CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 26, 2022
CASE: 2022-00046N
Citation: JRS Productions Inc. et al. v. Metropolitan Toronto Condominium Corporation No. 980, 2022 ONCAT 93

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

Member: Jennifer Webster, Member

The Applicants,
JRS Productions Inc. and Joseph Sutherland
Represented by Jaclyn Solomon, Paralegal

The Respondent,
Metropolitan Toronto Condominium Corporation No. 980
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – May 13, 2022 to August 13, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] This case is a parking dispute about the assignment of parking spots at Metropolitan Toronto Condominium Corporation No. 980 ("MTCC 980" or the "Respondent"), an industrial condominium.

[2] The Applicants are owners of two units of MTCC 980 and they started this case seeking an order that parking at MTCC 980 should be on a "first come, first served" basis or, in the alternative, an order that they should have reserved access to the parking spots in front of their respective units. As the hearing progressed, the Applicants' position evolved into a claim that the Respondent has acted outside of its authority in allocating parking spots as reserved to specific units and that the Respondent has unreasonably enforced parking rules against them.

[3] The Applicants seek a series of orders from the Tribunal, including the following determinations: that the Respondent has restricted use of the common elements of the parking lot contrary to the *Condominium Act, 1998* (the "Act") and the Respondent's governing documents; that the leases entered into by the Respondent with certain owners for parking spots are not enforceable; and that the Respondent has engaged in harassment of the Applicants in its enforcement of the

assigned parking spots. The Applicants also seek $1,500 each in compensation for damages incurred due to the Respondent's non-compliance, as well as their costs of this application.

[4] The Respondent submits that it has designated parking and leased parking spots in accordance with its governing documents. It further states that it has enforced its parking rules in a reasonable manner and it denies any harassment or threats towards the Applicants. The Respondent asks the Tribunal to dismiss the application and order the Applicants to pay its legal costs.

[5] The parties provided extensive submissions about the issues and concerns related to the Respondent's parking assignment and enforcement. I have carefully reviewed and considered all the submissions and evidence. I will, however, only address the submissions that are most relevant to the issues I must decide in this application.

[6] For the reasons set out below, I find that, although section 21 (1) of the Act permits the Respondent to lease parking spots as part of the common elements, it has leased the parking spots without a by-law, which is a requirement of section 21(1). Therefore, I find that the leases of the parking spots in November 2021 are invalid. However, I do not find that its enforcement of parking rules against the Applicants was unreasonable, harassing or in bad faith. I order the Respondent to pay the Applicants' fees in relation to this application. I make no order for the claimed compensation of $1500 each for non-compliance and no order for legal costs.

B. BACKGROUND

[7] The Respondent is a 14-unit industrial condominium located at 11 Carlaw Avenue in Toronto, Ontario.

[8] The issues related to parking at MTCC 980 have a long history, with the core issue being that there are insufficient spots for the owners, tenants, and visitors. The Respondent has taken numerous steps to address parking concerns, including the passing of four by-laws (By-Law Nos. 6 to 9) specifically related to parking, between 1999 and 2001.

[9] The Applicant, JRS Productions Inc., is a business owned and operated by Mr. John Sievert, and it has owned Unit 12 in MTCC 980 since 2012. The other Applicant, Mr. Joseph Sutherland, purchased Unit 11 in MTCC 980 in 2013.

[10] Mr. Sievert believed at the time of purchase that Unit 12 had a reserved parking spot due to By-Law No. 8. He also believed that he was allocated an exclusive

parking spot in the Agreement of Purchase and Sale.

[11] In May 2021, Mr. Sutherland contacted the condominium manager, asking for the removal of reserved parking signs above the parking spots in front of his unit. Prior to Mr. Sutherland's email in May 2021, neither Applicant had identified issues about parking to the condominium manager or the board.

[12] On June 9, 2021, Mr. Don Kirouac, the president of the Respondent's board, sent an email to all owners about parking. He advised that all parking spots in the lot were reserved pursuant to a parking plan developed in 2012. He further wrote that the parking plan had been approved by owners and that a by-law in support of the plan had been created, but that the status of the by-law was not clear.

[13] Following the June 9, 2021, email, Mr. Sutherland wrote to the condominium manager and Mr. Kirouac to request copies of the by-laws that assigned the parking spots. On June 18, 2021, Mr. Kirouac confirmed to Mr. Sutherland that By-law Nos. 6 to 9 dealt with the allocation of reserved spots and that he had a by-law identified as "By-Law No. 12" related to the parking plan in his personal file, but that he did not know whether it was registered.

[14] On November 12, 2021, the Respondent emailed lease agreements to all owners in relation to allocated parking spots. In this email, the Respondent also identified which spot or spots were assigned to each unit. Eleven of the fourteen owners signed the lease agreements with the Respondent for the lease of their allocated parking spot or spots.

[15] On numerous occasions, Mr. Sutherland has parked in the spot that is assigned and leased to Unit 10. The parking spot for Unit 10 is located in front of the door to Unit 11. The Respondent has requested that Mr. Sutherland move his vehicle from this spot and park in his own assigned spot, which is next to the spot assigned to Unit 10. The Respondent has also advised Mr. Sutherland that his vehicle may be tagged or towed if it is not removed from Unit 10's spot. Mr. Sutherland received two tickets from the City of Toronto in January 2022 for the violation of parking a vehicle on private property without consent. Both tickets related to the parking of his vehicle in the spot reserved for Unit 10 at 11 Carlaw Avenue.

C. ISSUES & ANALYSIS

[16] The issues before me in this case are:

1. Is the Respondent permitted to assign or allocate parking spots for the use of a particular unit?

2. Has the Respondent validly allocated reserved parking spots?

3. Is the Respondent's allocation of parking spaces reasonable?

4. Has the Respondent enforced its allocation of parking spots in a reasonable manner?

5. Should the Tribunal order compensation or costs?

Issue 1: Is the Respondent permitted to assign or allocated parking spots for the use of a particular unit?

[17] The parking lot at MTCC 980 is part of the common elements. Section 11 (2) of the Act provides that condominium unit owners are also owners as tenants in common of the common elements and section 11 (5) states that common elements shall not be partitioned or divided, except as provided for by the Act.

[18] Article 1.05 of the Respondent's declaration confirms that "each owner shall have an undivided interest in the common elements as a tenant in common with all other owners."

[19] The Applicants argue that, by assigning parking spots for the use of particular units, the Respondent is dividing the common elements contrary to the Act and the declaration. The Applicants also note that article 3.01 of the declaration provides that "no condition shall be permitted to exist that is likely to interfere with the use or enjoyment by other owners of the common elements." According to the Applicants, through the creation of reserved parking spots, the Respondent interfered with their enjoyment of the common elements by creating exclusive use common elements.

[20] The Respondent argues that it has the right to lease common element parking spots pursuant to its declaration, article 5.02 (j) of By-Law No. 1 and section 21 (1) of the Act.

[21] Article 3.07 of the declaration reads:

> Parking shall be permitted on those parts of the Common Elements as may be designated from time to time by the Board by By-Law and confirmed by the Condominium Corporation. Each space in the Common Elements so designated for parking shall be used for the purpose of parking thereon one (1) vehicle.

[22] Article 5.02 (j) of By-Law No. 1 empowers the Respondent "to lease any part of parts of the Common Elements". Section 21 (1) of the Act permits a condominium

corporation to lease common elements:

> 21(1) The corporation may by by-law,
>
> (a) lease a part of the common elements, except a part that the declaration specifies is to be used only by the owners of one or more designated units and not by all the owners;
>
> (b) grant or transfer an easement that is part of the common elements; or
>
> (c) release an easement that is part of the common elements.

[23] From a review of the Act, declaration and by-laws, I find that the Respondent has the authority to designate parking spots and to lease common elements, which includes the parking areas. I also find that the Respondent has the power to lease parking as part of the common elements, pursuant to section 21 (1) because the declaration has not specified that any of the parking spots are to be used only by owners or one or more designated units. Therefore, the Respondent has the authority through a lease or an easement (authorized by by-law) to assign or allocate specific parking spots to particular units.

Issue 2: Has the Respondent validly allocated reserved parking spots?

[24] The Applicants submit that the Respondent has not properly implemented the leases of the parking spots because no by-law has been adopted to support the leases.

[25] There are four by-laws related to parking that were enacted and registered by the Respondent between 1999 and 2001.

[26] By-Law No. 6 was created in 1999 and it includes provisions relating to parking. These rules include prohibitions against owners parking in visitor parking spaces, overnight parking, and the repairing of vehicles on the common elements. Owners are also directed to provide the Respondent with the licence number of their motor vehicles. By-Law No. 6 also includes the following provision with respect to reserved parking:

> No motor vehicle shall be parked in an area designated as a reserved parking space in the Common Elements unless it displays in a prominent area in the said vehicle a parking permit tag (or sticker or such other means of identification as the Corporation may designate from time to time) allocated to such vehicle by the Corporation.

[27] Through By-Law No. 7, the Respondent assigned two reserved parking spots to each of Units 13 and 14. A reserved parking spot was assigned to Unit 12 in By-

Law No. 8, and a reserved parking spot was assigned to Unit 10 in By-Law No. 9. Through this series of by-laws between 1999 and 2001, the Respondent had reserved six parking spots for four units. The by-laws did not, however, identify the location of the reserved spots for any of these units.

[28] According to Mr. Kirouac's testimony, in response to parking concerns, the Respondent developed a parking plan in 2012 through which parking spots were allocated to owners based on their share of the common elements, as set out in Schedule D of the declaration. He stated that the parking plan also took into the account the reserved spots created by By-Law Nos. 7, 8, and 9. Mr. Kirouac testified that the plan was approved by the owners in 2012 and circulated to them. It was his understanding that he had the right to use his assigned spot for Unit 10 in accordance with the approved parking plan.

[29] Mr. Kirouac also testified that there were parking spots assigned to Units 11 and 12, the Applicants' units, in the parking plan, and that therefore, he believed that they should be parking in their assigned spots. There were, however, no signs or other markings to indicate which spots were assigned to Units 11 and 12, although there were reserved parking signs in relation to the spots for some of the other units.

[30] Mr. Kirouac stated that, in November 2021, the Respondent offered leases to all owners as a way to formalize the parking plan that was already in use.

[31] Despite statements from Mr. Kirouac that he had the parking plan and a draft by-law about the plan in his personal files, the Respondent did not produce either document in evidence. The parking plan is not part of any existing by-law nor has it been adopted as a rule of the Respondent. The plan may be an informal policy or understanding among owners without any formal support in governing documents.

[32] By-Law Nos. 7, 8, and 9 created reserved parking spots for specific units and, therefore, appear to be in compliance with section 21 (1) of the Act for the purposes of granting an easement or licence to a portion of the common elements by by-law.

[33] The Respondent has also expressly leased common elements by By-law No. 11 dated March 12, 2012, through which it leased a portion of the rooftop to one of the owners.

[34] The Respondent's parking plan has not, however, been created by by-law but instead through an informal agreement in 2012 that was later followed by leases offered in November 2021. If the leases and parking plan were part of a by-law or

rule, new or prospective owners would be notified of the restrictions on parking through a status certificate. Given that the parking plan is an informal agreement or arrangement, owners may or may not learn of the parking plan.

[35] Although By-Law No. 1 provides the Respondent with the general power to lease common elements, I find that the general power is insufficient to permit the Respondent to lease parking spots without a by-law. Moreover, through its action of creating a by-law to lease part of the rooftop common elements, the Respondent expressly leased a particular common element in a manner that did not rely on it general power to lease. However, and in contrast to By-Law No. 11, the Respondent did not take the step of enacting a by-law to expressly lease the parking spots. I find that the Respondent's assignment of reserved parking spots through the parking plan or the leases has not been properly enacted pursuant to section 21 (1) of the Act. Although Mr. Kirouac referenced draft By-Law No. 12 to support the parking plan in his testimony and in his email communications to owners, no such by-law has been approved or registered. In the absence of a by-law, the Respondent cannot validly lease parking spots.

[36] The Respondent argues that the parking plan was a reasonable solution to issues of supply and demand in the parking lot. It notes that the plan was in place for 10 years without any objections and it resolved the issues the owners were experiencing. The Respondent submits that the board's decision making in relation to parking involved a balancing of the interests of all owners and that the parking plan protected the legitimate expectations of owners. For these reasons, the Respondent submits that the Tribunal should defer to the Board's decision to implement the parking plan.

[37] The Tribunal has generally accepted that deference should be given to decisions of a condominium corporation's board as part of the business judgment rule, provided the decision is neither unfair or unreasonable and the directors have met the standards set out in section 37 of the Act (see *Boodram v*. *Peel Standard Condominium Corporation No. 843*, 2021 ONCAT 31 at paragraphs 17 and 18; and *Davy v. Toronto Standard Condominium Corporation No. 2121*, 2021 ONCAT 114 at paragraph 21).

[38] I do not agree that the Tribunal should defer to the board's decision to lease parking spots in accordance with its 2012 parking plan. The Respondent's failure to enact a by-law to lease the parking spots does not meet the standard of care required of directors by section 37 of the Act to exercise the care, diligence and skill that a reasonably prudent would exercise in comparable circumstances. The board had passed previous by-laws granting reserved parking spots as well as a

by-law to lease part of the common element of the rooftop. The board was also aware that a by-law had been drafted in relation to the parking plan in 2012 and that the status of the by-law was unknown. It was, nonetheless, clear from Mr. Kirouac's evidence that the By-Law No. 12 about the parking plan had not been voted on by owners and had never been registered.

[39] The board undertook the option of leasing parking spots as a means to formalize the assignment made in the 2012 parking plan. It was reasonable for the board to create parking plan to address the challenge of balancing the interests of the owners in a crowded parking lot where many users were fighting for spots. The board has the authority to lease but it needs to do so by by-law in order to act in compliance with section 21(1). Without a by-law related to the lease of parking spots, the board has acted outside its authority, and a failure to comply with known statutory requirements cannot be considered to be within a range of reasonable choices attracting the Tribunal's deference.

Issue 3: Is the Respondent's allocation of parking spots reasonable?

[40] The Applicants outlined numerous complaints they have relation to the location of their allocated parking spots. All but one of these complaints is not relevant to these proceedings, as they fall outside the jurisdiction of the Tribunal to decide. However, since the parties provided extensive submissions about them, I provide the following brief comments.

Non-compliance with municipal by-laws

[41] The Applicants complain that the parking allocations are not in compliance with municipal by-laws that they say specify the number of parking spots they should have reserved for their use. This is unrelated to the provisions of the condominium's governing documents, and as such the Tribunal is not the correct forum to determine this matter. This is a matter that the Applicants may bring to the City's attention for assessment and determination, if wanted.

Proximity to Fire Hydrant

[42] Mr. Sutherland complains that his assigned parking spot is located too close in proximity to a fire hydrant located in the common elements, which he believes is therefore contrary to law. However, Mr. Sutherland refers only to the prohibition against parking near to fire hydrants that applies to public sites. The hydrant in question is on the condominium property, which is private property and subject to different regulations. In any event, as this is not an issue relating to the condominium's governing documents, it is not within the Tribunal's jurisdiction to

decide and, again, Mr. Sutherland may wish to review the matter with the relevant government authority if he believes the claim is correct.

Inconsistent with Agreement of Purchase and Sale

[43] Mr. Sievert states that his agreement of purchase and sale for Unit 12 entitles him to one additional parking spot. I note that the condominium is not a party to that agreement, and it is not clear why Mr. Sievert believes the condominium is compelled to do anything on account of it. In any event, as this complaint does not relate to a provision in the condominium's governing documents, it is outside of the Tribunal's jurisdiction to decide.

[44] The fourth complaint of the Applicants is that their assigned parking spots are located in front of a "loading space" contrary to Rule 5.01 of the Respondent's rules, which prohibits parking in front of loading spaces (amongst certain other areas). The Applicants argue that the fact that the parking spots are located in front of roll-up doors necessitates that they be identified as "loading spaces". Based on input from its legal counsel, the Respondent disagrees. I am not persuaded that the style of door necessarily defines the area as a loading space for the purposes of the Respondent's rules. Nor do I find it to be outside of the board's discretion to decide what that phrase in the Rules means and to which parts of the property it should apply. I note the Respondent has obtained legal counsel on this question, and it is reasonable for it to rely on such advice.

[45] Finally, the Applicants argue that the parking plan favours the individual wishes of certain owners, and, in particular, that Mr. Kirouac, as the owner of unit 10, has assigned to himself a preferred spot directly in front of the door to Mr. Sutherland's unit. Unit 10 does not have an exterior door to the parking lot and the closest spots to unit 10 are the two spots in front of unit 11. Unit 10 was provided with a reserved parking spot by By-Law no. 9 in 2001, prior to Mr. Sutherland's purchase of unit 11. The By-Law did not specify the location of the reserved spot for unit 10 but it is reasonable to locate the spot close to unit 10's entrance. Mr. Kirouac testified that he recalled that the reserved parking for unit 10 was designated in 2013 before he was on the board.

[46] Mr. Sutherland has offered no evidence to support his claim of bad faith or favouritism in the designation of the spot for unit 10. Put simply, he wants the spot that was assigned to unit 10 because it is a convenient location directly in front of the door to his unit. His individual preference for this spot over the one to which he was assigned in front of his roll up door does not make the assignment unreasonable.

Issue 4: Has the Respondent enforced its allocation of parking spots in reasonable manner?

[47] The Applicants claim that they were harassed and threatened with respect to the Respondent's enforcement of assigned parking spots, and that, therefore, the Respondent has engaged in unreasonable enforcement against them.

[48] Although both Applicants claim harassment, there was insufficient evidence provided in relation to any alleged harassment directed at Mr. Sievert. With respect to Mr. Sutherland's claim of harassment, the alleged threats are found in a series of emails related to his parking in the spot assigned to Unit 10. In these emails, the Respondent's representatives ask Mr. Sutherland to move his vehicle and park it in the spot assigned to him. They also advise Mr. Sutherland that if he fails to do so, he may be ticketed and /or towed. Mr. Sutherland received two tickets from the City of Toronto in January 2022 for parking in the spot assigned to Unit 10. Each ticket assessed an administrative penalty of $30. Mr. Sutherland confirmed that his vehicle was never towed from the parking lot at 11 Carlaw Avenue.

[49] In the Respondent's By-Law No. 6 about parking, there is a requirement that vehicles parked in reserved parking spots display a parking permit tag provided by the condominium corporation. Also, it is explicitly stated that if an owner or tenant breaches the By-Law, the corporation is entitled to tow the impugned vehicle.

[50] Mr. Sutherland was engaged in a conflict with the Respondent about parking since May 2021. He received consistent responses from the board that it was the Respondent's position that it had the authority to allocate parking spots. In addition, the parking spot for Unit 10 had been designated as a reserved spot since 2001 through By-Law No. 9. Despite clear communication from the Respondent board and its counsel, Mr. Sutherland continued to park in the spot designated as reserved for Unit 10. In these circumstances, the board had a duty and the authority to enforce By-Law Nos. 6 and 9. It sought first to enforce the reserved parking spot for Unit 10 by writing to Mr. Sutherland and asking him to move. These requests were made on November 15 and 16, 2021, December 1, 2021, and January 4, 2022. After Mr. Sutherland failed to move his vehicle, he received parking tickets on January 5 and 10, 2022.

[51] There is nothing unreasonable in the Respondent's approach to attempt to get compliance from Mr. Sutherland with By-Law Nos. 6 and 9 in the face of his repeated refusal to respect the assignment of the parking spot to Unit 10. The Respondent asked that he move his vehicle and only resorted to ticketing after its repeated requests were ignored.

[52] Mr. Sutherland also claims that the Respondent has condoned harassment directed at him by other owners in relation to the parking dispute. In particular, he describes an incident that occurred on or about November 7, 2021, when Mr. Kirouac's daughter parked in the spot reserved for Unit 10. He states that he was removing the cone placed in Unit 10's spot so that he could park there when Mr. Kirouac's daughter drove at him from another direction and almost assaulted him with her vehicle as she parked in the spot. He further states that she screamed at him from her vehicle. Mr. Sutherland's employee, Mr. Steve Fillis, was with him during this incident, and Mr. Fillis confirmed Mr. Sutherland's account of the incident.

[53] The Respondent provided a video that documents the incident between Mr. Kirouac's daughter and Mr. Sutherland. I did not find the video particularly helpful or relevant.

[54] There may have been some conflict between Mr. Sutherland and Mr. Kirouac's daughter. However, this does not amount to harassment on behalf of or condoned by the board. Mr. Sutherland did not make a complaint to the board about this incident, and therefore, the board did not have an opportunity to investigate or respond.

[55] Mr. Sutherland claims that the Respondent is only enforcing the parking rules against him and not against others. In support of this claim, he provides a series of photos that show that the car owned by Mr. Kirouac's daughter has parked over the lines of the two spots in front of Unit 11 such that he cannot use the spot assigned to him. This may be evidence of poor or inattentive parking, but the photos in and of themselves do not demonstrate unreasonable or inconsistent enforcement. In addition, he claims that in the winter of 2022, snow piles were left in front of Units 11 and 12 as a reprisal for the parking conflict, and he submits photos to show the snow piles. Mr. Kirouac commented that the photos were taken during a particularly heavy winter snowfall and that there were piles of snow everywhere for a short period of time. I believe that it would be frustrating for Mr. Sutherland and Mr. Sievert to have snow piles in front of their units, but this is not sufficient or compelling evidence of unreasonable enforcement of parking rules.

Issue 5: Should the Tribunal order costs?

[56] The Applicants seek $1500 each as compensation for damages arising out of the Respondent's non-compliance with the Act, pursuant to section 1.44 (1) 3 of the Act. I have found that the Respondent has the authority to designate parking areas generally, and that By-Laws No. 7, 8, and 9 reserving particular spots appear valid. However, I have also found that none of the leases for parking spots or the parking

plan are properly authorized.

[57] Section 1.44 (1) 3 permits the Tribunal to make

> An order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of $25,000 or the amount, if any, that is prescribed.

[58] I decline to order the damages claimed by the Applicants. I do not find that they have incurred damages as a result of the act of non-compliance, being the failure to lease by by-law. Most of Mr. Sutherland's claims of damages are related to his inability to use the parking spot that was reserved for Unit 10. This allocation was made validly in 2001 by By-Law No. 9, and any damages he may have suffered are related to this parking spot. Consequently, any possible damages incurred by Mr. Sutherland are not due to the Respondent's failure to lease the other parking spots by by-law but are due to his own repeated refusals to follow the board's direction about the reserved parking spot for Unit 10. Mr. Sievert has offered no evidence of damages experienced by JRS Productions Inc. beyond general assertions that his inability to park in front of his unit has caused delays in his production work. I find that neither party has incurred damages that should be compensated under s. 1.44 (1) 3.

[59] Mr. Sutherland claims compensation of $60 for the two parking tickets he received in January 2022. I find that it was reasonable for the Respondent to use municipal by law enforcement after its numerous warnings and requests to Mr. Sutherland, and I do not order any compensation to him for the two parking tickets.

[60] The Applicants seek costs in the amount of $200 for the fees paid to the Tribunal for the application and hearing. Since the Applicants have been partially successful in their claim that the Respondent did not validly lease the parking spots, they are entitled to their costs of $200 for the fees paid to the Tribunal pursuant to s. 1.44 (1) 4 of the Act.

[61] The Respondent claims its legal costs of this application based on Rule 48.2 of the Tribunals' Rules of Practice which states:

> 48.2 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 cause a delay or additional expense.

[62] In support of its claim for costs, the Respondent argues that the Applicants filed this application in bad faith and for an improper purpose. It submits that the Applicants were aware of the parking plan and the reasons for the allocation of parking spots and that nonetheless, they pursued this application in order to obtain the parking spot locations of their choice. According to the Respondent, the application was made for an improper purpose because the Applicants were initially seeking an oppression remedy through the Tribunal, and such remedy is outside the Tribunal's jurisdiction. The Respondent also argues that the Applicants filed voluminous and irrelevant submissions which resulted in unnecessary legal costs to be incurred by the condominium corporation.

[63] The Applicants submit that there are no exceptional reasons to support an order of costs.

[64] Rule 48.2 is clear that the Tribunal will generally not order costs. The Tribunal has also developed a Practice Direction to provide clarity on the criteria the Tribunal might consider when deciding whether to order costs and the amount of costs to be ordered. These criteria include: unreasonable conduct on the part of a party or representative; whether a case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; and whether the parties attempted to resolve the issue in dispute before the CAT case was filed.

[65] I find that the circumstances of this case do not justify an order of costs in favour of the Respondent. At all times, there were an intense dispute between the parties as to the validity of the allocation of parking spots. This dispute caused significant conflict and the parties needed assistance to finally resolve the issue, despite their efforts to find solutions prior to filing the CAT case and at Stage 2-Mediation. This was a complex case that involved voluminous and complex submissions from both parties, but the size of the submissions does not merit a costs award for either party. Having found that the Respondent did not validly lease the parking spots, I cannot conclude that the Applicants filed this case in bad faith or for an improper purpose. For these reasons, I do not order costs.

D. CONCLUSION

[66] I conclude that the Respondent had the authority to allocate parking spots for the use of particular units. Nonetheless, I conclude that the Respondent did not validly allocate parking spots when it leased them to unit owners in November 2021 without a by-law.

[67] I also find that the Respondent has been reasonable in its assignment of particular parking spots to the Applicants and in its enforcement of the parking rules.

E. ORDER

[68] The Tribunal Orders that:

1. The Respondent's parking leases are unenforceable.

2. Within 30 days of the date of this Order, the Respondent shall pay to the Applicants costs in the amount of $200 pursuant to s. 1.44 (1) 4 of the Act and the rules of the Tribunal.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: August 26, 2022