

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 15, 2023

CASE: 2022-00432N

Citation: Manna v. York Condominium Corporation No. 62, 2023 ONCAT 24

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

Member: Susan Sapin, Member

The Applicant,
Anna Manna
Self-Represented

The Respondent,
York Condominium Corporation No. 62
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – November 17, 2022 to January 31, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Ms. Manna has owned one of 110 units in York Condominium Corporation No. 62 (“YCC 62”), a multi-story building with two underground parking levels, since 2011. She asserts YCC 62 has failed to enforce rules that govern visitor surface parking spaces, unit owners’ underground parking spaces, locker storage, and what and how certain items can be stored on balconies, in particular, non-seasonal items, bicycles and flower boxes.
- [2] YCC 62 maintains that its enforcement practices reflect appropriate exercises of its discretion, and that Ms. Manna brings this application because she has a grudge against the board. The evidence supports that the relationship between the parties is indeed acrimonious, and that Ms. Manna has long been frustrated with what she perceives as YCC 62’s failure to enforce certain rules or to consistently enforce others.
- [3] On review of the evidence and submissions of the parties, I find that YCC 62 has indeed been inconsistent in relation to its enforcement of certain rules. As Ms. Manna’s claim has been largely successful, I order that the Applicant be reimbursed for her CAT fees in the amount of \$200.

B. BACKGROUND

- [4] Some background information is helpful to put the disputes in perspective. YCC 62 submits that Ms. Manna has brought this application in retaliation for a “cease and desist” letter its counsel sent her on March 1, 2021, as a result of a series of strongly worded emails she sent to members of the board and to the condominium manager, Vadim Koyen, between November 2020 and February 2021, in which she accused them of being uncaring, negligent, incompetent and corrupt because they were not dealing with items improperly stored in a locker room hallway, together with other matters not relevant to this application. The letter advised Ms. Manna that her “. . . conduct undermined the ability of the Board and management to control, manage and administer the property and assets of the Corporation,” that the conduct was abusive and harassing, and that it was totally unacceptable and “must immediately and permanently cease.”
- [5] YCC 62 also demanded Ms. Manna reimburse the corporation for the legal costs of their letter, which she testified she did in order to avoid the corporation putting a lien on her unit.
- [6] The emails noted above, and the evidence and submissions of both parties indicate that the considerable animosity between Ms. Manna and the board of directors of her condominium goes back many years. Ms. Manna served on the board of YCC 62 from August 2015 until she resigned three years later in 2018 in frustration because she felt that “everything that needed doing got voted down during monthly board meetings.” She felt other board members were corrupt and not doing their job.
- [7] Based on the evidence provided, I find that in this case, both parties have communicated with each other in a way that is disrespectful and antagonistic. I include this background to emphasize the point that regardless of how a complaint is brought to its attention, this does not excuse YCC 62 from its duty under subsections 17(2) and (3) of the *Condominium Act, 1998* (the “Act”) to “control, manage and administer the common elements and the assets of the corporation,” and 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.”
- [8] I have reviewed and considered all of the submissions and evidence provided by the parties, but I will only refer to those that are relevant and necessary to making my decision.

C. ISSUES & ANALYSIS

- [9] The issues in this case are as follows:
1. Is YCC 62 consistently enforcing the current parking Rules for unit parking spaces and visitor parking?
 2. Has YCC 62 failed to enforce Rules 7, 8, 9 and 10 which forbid the storage of any kind, except seasonal furniture, on the balconies?

3. Does the storage located on the P1 level violate the Declaration, By-Laws and Rules of the Corporation?
4. What remedy, if any, should be directed in this case?
5. Should an award of costs be assessed?

Issue 1: Is YCC 62 consistently enforcing the current parking rules for unit parking spaces and visitor parking?

[10] Ms. Manna identified several instances where she alleges that the board is not enforcing rules that govern both unit parking spaces on the underground levels, and the surface level visitor parking spaces. Regarding parking spaces assigned to unit owners, she alleges that a blue SUV belonging to a deceased person and parked in the underground garage is “unlicensed, filthy, and an eyesore,” and that YCC 62 has not enforced a rule that requires its removal. She further submits that unit owners and/or tenants routinely park in the exterior visitor’s parking lot against the rule specifically forbidding it. She states that this is a longstanding issue of many years that YCC 62 does nothing about despite many complaints by herself and other owners.

[11] For its part, YCC 62 submits that “. . . contrary to the Applicant’s belief, YCC 62 is enforcing parking rules like it should,” and that Ms. Manna has presented no evidence to substantiate her claims.”

[12] For the reasons set out below, I find that YCC 62 has not enforced the rule that prohibits unlicensed vehicles to be parked in parking spaces assigned to unit owners. As to visitor parking, I find Ms. Manna has established, on a balance of probabilities, that YCC 62 has not enforced the rule against residents parking in visitor spaces with respect to one particular vehicle on one occasion.

The Rules

[13] Ms. Manna submitted two versions of the corporation’s rules that deal with parking and storage, one set dated the same year as the Declaration, in 1992 (“the Original Rules”), and an undated version she identified as the “New Rules.” Neither party made any submissions about which rules should apply. As the relevant rules are identical except for one sentence added at the end of Rule 43 of the New Rules, (emphasized in bold below), I will refer to the New Rules in this decision, of which Rules 43 – 45 and 47 apply to both visitor and unit owner parking:

43. No person shall place, leave, park or permit to be placed, left or parked within or upon the common elements including a parking space, any motor vehicle which, in the opinion of the Board of Directors, either by reason of its lack of use, length of unattended stay, physical condition or appearance and/or potential damage to the property, may be unsightly, pose a safety or security risk [or] diminish the value of the property. **A**

\$10.00 charge will apply to owners parking their vehicle(s) in visitors parking each and every time.

44. Upon written notice from the Board, the owner of the vehicle shall be required to remove or attend to the vehicle as directed, in default of which the vehicle shall be removed from the property at the expense of the owner.

45. If a motor vehicle is left standing in a parking space or elsewhere upon the common elements and is unlicensed or without current plates, it shall be removed from the property without notice to the owner, and at the owner's expense and neither the Corporation nor its agents shall be liable for any damage, cost or expense whatsoever, caused to such motor vehicle or the owner thereof arising from the strict enforcement of these or any other rules respecting the parking of vehicles on the common elements.

...

47. Residents shall not park in the Visitor's Parking Spaces. Surface parking is for the use of bona fide guests only.

a. Unit owner parking spaces underground

[14] Ms. Manna raised two concerns regarding underground parking. The first relates to the blue SUV that is “unlicensed, filthy and an eyesore” and which she states belongs to a deceased person. She provided a photograph of this vehicle taken from the front. It is dusty and does not display a licence plate. She did not say when the owner died but stated that the vehicle has been there “for a number of years.” She testified that residents have complained about it but provided no evidence to support this claim. In his affidavit, Mr. Koyen, the condominium manager, testified that YCC 62 is aware of this vehicle, it is registered with the corporation and occupies the parking spot properly assigned to the unit owner, and no one, including Ms. Manna, has ever complained about this vehicle. Mr. Koyen stated that the photograph indicates the vehicle is properly parked within the boundaries of its assigned space. YCC 62 submits that Ms. Manna’s evidence does not substantiate that the vehicle causes any sort of hindrance or nuisance to other unit owners and residents.

[15] I reject Mr. Koyen’s testimony. Rule 45 states unambiguously that a vehicle that is unlicensed or without current plates *shall* be removed. The reasons Mr. Koyen states for why YCC 62 has not required the vehicle to be removed are not relevant in the face of this mandatory wording. I find YCC 62 has simply chosen to ignore this rule.

[16] Having said this, I acknowledge that the courts in Ontario have found that condominium boards have the discretion to determine how to enforce their governing documents, including rules, so long as they act reasonably. As set out in a recent CAT case, *Roberts v. Halton Standard Condominium Corporation No. 617*

and Yamine (“Roberts”):

Courts have clearly stated that while a board has a duty to enforce its own declaration and rules where the violation is causing a problem, not every minor violation of a declaration must be met with an enforcement procedure (*Muskoka Condominium Corporation No. 39 v. Kreuzweiser*, 2010 ONSC 2463). A condominium board is vested with some discretion in deciding the manner and extent to which it should enforce its declaration and rules and is owed some deference, provided it acts reasonably and not capriciously.

- [17] In this case, however, although the presence of the unlicensed vehicle may be minor, YCC 62 has not provided a valid discretionary purpose for not requiring its removal. Its decision not to enforce a mandatory rule is not a reasonable exercise of its discretion, but an arbitrary one.
- [18] A reasonable exercise of YCC 62’s discretion in this case would be to notify the owner of the vehicle that if the vehicle is unlicensed, it must be removed, and if the vehicle is not removed within a reasonable period of time, then YCC 62 must remove it.
- [19] Accordingly, within 15 days of this decision, YCC 62 is required to notify the owner of the vehicle (or the unit owner if the owner of the vehicle is fact deceased or cannot be identified) that if the vehicle is unlicensed, it must be removed within 30 days from the date of the letter. If the vehicle is not removed within 30 days, then YCC 62 must remove the vehicle in accordance with Rule 45, within 15 days.
- [20] As to Ms. Manna’s claim that the vehicle is an eyesore, I find that under Rule 43, whether a vehicle may “be unsightly, pose a safety or security risk [or] diminish the value of the property” is a matter of opinion for the board of directors, and not of an individual owner. Accordingly, I find YCC 62’s decision not to enforce Rule 43 is a reasonable and fair exercise of its discretion in the circumstances.
- [21] Ms. Manna’s second complaint regarding underground parking, is that there are two cars parked in a space designed for only one vehicle. She provided a photograph of the two vehicles, a blue SUV with large “splotches” on the side, which she alleges belongs to a tenant of a board director’s “illegal rooming house.” This vehicle is parked back-to-back with a smaller red sedan. Ms. Manna testified that Schedule C of the Declaration lists the numbered parking spaces that belong to each unit, and that the space in which the blue SUV is parked is a single parking spot assigned to one unit, and not a “tandem” parking spot.
- [22] Mr. Koyen stated that, “The parking spot in question is a tandem parking and it is permitted to park two cars in the said parking spot. While the spot looks like one spot it is designed to accommodate two cars, and there is no breach of the corporation’s rules. In addition, there have been no complaints about this parking situation.

[23] Neither party pointed me to any provision in the Declaration or any rule that governs this situation, nor does there appear to be any such rule. Accordingly, I find there is no basis upon which I can conclude that this parking situation as described by Ms. Manna is in violation of a rule.

b. Visitor Parking Spaces

[24] As noted, there are 110 units in YCC 62. According to the Declaration, each owner has exclusive use of an assigned parking space on one of two underground parking levels. Some units have two assigned spaces. There are also 19 visitor parking spaces in a surface lot.

[25] The rules specific to visitor parking are the last sentence of Rule 43, which states that “A \$10.00 charge will apply to owners parking their vehicle(s) in visitors parking each and every time,” and Rule 47, stating that “Residents shall not park in the Visitor’s Parking Spaces. Surface parking is for the use of bona fide guests only.”

[26] Ms. Manna submits that although YCC 62 has a contract with a parking enforcement company, it does not actually enforce the rule against residents parking in the visitor parking spaces. She submits that certain vehicles belonging to owners or tenants routinely park in visitor parking spaces. She cites in particular the aforementioned blue SUV with the paint splotches and the small red car parked end-to-end with it in the underground garage, both of which she submits belong to unit owners. Ms. Manna provided an undated photograph taken of the visitor's parking lot showing eleven vehicles parked there, as well as six videos she took of the visitor lot on her cell phone. These videos show the number of vehicles parked on various dates in August and September 2022: August 4 (16); August 6 (14); August 11 (17); August 14 (18); August 28 (16) and September 4 (19, including the blue SUV with the paint splotches.)

[27] I was not able to identify the red car in any of the videos or photographs of the visitor parking lot.

[28] I accept Ms. Manna’s evidence that the splotchy blue SUV belongs to a tenant of a unit owner who is also a director of the corporation, and that it parked in the visitor lot on at least one occasion, September 4, 2022. YCC 62 submits that Ms. Manna has failed to substantiate her allegation that residents park in the visitor lot. I find that except for the blue SUV, Ms. Manna has provided no evidence that any of the other vehicles in the photograph and videos she took of the visitor lot belong to unit owners or tenants of the condominium.

[29] In the video taken on September 4, when the visitor lot was completely full, Ms. Manna can be heard commenting that she met “medical staff” that day who had to park on the street because the visitor lot was full. No further detail was provided. Her videos show that the lot is indeed almost full on the six days she filmed it. However, as noted, she provided no evidence to support her claim that any of the

vehicles parked there save one belonged to residents of the condominium.

[30] Ms. Manna alleges that condominium residents parking in the visitor parking lot is a longstanding issue that many residents have complained about over the years, and that the issue came up frequently when she was a director between 2015 and 2018. She submitted (but did not further explain) several excerpts from board meetings between January 2016 and March 2019 (Exhibits 12-22) where the issue of visitor parking was discussed. Contrary to her allegations, I find this evidence indicates that YCC 62 has, in the past, taken some steps over the years to manage the visitor parking lot and enforce its rules, although not necessarily to Ms. Manna's satisfaction. For example:

- August 25, 2015, minutes, Item 4.2.3. (Exhibit 14): "Management reported that parking enforcement has yielded positive results;" the board rejected Ms. Manna's suggestion to enlist the City of Toronto parking enforcement; the president's reason was that "he does not know owner's vehicles and would not want to have the cars of visitors mistakenly towed."
- November 25, 2016, minutes, Item 2.3 Parking Stickers (Exhibit 20): "A. Manna advised that at the next Annual General Meeting (AGM) the Board is going to be handing out those stickers . . . and cars caught for more than a half-hour to an hour will be towed. . ."
- March 31, 2017, minutes Item 5.4 (Exhibit 18): "Parking Enforcement – it was the consensus of the Board of Directors to go back to the parking enforcement and issuing tickets for visitors parking violations."
- Excerpt from a management report dated May 24, 2017 (Exhibit 19) under the heading "Parking enforcement: "Notice has been distributed. The information is coming from the owners. Data base is in progress."
- Excerpt from September 1, 2017, minutes (Exhibit 15): Ms. Manna's suggestion to involve the City of Toronto Parking Enforcement services was voted down, and that further information was required. The excerpt also indicates that YCC 62 had its own parking enforcement service with the ability to issue tickets.
- Item 5.8 of the December 1, 2017, meeting minutes (Exhibit 16): "The Board reported a discrepancy in the distribution of parking tickets, with some drivers receiving preferential treatment. Residents have complained that certain cars are allowed to park in the parking lot on a regular basis while others are immediately ticketed."

[31] Although Ms. Manna submitted that preferential ticketing continues to this day and residents continue to complain of this, she provided no evidence to support these claims. She has not established that YCC 62 has failed to enforce its rule prohibiting residents from parking in the visitor parking lot, except for one particular

vehicle on one occasion. Apart from that instance, no evidence has been presented of any violations or complaints since December 1, 2017. There is, therefore, nothing to suggest that residents parking in spaces reserved for visitors is an ongoing or regular occurrence or that it is a source of dissatisfaction among residents of YCC 62 that YCC 62 needs to do anything about at this time.

[32] YCC 62 also asserts that it enforces parking rules as it should.

[33] I have accepted Ms. Manna's evidence that the splotchy blue SUV has parked in the visitor parking lot. I accept her testimony that this is likely a recurring situation. I accept that the vehicle belongs to a tenant of a unit owned by a board director. I also accept Ms. Manna's uncontradicted testimony that YCC 62 has not enforced the visitor parking rule against this particular vehicle. Had there been evidence of complaints from other residents of preferential treatment of some residents since the issue was last raised in December 2017, it might be reasonable to conclude that YCC 62 currently accords preferential treatment. However, I find the sole example cited by Ms. Manna is not sufficient to prove that YCC 62 has generally failed to enforce its visitor parking rule in a fair and consistent manner.

[34] Nevertheless, now that YCC 62 has been made aware that a resident has parked in the visitor parking and that they possibly do so on a regular basis, YCC 62 is required to enforce the rule if the situation recurs.

[35] I note that as for the \$10.00 charge to residents who park in visitor spaces mentioned in rule 43, there is no authority under the Act that permits a condominium corporation to impose this type of charge upon its unit owners.

Issue 2: Has YCC 62 failed to enforce Rules 7, 8, 9 and 10 which forbid the storage of any kind except seasonal furniture on the balconies?

[36] Rules 7, 8, 9 and 10 of the New Rules and 7, 8, and 9 of the Original Rules, entitled "Balconies," prescribe what may and may not be stored on balconies. The only difference between the two sets of rules is that Rule 8 of the New Rules deals with Christmas lights (the Original Rules lack this provision), and the sentence "No bicycles hanging over sides or protruding over" has been added to the end of Rule 7 in the New Rules.

[37] Ms. Manna submits that YCC 62 has failed to enforce rules prohibiting planters on railings, protruding bicycles, and clutter on balconies.

Flower boxes

[38] Rule 9 provides that "Balconies shall not be used for any kind of storage whatsoever, except for the use of seasonal furniture only. Hanging or drying clothes is not permitted on balconies, **nor may anything be hung on the outside of the balcony railings. Plants must be kept in appropriate plant pots and inside the balcony railing**" [emphasis added].

- [39] Ms. Manna submitted an undated photograph of the balcony of a unit on the sixth floor of the building where there are six window-box type flower boxes with red flowers on the outside of the railing that she says have been there “for several years.” She testified that there are also two bird feeders on the same balcony that attract birds and squirrels; however, the feeders cannot be seen in the photograph. She submits the window boxes are dangerous as strong storms dry the pots out quickly and the root ball can be tossed out of the container.
- [40] Mr. Koyen testified that the flowerpots are properly secured and do not cause a hazard and that Ms. Manna did not ask the board or management to look into the issue before commencing this application. As to the bird feeders, Mr. Koyen testified that as he could only see birds in the photograph, “it is not proper to suggest that the birds are sitting on the balcony because of bird feeders.” Ms. Manna testified that the owner of another unit complained about a problem with bird feeders at the AGM of March 27, 2019 and asked that a sign be put up that they not be allowed. The minutes indicate the board president, Dmitri Obouhov, advised that this would be discussed at the next board meeting. Neither party presented any evidence that such a discussion took place or that the issue allegedly raised by the unit owner was addressed.
- [41] Rule 9 is straightforward and quite specific. It states plainly that nothing may be hung on the outside of the balcony railings and plants must be kept in appropriate plant pots **inside** the balcony railing. Mr. Koyen testified that the flower boxes are properly secured and not a hazard. This, however, is beside the point. The point is that they are attached to the railing contrary to the rule. I find YCC 62 has ignored this rule, and that failing to enforce it is not a reasonable exercise of its discretion. YCC 62 must enforce this rule within 21 days of this decision.

Bicycles

- [42] The last sentence of Rule 7 under the heading “Balconies” states simply “no bicycles hanging over sides or protruding over.” There are other rules that apply to bicycles, for example, that they must be carried through the lobby, but they are not relevant to this application.
- [43] Ms. Manna submitted a photograph that shows two balconies, one on the 4th floor and one on the 6th, that each have one bicycle apparently resting on its back wheel, with the front wheel resting on and protruding over the balcony railing. Mr. Koyen’s answer to this is that “It is incorrect to suggest that the same creates a hazardous situation as the bikes are well within the boundaries of the balconies. We can certainly ask owners that the said bikes [are] kept completely within the boundaries of the balcony. Again, the Corporation has not received any complaints with respect to the same issue.”
- [44] It is stating the obvious to point out that the bikes are not, in fact, “well within the boundaries of the balconies,” and that the photograph clearly shows that they “protrude over” contrary to the rule. Whether or not there have been any

complaints about this is, again, beside the point. I find that the same reasoning applies to bikes as to flowerpots, and that YCC 62 has not acted reasonably within its discretion in deciding not to enforce this rule. YCC 62 must enforce this rule within 21 days of this decision.

Clutter/non-seasonal items stored on a balcony

- [45] Rule 8 provides that “Balconies shall not be used for storage of any kind whatsoever, except for the use of seasonal furniture only.” Ms. Manna submitted a photograph of a balcony that contains a great many items, some of which do not appear to be the type of seasonal items that are permitted to be stored on balconies according to the rules. These items include, among plant pots and items that might be seasonal furniture, a mattress and a very large structure consisting of a jumble of wood and ropes. All of the objects appear to take up all of the room on the balcony. Ms. Manna testified that she spoke to the unit owner when she was a director and “he brought it down to minimal size,” but that the pile has grown since. She testified that “the balcony belongs to a long-standing owner in the building who is a prime example of owners doing what they want.”
- [46] YCC 62 did not make any submissions or provide any evidence about this particular issue. Ms. Manna provided no evidence other than her own testimony that she raised the issue with YCC 62 since she dealt with it herself as a director. I find that the items on the balcony, at least the mattress and the jumble of wood and rope, are not seasonal items. They are being stored on the balcony in violation of Rule 8. Accordingly, I find that YCC 62 now has notice of this issue and must, within 21 days of this decision, send a letter to the owner requiring the owner to remove all non-seasonal items from the balcony, and confirm to Ms. Manna that it has taken this action.
- [47] Ms. Manna’s examples of “owners doing what they want” in defiance of the rules raise an important issue: if the rules do not apply to all residents of the condominium equally, then they are essentially meaningless. This is contrary to the intent of the Act. Section 17(3) of the Act imposes a duty on the corporation to “take all reasonable steps to ensure that the owners, the occupiers of units...comply with this Act, the declaration, the by-laws and the rules.” Section 119(1) requires owners to comply with the Act, and the corporation’s declaration, by-laws and rules and under section 119(3), a corporation has the right to require owners to comply with those provisions.

Issue 3: Does the storage located on the P1 level violate the Declaration, By-Laws and Rules of the Corporation?

- [48] There are two complaints here. The first is about items stored in the unit owner’s underground parking spot next to Ms. Manna’s which she submits violate the condominium’s rules about storage. The second deals with items that she submits are stored in the hallway of Locker Room 5, where her storage unit is located, that block her access to her storage unit, and which violate the Fire Code.

[49] Neither party pointed me to any provision in any governing document, be it the Declaration or the old or new rules, that would pertain directly to the issues Ms. Manna has raised. Article x(b) of the Declaration provides only that each unit owner shall have exclusive use of a storage locker.

[50] Rules 21 and 23 of the old rules (rules 37 and 39 of the New Rules) address hazards and obstructions:

Hazards, Obstruction and Fire Risk.

21. No owner shall do, or permit anything to be done to his unit or bring or keep anything therein which will in any way increase the risk of fire or rate of fire insurance on any building, or on property kept therein, or obstruct or interfere with the rights of other owners, or in any way injure or annoy them, or conflict with the laws in relation to fire or with the regulations of the Fire Department or with any insurance policy carried by the Corporation or any owner or conflict with any of the rules and ordinances of the Board of Health or with any Statute or Municipal By-law.

Ingress and Egress to Suites

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

[51] Although these rules do not particularly mention storage lockers or parking spaces, I find it is common sense that since these are areas used in common by owners, and the rules deal with important safety precautions in general, that Rule 23 in particular applies to items stored in parking spots or passageways around storage lockers where such items pose a safety hazard or interfere with the rights of other owners.

Items in the parking spot next to Ms. Manna's

[52] Ms. Manna submitted a photograph she took of items which appear to be a bicycle, a scooter, a wheeled garbage can, a laundry basket or garbage can, topped by a large cardboard box wedged between the wall and the parked car in the parking spot next to hers. She submits they belong to a senior and the "items were collected to give to charity or to send back home. As a Director, complaints were made and brought forward to the board with little result." I assume from this last sentence that Ms. Manna is here referring to herself and the period from 2015 – 2018 when she was a director of YCC 62. Apart from this statement, Ms. Manna provided no other evidence that either she or anyone else has complained about the items stored behind the car in the parking spot next to hers since 2018.

[53] Mr. Koyen testified that "With respect to owners storing items behind their respective cars, please note the same is not permitted. It is quite possible the owner was moving stuff from the car to their unit and the Applicant clicked the

picture while the said owner was not there. The picture does not establish that this is a regular occurrence.” YCC 62 submits that this sole example provided by Ms. Manna does not indicate a continual breach of the rules. This may be true, but there does appear to be several large items, and they should nevertheless be removed if the situation persists.

Items blocking Ms. Manna’s access to her storage locker

- [54] This is a more serious issue. Ms. Manna states that personal items and furniture, some of which belong to a current director’s husband, block access to her own storage unit, and they have been stored in such a manner “from before I moved in 2011.” She further alleges that these items “are hazardous as they block the pathway, piled so they are unsteady, and must be moved as they block access to storage units. . . . I myself have had to ask Supers Linda, Vet to move items for me when I was a director so that I may access my storage unit. Yes I called the Fire Department for an inspection. My foot was injured. I notified management and the supers but nothing was done this time. A verbal statement was issued. Although these items are not combustible, fire will spread rapidly as these items are boxes, wooden furniture, etc.” Ms. Manna alleges that these items, stored in the aisles of the storage locker room, violate the Fire Code.
- [55] YCC 62 did not present any evidence to contradict these allegations and did not address them in its submissions. I accept Ms. Manna’s uncontradicted evidence that there are items obstructing aisles outside of lockers.
- [56] I note that Mr. Koyen testified that Ms. Manna wrote to YCC 62’s directors and management on November 23, 2020, to notify them that residents had been leaving items outside of their lockers, resulting in items being stored in the hallway of locker room 5. Ms. Manna’s email also accused the directors and Mr. Koyen of negligence and stated, “I give you until the end of this week to remove or I will contact the city fire inspector.”
- [57] In a second email to the directors and Mr. Koyen on November 24, 2020, Ms. Manna states in part, “Dimitri [the president of YCC 62] I have tried the usual routines but to no avail. The six of you seem to believe that you should do nothing as a board. I’ve reached the stage where it is time for an ultimatum,” referring to her previous email.
- [58] Neither party provided any evidence to indicate if YCC 62 responded to Ms. Manna’s complaint or if it took any action about the items improperly stored in the hallway of locker room 5.
- [59] I find that Ms. Manna has raised a valid complaint about improper storage that violates Rules 21 and 23, which deal with important safety concerns, and that YCC 62 has not acted reasonably by not responding to Ms. Manna, despite the inappropriate manner in which she raised the complaint. By not addressing her complaint at the time, or in its evidence or submissions in this proceeding, I find

that YCC 62 has effectively ignored Ms. Manna's complaint without explanation. This is not a reasonable exercise of its discretion. Accordingly, within 21 days of this decision, YCC 62 shall require the items to be removed. Furthermore, YCC 62 shall ensure that only items that conform to the rules are placed in storage lockers. Finally, and also within 21 days, YCC 62 shall respond to Ms. Manna in writing, clearly explaining any action it has taken.

Communication

- [60] It is evident that both parties in this proceeding have had an antagonistic relationship for some time and communicate poorly with each other as a result. This makes it difficult for them to identify genuine issues of concern and to resolve them appropriately. In this case, Ms. Manna did not notify YCC 62 of several issues in this hearing before bringing this application, and YCC 62 did not respond at all to the concern she raised about items obstructing the aisles in Locker Room 5.
- [61] The Condominium Authority of Ontario's (CAO) website contains a wealth of useful information to help owners, boards and condominium managers resolve typical disputes that arise about matters within the Tribunal's jurisdiction under the heading, "Guided Steps to Common Issues." There is a specific section for parking and storage. It describes the types of scenarios that can lead to conflict, and, under Step 3, recommends solutions for owners, condominium boards and managers.
- [62] These recommendations include how to identify whether an issue involves a violation of governing documents, and how to raise the issue in writing directly either with the unit owner causing the issue or the condominium board of directors or manager. The website provides email and letter templates for this purpose. This gives the condominium board the opportunity to resolve the issue.
- [63] The Tribunal strongly recommends that unit owners, condominium boards and managers follow the guided steps to resolving issues *before* filing an application with the Tribunal.
- [64] Stage 1 – Negotiation and Stage 2 - Mediation also provide the parties with opportunities to discuss and assistance with resolving their disputes.
- [65] As there is no evidence that the parties in this proceeding attempted to resolve their disputes according to the Tribunal's recommendations, it is strongly recommended that in future Ms. Manna follow these steps when she wishes to raise an issue about parking or storage with YCC 62. She should raise her concerns in writing directly with the condominium manager, Mr. Koyen. Mr. Koyen should acknowledge Ms. Manna's communication in writing within two business days and explain what action YCC 62 will take to address her concerns, and what the time frame will be for such action. Needless to say, both parties should communicate in a civil and professional manner.

[66] I note in passing that several of YCC 62's rules appear to be unhelpful, outdated, and difficult to enforce fairly and consistently. It is strongly recommended that YCC 62 undertake a review of its rules and either amend them or create more suitable ones, following the procedures set out in s. 58 of the Act.

D. CONCLUSION

[67] As set out above, I have found that for the most part, YCC 62 has not been enforcing its rules, and that this is not a reasonable and fair exercise of its obligation under the Act, or of its discretion to enforce the provisions of its governing documents fairly and consistently. Where applicable, I have ordered that YCC 62 take steps to enforce the rules.

[68] Although Ms. Manna claimed compensation for damages in this proceeding, she has not made out a case for such compensation and I do not find such an award is appropriate in the circumstances. As Ms. Manna has been largely successful in this proceeding, I find she is entitled to be reimbursed her Tribunal fees of \$200 under s. 1.44(1)4 of the Act and s. 48.1 of the Tribunal's Rules of Practice.

[69] Ms. Manna claimed costs; YCC 62 did not. With respect to legal costs and disbursements, Rule 48.2 of the Tribunal's rules state:

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 caused a delay or additional expense.

As none of the criteria in Rule 48.2 apply in this case, I make no order as to costs.

E. ORDER

[70] The Tribunal Orders that:

1. Within 15 days of this decision, YCC 62 shall notify the owner of the unlicensed vehicle (or the unit owner if the owner of the vehicle is fact deceased or cannot be identified) that if the vehicle is unlicensed, it must be removed within 30 days from the date of the letter. If the vehicle is not removed within 30 days, then YCC 62 must remove the vehicle in accordance with Rule 45, within 15 days.
2. YCC 62 shall enforce Rules 43 and 47 regarding residents of the condominium parking in visitor spaces as against the splotchy blue SUV belonging to a tenant referred to in this decision, each time the vehicle is parked in the visitor's lot contrary to the rules.
3. Within 21 days of this decision, YCC 62 shall enforce Rule 9 with respect to flower boxes hanging on the outside of balcony railings.

4. Within 21 days of this decision, YCC 62 shall enforce Rule 7 with respect to bicycles that protrude over the balcony railings.
5. Within 21 days of this decision, YCC 62 shall enforce Rule 8 with respect to non-seasonal items stored on the balcony referred to in this decision.
6. Within 21 days of this decision, YCC 62 shall investigate Ms. Manna's complaint about items improperly stored in the hallway of Locker Room 5 and shall determine if any action is necessary to ensure compliance with Rules 21 and 23. If so, YCC 62 shall require that items improperly stored in hallways be properly stored in the appropriate lockers or promptly removed.
7. Within 21 days of this decision, YCC 62 shall provide Ms. Manna with a written explanation of the actions it has taken to enforce the rules required by this Order.
8. YCC 62 shall reimburse Ms. Manna's Tribunal fees of \$200 within 21 days of this decision.

Susan Sapin
Member, Condominium Authority Tribunal

Released on: February 15, 2023