit, is in breach of its own Declaration. Also, recall that other unit owners have complained about the Respondent Forde's activity in having other people residing in her unit.

- [75] Further, the leasing of the units is not only permitted but provided for in the Declaration. In fact, Article V of the Declaration provides the parameters under which a unit can be leased. In particular, the lease shall be for at least one year and the owner has to deliver to the Corporation a covenant or Agreement signed by the Tenant. This does not offend the Applicant's interpretation of its own Declaration.

Is the Activity of the Respondents in Breach of the Condominium Corporation Declaration?

- [76] The evidence of Christopher Jackson, who attended Ms. Forde's unit on July 24, 2025, is that renovations had occurred in the basement, which created a bedroom containing two single beds and at least one dresser. There was also another livable room in the basement. Neither could be used because of insufficient egress.
- [77] Both John Pearson and Paul Mazerolle's evidence is that the Respondent Forde confirmed to them she is renting and/or leasing a portion of her unit to a non-family member while she continues to reside therein.
- [78] The Respondent Forde's current activity is to have foreign students stay in her unit while she continues to reside therein.
- [79] I determine the Respondent Forde's activity is not permitted under the Condominium Corporation's Declaration.

- [80] Both John Pearson and Paul Mazerolle's evidence is that the Respondent Albert confirmed to them he is renting and/or leasing a portion of his unit to a non-family member while he continues to reside therein.
- [81] The Respondent Albert, beginning in 2014, as per his own description, took in a "roomer", a university professor who rents a room from September to April each year, while he continues to reside therein. I determine the Respondent Albert's activity is not permitted under the Condominium Corporation's Declaration.
- [82] The Respondent Albert says he has now invited the professor to stay with him as a "friend" or as a "guest." In my view, this change of description of the activity does not render it permissible, as it is akin to leasing and/or renting. I make this determination for the following reasons.
- [83] This arrangement is yearly and systematic and according to an agreed upon arrangement. It is an activity that occurs 8 months per year; it is of substantial duration. Furthermore, the professor has exclusive possession of the unit for the period when the Respondent Albert is in Mexico.
- [84] Recall that if a Unit owner wishes to rent their unit, they need to comply with section V of the Declaration. The Respondent Albert is not compliant with Article V. His activity is not leasing the unit pursuant to the Declaration. While the Owner of a Unit can lease his or her unit, he shall notify the Corporation, shall provide to the

Corporation the Lessee's name and address, the lease must be for at least one year and the covenant or agreement signed by the tenant to be delivered to the Corporation. John Pearson's evidence is that he has not received a covenant or agreement signed by a tenant under seal for the renting of the Respondents' units pursuant to Article V(1) b) of the Declaration.

[85] For the purposes of compliance with the Declaration, I conclude that the Respondent Albert continues to reside in his unit, notwithstanding he spends a period of time in Mexico on a yearly basis.

[86] Having considered the circumstances, I conclude the Respondent Albert's activity in having a non-family member residing in his unit 8 months a year, while he continues to reside therein, is not permitted under the Condominium Corporation's Declaration.

[87] I find the Respondent Forde and the Respondent Albert are in breach of the Condominium Corporation's Declaration, where they rent or lease to a non-family member while, at the same time, they continue to reside therein. I order that the Respondents cease the improper use of their respective units and they shall not rent or lease their units to non-family members while continuing to reside therein.\

COSTS

- [88] The Applicant is seeking costs and in submissions for costs made the following comments. Counsel for the Applicant argued the original hearing was scheduled for November 17, 2025, and because the Respondent Albert wanted to proceed in French, it caused the adjournment. Further, that Mr. Albert filed his pre-hearing submissions late, as he did so on the day of the hearing.
- [89] The following reminder appears necessary. The **Charter** and the **New Brunswick Official Languages Act** provides that either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick (**Constitution Act**, 1982, R.S.C. 1982, s. 19(2); **The New Brunswick Official Languages Act**, chap. O-0.5, paragraph 17.)
- [90] Those submissions of counsel related to the choice of language causing an adjournment in submissions for costs are unfortunate. Such submissions are ill founded and ought not to be advanced. They bear no significance in my assessment of costs.
- [91] Rule 59 of the New Brunswick **Rules of Court** deals with costs. Costs normally follow the cause and should a trial judge decide to depart from the rule, the judge is required to justify the departure.

- [92] Having considered the totality of the circumstances in this matter, including that the Applicant has been entirely successful and that Mr. Albert, who represented himself, filed his submissions late, I determine as follows. The Applicant is entitled to costs of \$1500 from the Respondent Carol Forde and \$1500 from the Respondent Donald Albert.

DISPOSITION

- [93] Pursuant to Rules 16.04 (e) of the ***Rules of Court*** of New Brunswick, I make the following determination: The Declaration of the Westmorland County Condominium no. 85 does not permit the Respondent's units to be rented or leased by a non-family member while, at the same time, the Respondents continue to reside therein.
- [94] Pursuant to Rule 16.04 (i) of the ***Rules of Court*** of New Brunswick the following consequential relief ancillary thereto is granted: The Respondents are prohibited from renting or leasing their units to non-family members while continuing to reside therein.
- [95] The Applicant is entitled to costs of \$1,500 from the Respondent Carol Forde and \$1,500 from the Respondent Donald Albert.

DATED at Moncton, New Brunswick this 12th day of August, 2026.

J. Danie Roy,
Judge of the Court of King's Bench
of New Brunswick