CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 14, 2024
CASE: 2023-00621N
Citation: Middlesex Condominium Corporation No. 169 v. Doherty et al., 2024 ONCAT 84

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Middlesex Condominium Corporation No. 169
Represented by Megan A. Alexander, Counsel

The Respondent,
Joe Doherty and Nancy Doherty
Represented by Pierre Seguin, Agent

Hearing: Written Online Hearing – March 27, 2024 to June 11, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Respondents are residents and unit owners of the Applicant condominium corporation. In addition to owning a residential unit in the condominium, the Respondents own three parking units, each of which is what the Applicant's rules refer to as a "double parking space," being a space sized to allow for the parking of two vehicles.

[2] About 30 years ago the Respondents installed garage doors on their parking units, as the rules of the condominium at that time allowed. Since then, they have used those parking spaces for the purposes of both parking motor vehicles and storing personal items. The Respondents submit that such use of the parking units in the condominium was both permitted and common amongst other unit owners during the same period.

[3] The Applicant now contends that use of the parking units for any purpose other than the parking of permitted motor vehicles, including for storage, is not allowed under the condominium's declaration, and they seek an order from this Tribunal

prohibiting the Respondents from continuing to do so.

[4] The issue in this case is whether the Respondents' use of their parking units for storage purposes contravenes the Applicant's declaration and should be ordered to stop. For the reasons set out below, I grant the order requested by the Applicant. I award costs on a partial indemnity basis to the Applicant.

[5] Given that there is just one substantive issue in this case, other than costs, my reasons are organized (in Part B of these reasons) according to topical headings that represent key facts and positions in the case, which are then followed (in Part C) by my analysis of them, and lastly my conclusions and order before addressing the matter of costs. All evidence of submissions of the parties have been considered in reaching my decision, though only relevant portions of them are specifically mentioned in these reasons.

B. KEY FACTS AND POSITIONS OF THE PARTIES

1. Fire Inspection Order

[6] It appears that the initial motivating factor prompting the Applicant's board of directors to take its position with respect to storage in the parking units was an inspection of the condominium property conducted by a London Fire Department inspector on or about April 19, 2022. The inspector concluded that the presence in many parking units of "cabinets, shelving, tires, appliances and any storage" constituted a deficiency contrary to the Ontario Fire Code, and in May 2022 ordered that such items be removed from all applicable parking units, including the Respondents' three parking units.

[7] The owners were required to comply with such order by July 14, 2022. The Applicant's witness, Bruce Zuliani, the corporation's president, stated that by about August 9, 2022, more than 95% of the unit owners had done so.

[8] Subsequently, the representative of the Respondents in this case, Pierre Seguin, made an application for reconsideration of the order to the Office of the Ontario Fire Marshall. Following its review, the Fire Marshal rescinded the London Fire Department order on August 22, 2023. The letter ordering and explaining the reasons for the recission states,

> *Since the Order identified both the owner of the building and an occupant of the building together and did not establish that these are separate entities, the Inspection Order has not clearly identified the issued persons. Therefore, it is unclear who is responsible for carrying out the required work. On this basis,*

the Order does not meet the requirements of Section 21 (1) (g) of the FPPA [Fire Protection and Prevention Act, 1997].

and further explains,

…the parking spaces in the storage garage are individually owned and do not form part of the common elements of the building. If parking spaces are individually owned, then it may be necessary to issue Orders to the individual owners of the parking spaces.

[9] Although no such individual orders were subsequently issued, the Applicant continued to require the removal of all storage items from the parking units of the condominium. The Applicant cites the existence of cases such as *Metro Toronto Condominium Corporation No. 1298 v. Toronto Fire Services*, 2023 ONFSC 13541 – a decision of the Fire Safety Commission in which the commission rejected a request to rescind a fire inspection order prohibiting storage in a garage – as justification for its continued enforcement.

2. Declaration and Rules

[10] The Applicant relies principally upon the following provision of its declaration to require storage items to be removed from all parking units:

Article C, Section 2, Clause (a)

Each parking unit shall be used and occupied only for the purpose of parking a private passenger motor vehicle as may from time to time be defined in the rules. Each owner shall maintain his parking unit in a clean and sightly condition, notwithstanding that the Corporation may make provision in its annual budget for cleaning of the parking units.

[11] It states that the restriction on use of the parking units for the parking of motor vehicles prohibits their use for storage of any other items.

[12] In challenging this position, the Respondents seek to rely on the following of the Applicant's rules, which they submit clearly allows use of their parking units for storage purposes:

Rule 38

Owners of double parking spaces may either add an overhead door to enclose the space or install a Board Approved Storage unit at the back wall. All storage with the exception of grocery carts must be in an enclosed locked unit. The corporation shall accept no liability for loss or damage, however caused, for goods stored in garage spaces.

[13] The Applicant submits that, despite its long-standing existence and application, Rule 38 is and always was contrary to the declaration, in so far as Clause C.2(a), quoted above, prohibits any use of the parking units for anything other than parking motor vehicles. As such, it states that the rule is invalid as a result of subsection 58 (2) of the *Condominium Act, 1998* (the "Act"), which requires that condominium rules are "consistent with… the declaration" of the condominium to which they apply. The Act further states, in subsection 58 (4), that any rule that is inconsistent with the Act "shall be deemed to be amended accordingly".

[14] Furthermore, the Applicant asserts that it has repealed Rule 38, its board having passed a resolution to this effect on February 28, 2023, and having delivered notice of that decision later in the year. It states that no requisition of owners was ever submitted to challenge the repeal, which has been in effect since at least October 18, 2023 (being thirty days after the notice of repeal was dated and provided to owners).

[15] The Respondents argue that the Applicant's purported repeal of Rule 38 was ineffective since the Applicant did not "demonstrate that the rule was unreasonable and not consistent with the Act and the Declaration" and, further, because the rule "does not prejudice the safety, security, or welfare of the owners or the property and does not interfere with the use and enjoyment of the units, the common elements, or the corporation's assets as outlined in section 58(1) (a), (b)."

[16] The Respondents further submit that Rule 38 is not, in fact, inconsistent with Clause C.2(a) of the declaration since they assert that clause "also points to the rules in an obvious desire by the Declarant to provide additional provisions for using a parking unit."

3. Alternative Approaches

[17] The Respondent also asserts that even if the Applicant's interpretation of its declaration and rules is accurate, the Applicant's board could have approached the issue in a different manner than they chose to do. They state the board had four options:

1. To leave things as they were (status quo) once the London Fire Department order was rescinded;

2. to amend the declaration to "entrench" the existence of the garages and right to continue using them for storage;

3. to grant legacy status to the existing garages and their current uses; or

4. the “draconian autocratic approach” that the Respondents state the Applicant ultimately selected, that they say, “forces everyone to clear out their garages based on a presumption that the garages are inconsistent with the Declaration without spelling out what inconsistency exists and provides an opportunity to rectify the inconsistency to ensure compliance.”

[18] I recognize that the Respondent’s description of the Applicant’s fourth option includes what could be called “loaded terms” that are biased in favour of the Respondent’s perspective, and that they would have preferred the board had adopted any of the other three options to that one. Nevertheless, they correctly identify that enforcement of the declaration as it is written is a fourth option that was before the Applicant’s board.

[19] The Applicant also acknowledges it had options like those set out in the Respondents’ list. In a document titled, “The Anatomy of an Unpleasant Circumstance,” written by Bruce Zuliani and distributed to unit owners in or around May 2022 (a copy of which was attached to the affidavit of Mr. Zuliani submitted as evidence in this case), there is a fairly detailed explanation of the board’s various considerations, including its assessment of the options to grant legacy status or to amend the declaration, and why it concluded it had “no option” but to enforce the declaration as written and not leave things as they were.

4. Acquiescence or Acceptance Over Time

[20] Lastly, the Respondents note that their (and other owners’) use of parking units for storage has persisted for at least thirty years, and that no objections to it were previously raised by the Applicant. In fact, such use was well-known and openly acceptable to the condominium. As an example, they produced a copy of the Applicant’s “Owner Reference Manual” in which it states,

> *Parking stalls are not to be used for storage except in the case where the stall is completely closed in by walls and an additional garage door. Any such storage must comply with the local fire code. The owner of stalls with private garage doors must provide the access code to the corporation.*

[21] And the manual further provides,

> *Owners are permitted to leave their grocery carts in their parking stalls.*

[22] The Respondents argue that their long-standing reliance on Rule 38 and the condominium’s evident permission of and support for use of the parking units for storage purposes should support their continuation of that use and estop the Applicant from enforcing its declaration against them (a principle in law sometimes

referred to as *laches*).

[23] The Applicant states that such prior long-term acquiescence does not prevent it from now enforcing its declaration based on a correct understanding of its provisions. It cites section 4 in Article G of its declaration, which provides,

> *The failure to take action to enforce any provision contained in the Act, this Declaration, the by-laws, or any rules and regulations of the Corporation, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor be deemed to abrogate or waive any such provision.*

and notes that in each of the following Superior Court of Justice cases, the existence of such a non-waiver clause was relied upon to overcome any claims of *laches* or estoppel: *Ballingall v Carleton Condominium Corporation No. 111*, 2015 ONSC 2484 ("Ballingall"), and *Waterloo North Condominium Corp. v. Silaschi*, 2012 ONSC 5403, 2012 CarswellOnt 11860 ("Silaschi"). For example, in paragraph 17 of Silaschi, the court stated,

> *… with respect to the argument of Mr. Silaschi that the Condo Corporation "slept on its rights" and was guilty of laches, rendering the bringing of the Application unreasonable, para. XVII (5) of the Declaration provides a complete answer. That paragraph stipulates that the failure to take action to enforce any provision of the Act, Declaration, bylaws or rules, irrespective of the number of violations or breaches which may occur, shall not constitute a waiver of the right to do so thereafter, nor can it be deemed to abrogate or waive any such provision.*

C. <u>ANALYSIS</u>

[24] Considering all the foregoing and the additional information contained in the materials and submission provided by the parties, I find as follows on the key topics listed above.

1. Fire Inspection Order

[25] It is evident from the text of the Fire Marshall's letter of August 22, 2023, that the original order of the London Fire Department was not rescinded because the inspector's analysis or application of the Fire Code was determined to be incorrect, but solely because the inspector erroneously addressed the order to a member of the Applicant's board of directors rather than to each of the applicable unit owners.

[26] The Respondents allege in their submissions that the Fire Marshal "accepted the… conclusion" that "a garage is used for parking and storage." There is no

evidence to support this allegation.

[27] The Respondents' statement that a garage "is used" for such purposes was made in reliance on an alleged "universal" recognition that "a garage is used for parking a vehicle and storing personal property." This universal view is supported, the Respondents say, by what appears to have been an informal poll of condominium managers and declarations of other condominiums that have parking garages where storage is permitted. While all such submissions made for interesting reading, they are not sufficiently objective to ground my decision.

[28] Further, contrary to the Respondents' claims, the Fire Marshall's letter, which sets out the reasoning for the rescission, says nothing about this subject. Rather, it merely states that the order relating to the cessation of storage in the parking units is rescinded "because it has not clearly identified the issued person(s)." The Fire Marshall then adds that "it may be necessary to issue Orders to the individual owners of the parking spaces." This clearly contradicts the Respondents' view that the Fire Marshall found the storage to be an acceptable condition that does not breach the Ontario Fire Code.

[29] Regardless of the foregoing, if the Applicant's reading of its declaration is correct, the Applicant is not dependent on the London Fire Department order to justify its enforcement of Clause C.2(a) of the declaration, since it is under a statutory obligation to do so pursuant to subsection 17 (3) of the Act[1] (just as subsection 119 (1) of the Act[2] requires the Respondents to comply with the declaration). The fire department's order and its rescission are therefore ultimately of historical interest only, with the order indicating an at least initial motivation for the Applicant's enforcement actions.

2. Declaration and Rules

[30] On a plain reading of it, there is no reasonable basis for questioning that Clause C.2(a) of the Applicant's declaration prohibits the use of parking spaces in the condominium for anything other than parking motor vehicles.

[31] To the contrary, the Respondents' suggestion that this clause in the declaration "also points to the rules in an obvious desire by the Declarant to provide additional

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[1] "The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules." *Condominium Act, 1998*, s. 17 (3).

[2] "… an owner … shall comply with this Act, the declaration, the by-laws and the rules." *Condominium Act, 1998*, s. 119 (1).

provisions for using a parking unit," is not supported by either its plain wording or syntax. The more plain and obvious meaning of the phrase, "as may from time to time be defined in the rules," is that it permits there to be additional clarity in the rules as to what may qualify as a "private passenger motor vehicle" but not that it is intended to allow the rules to set out additional uses of the parking units other than the parking of motor vehicles.

[32] As such, Rule 38 of the Applicant's rules cannot be relied upon by the Respondents to support their continuing use of their parking units for storage for at least two reasons.

[33] First, the rule has been effectively repealed. The Respondent's argument that the Applicant was required to demonstrate that the rule was both unreasonable and inconsistent with the Act and declaration in order to justify its repeal, is incorrect. Either flaw (i.e., unreasonableness or inconsistency) can be fatal and it is not necessary for both to be proven.[3] They also erroneously reverse the analysis and application of subsection 58 (1) of the Act[4] when they suggest a rule should be found to be valid and consistent with the Act if it "does not prejudice" the safety, security, or welfare of the owners or the property and "does not interfere" with the use and enjoyment of the units, the common elements, or the corporation's assets. Rather, the criteria in subsection 58 (1) is not that the rule must not prejudice or interfere with such things, but that it is required to promote them. Further, the Applicant was not required to find any such issues with the rule in order to present it to the owners for repeal.

[34] Second, even if its repeal had not been effectively done, Rule 38 is inconsistent with Clause C.2(a) of the declaration and therefore must be considered unenforceable or deemed amended to comply with it.[5] Therefore, if Rule 38 had not been repealed, it could only allow only for the installation of garage doors on double parking units but could not permit any use or occupancy of the parking units for purposes other than the declaration allows: i.e., the parking of motor

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[3] "The rules shall be reasonable and consistent with this Act, the declaration and the by-laws." *Condominium Act, 1998*, s. 58 (2)

[4] "The board may make, amend or repeal rules under this section respecting the use of the units, the common elements or the assets, if any, of the corporation to, (a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or (b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation." *Condominium Act, 1998*, s. 58 (1).

[5] "If any provision in a rule or a proposed rule is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the rule or proposed rule, as the case may be, shall be deemed to be amended accordingly." *Condominium Act, 1998*, s. 58 (4).

vehicles.

3. Alternative Approaches

[35] As noted above, both the Applicant and Respondents agree that the Applicant had various options for how it might deal with the issue before it. The Applicant's board chose an approach with which the Respondents do not agree, but this does not render their decision improper.

[36] It is a well-established principle of law that condominium boards possess some discretion with respect to the manner and extent that they will enforce provisions of their governing documents, and provided their discretion is exercised reasonably they are entitled to deference in respect of such decisions. As such, it is not relevant whether the Respondents, or I, or any other reviewer of their decision believes they would have made a different decision in the same circumstance. That is not a valid test of whether a decision is reasonable.

[37] A decision is not rendered unreasonable just because there is more than one alternative available, or because the chosen alternative creates some hardship for some owners, or because some people disagree with it, or even if there were flaws in the decision-making process. Only flaws that are significant or central to the decision can undermine the right to deference. I noted no such significant flaws in the materials explaining the board's reasoning in this case. I find no basis in law for this Tribunal to reverse the board's decision to enforce its declaration as written.

4. Acquiescence or Acceptance Over Time

[38] In view of the above facts and conclusions, the Respondents' only remaining defense against the Applicant's enforcement of Clause C.2(a) of the declaration would appear to be if the Applicant had "sat on its rights" for so long that it could no longer enforce it. While many facts of the case do support this assessment, I find, ultimately, that this argument also cannot succeed.

[39] The facts which support the Respondents include that for over thirty years the condominium community as a whole considered Rule 38 to be valid and not only permitted the installation of garage doors in the applicable parking units, but also knew about and allowed storage of personal items. It is fair to conclude, contrary to the circumstances in Ballingall, that, although the unit owners would have had notice of the wording in C.2(a) of the declaration, both the conduct of and documents issued by the condominium during the relevant period (including Rule 38 while it was presumed valid and in force) would have led owners to believe and

rely upon the view that they were not bound by the restrictive language of that clause.

[40] However, despite this long-term, justified reliance, the Applicant is correct that the non-waiver clause set out in section G.4 of its declaration operates to protect it from estoppel. In both Ballingall and Silaschi, and various other cases referenced in them, it is noted by the courts that such a clause will "provide **a complete answer** to any argument advanced… based on laches or estoppel" (emphasis added). This Tribunal does not have authority to disregard such precedent. As such, I conclude that the corporation was entitled to commence the enforcement of its declaration once it became conscious of and concerned about it.

D. CONCLUSION

[41] Based on the foregoing analyses, I order that the Respondents' must use and occupy their parking units solely for the purpose of parking private passenger motor vehicles in compliance with Clause C.2(a) of the declaration and that they cease the use of such units for storage as demanded by the Applicant.

[42] In regard to how soon the Respondents should be required to come into compliance, the Applicant suggests its enforcement has been reasonable and accommodating. It notes that the vast majority of impacted owners are already in compliance (a statistic the Respondents do not believe is accurate) and that it has been seeking to enforce its declaration for nearly two years. Referring to this as "a very reasonable transition period," the Applicant suggests the Respondents have had ample time to prepare to comply and for that reason should be ordered to do so "immediately."

[43] The Applicant further requests that the Tribunal's order "allow the Applicant to have a third-party bonded and licensed moving company remove [from the Respondents' parking spaces] and subsequently store in an off-site location any items reasonably deemed not to be in compliance with the Declaration from the Respondent's parking units and allow the Applicant to charge back the full costs of completing same if compliance not achieved fourteen (14) days following the receipt of the CAT's Decision in this matter, collected in the same manner as common expenses."

[44] The Respondents request that, if they are ordered to comply, the order be effective only at the time that they sell and move out of their unit.

[45] It is not reasonable to order compliance to take effect at such an indeterminate time as the Respondents' have requested. However, I have considered that,

despite having had, in principle, ample opportunity to comply, it is likely that the Respondents will require a practical amount of time to achieve actual compliance. Therefore, I will grant them 60 days from the date of issuance of this order to remove from each of their parking units all storage items, including all cabinets, shelving, tires, appliances and any other items other than private passenger motor vehicles.

[46] If, at the end of the 60 days, the Respondents have not accomplished this, I agree that the Applicant should have the right, on reasonable notice (which, in this case, I would specify to be a minimum of two days) to remove the non-compliant items and that it would be appropriate, if it does so, to store those items securely so that the Respondents can retrieve them. It is also reasonable that the costs of such removal and storage should be borne by the Respondents. While I believe the Applicant likely already has the authority it needs to take such actions under section 19 and subsections 92 (3) and (4) of the Act,[6] I find that the Tribunal has authority to make such an order under clauses 2, 3 and 7 of subsection 1.44 (1) of the Act, and therefore do so.

E. <u>COSTS</u>

[47] The Applicant has been wholly successful and is entitled to reimbursement of its application fees in the amount of $200 in accordance with the Rules of the Tribunal. The Applicant also requests reimbursement of its costs "from April 28, 2023 to the completion of this matter" in the amount of $16,597.33, not including its Tribunal fees. The relevance of the date of April 28, 2023, was not explained by the Applicant.

[48] The amount claimed by the Applicant constitutes not only a request for the costs of proceedings before the Tribunal, Stage 1 of which commenced in November 2023, but also for compensation of pre-Tribunal enforcement expenses; however, the

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[6] "On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation." *Condominium Act, 1998*, s. 19.

"If an owner has an obligation under this Act to maintain the owner's unit and fails to carry out the obligation within a reasonable time and if the failure presents a potential risk of damage to the property or the assets of the corporation or a potential risk of personal injury to persons on the property, the corporation may do the work necessary to carry out the obligation." *Condominium Act, 1998*, s. 92 (3).

"An owner shall be deemed to have consented to the work done by a corporation under this section and the cost of the work shall be added to the contribution to the common expenses payable for the owner's unit." *Condominium Act, 1998*, s. 92 (4).

Applicant did not provide a precise accounting to distinguish these amounts. On the other hand, the Respondents suggested that, if the case were to be decided against them, the Applicant should be entitled to just one dollar (over and above its Tribunal fees) as "general cost" in order to make the point to the Applicant that while "technically they are correct … this action was frivolous and could have been mitigated differently and more amicably."

[49] I cannot agree with the Respondents that this case is frivolous. I am also not convinced that the case could have been dealt with as differently as the Respondents suggest; at least, I believe it was not solely dependent on the Applicant to have done so. The evidence and submissions in this case disclose that though the Respondents were sincere (or, as they say, they "were not deceitful") in their views, they appear to have held steadfastly, and perhaps too stubbournly, to positions that were not entirely reasonable in the circumstances.

[50] Reflecting this, while the Respondents complained that the Applicant "consistently stipulated" its demand that the Respondents comply, they also stated that they "**always** responded" (emphasis added by me) that they were already in compliance. I do not think it should have been as mysterious to the Respondents as it seems to have been that there were problems with their interpretation of the condominium documents, and therefore with their view of what constituted compliance. Further, the Respondents' interpretation of the Fire Marshall's decision was neither accurate nor a reasonable basis on which to continue to defy the Applicant's requests for compliance.

[51] It is in relation to this apparently immovable posture that the Applicant's counsel cited the case of *Peel Condominium Corporation No 96 v Psofimis*, 2021 ONCAT 48 ("Psofimis") (as many condominiums party to Tribunal cases have been inclined to do since that case was decided). In that case, the applicant condominium was awarded substantial costs due to the ongoing and egregious non-compliance of the respondent. However, though not entirely reasonable in their views, I do not find evidence in this case that the Respondents' conduct has been nearly so difficult and recalcitrant as the respondent in Psofimis.

[52] The Respondents also made allegations relating to the Applicant's conduct in their closing submissions regarding costs and other matters. They stated that the Applicant created a "toxic" atmosphere supplemented by "tyrannical" leadership. They report being yelled at and told by one or more of the Applicant's board members to "get out, move out" on account of their opposition to the enforcement of Clause C.2(a) of the declaration. As a result, the Respondents state they do, in fact, intend to move, asserting "It is just too toxic to stay here." If this report is

accurate, such conduct and its result are indeed improper and unacceptable; however, these allegations do not form a basis for an assessment of costs as they appear to have no bearing on the Applicant's conduct during or in relation to these proceedings. Nor did the Respondents provide any evidence in support of their allegations.

[53] Lastly, counsel for the Applicant cited Rule 43 of the condominium's rules to support full indemnification from the Respondents, which states,

> *An Owner, their family, guests, servants, agents or tenants may cause the Corporation to incur loss or damages by reason of accident, negligence, deliberate action or breach of the Rules and Regulations in force at that time. At the discretion of the Board, cost recovery for said loss or damage may be charged to the unit owner and may be recovered by the Corporation in the same manner as common expenses.*

[54] However, I note that there is no allegation that the Respondents breached any rules of the condominium; therefore, this particular indemnification clause cannot be applied in this case.

[55] I also do not find it probable that $16,597.33 since April 28, 2023, constitutes a proportionate amount of costs for this case.

[56] In reviewing its basis for seeking indemnification, the Applicant cites several instances or examples of its enforcement-related activities that pre-date April 28, 2023. For example, the Applicant described the Respondents' failure to comply since May 2022, at least three letters demanding enforcement between October 2022 and March 2023, and work relating to an explanatory notice sent to all non-compliant owners in February 2023. These submissions also appear to demonstrate that much of the substantive analysis of the Applicant's positions was worked out well before April 28, 2023, and the commencement of Tribunal proceedings in the following November.

[57] In addition, Applicant's counsel itself stated, "[t]he issues in this proceeding are not complex." Thus, it is not reasonable to assume that significant legal work was required in or to prepare for these proceedings.

[58] I also observed that the parties were responsive, diligent, and did not cause delays or other difficulties in these proceedings.

[59] The facts and submissions in this case suggest that both parties share some responsibility for the failure to resolve this dispute more amicably and without recourse to the Tribunal. As such, while it is not fair that the other unit owners bear

the full costs of the Applicant’s enforcement and these proceedings, it is also not justified to impose those costs entirely on the Respondents.

[60] Taking all these points into consideration, and given that I have some uncertainty as to how much of the amount claimed by the Applicant relates particularly to its handling of these proceedings, I award the Applicant with costs at a partial indemnity rate of 30% of the amount requested, being $4,979.20.

F. ORDER

[61] The Tribunal orders that:

1. Under clause 1 of subsection 1.44 (1) of the Act, the Respondents have sixty (60) days from the date of issuance of this order to remove from each of their parking units in the condominium all storage items, including all cabinets, shelving, tires, appliances and any other items other than private passenger motor vehicles, and to cease use or occupancy of their parking spaces for any purposes other than the parking of private passenger motor vehicles in compliance with the declaration and current rules of the condominium.

2. If, at the end of the said 60-day period, the Respondents have not completely removed all items as set out in the preceding paragraph,

   i. the Respondents shall permit (ordered under clause 2 of subsection 1.44 (1) of the Act) and the Applicant shall be entitled (ordered under clause 7 of subsection 1.44 (1) of the Act) to enter into the Respondents’ parking units upon giving at least 48 hours’ written notice, to remove the remaining items and shall keep them in a secure storage facility until retrieved by the Respondents, and

   ii. the costs of such removal and storage shall be entirely at the Respondents’ expense, which the Respondents are required to reimburse to the Applicant upon receiving notice thereof, which reimbursement shall be considered an award of compensation in favour of the Applicant in accordance with clause 3 of subsection 1.44 (1) of the Act and therefore, for so long as the Respondents own units in the condominium, may be added by the Applicant to the common expenses payable for the Respondents’ units, as in subsection 1.45 (2) of the Act, if not paid to the Applicant within 30 days of receiving written notice thereof.

3. The Respondents shall pay the Applicant costs in the amount of $5,179.20,

under clause 4 of subsection 1.44 (1) of the Act.

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Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: June 14, 2024