

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 29, 2023

CASE: 2022-00350N

Citation: York Condominium Corporation No. 385 v. Vianellis, 2023 ONCAT 72

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

Member: Mary Ann Spencer, Member

The Applicant,

York Condominium Corporation No. 385
Represented by Matthew Varao, Paralegal

The Respondent,

Diane Vianellis
Represented by Christina Nastas, Paralegal

Hearing: Written Online Hearing – October 25, 2022 to May 9, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, York Condominium Corporation No. 385 (“YCC 385”), brought this application to the Tribunal seeking an order for the permanent removal of Respondent Diane Vianellis’ dog, Mitsey, from its premises. YCC 385, in accordance with its pet rules, had declared Mitsey a nuisance; dating from 2019, the elderly dog’s bladder control condition had resulted in a number of accidents on the corporation’s common elements. On April 8, 2022, YCC 385 demanded Mitsey be permanently removed from its premises within two weeks. Ms. Vianellis did not comply and YCC 385’s application was accepted by the Tribunal on June 1, 2022.
- [2] The Stage 3 – Tribunal Decision proceeding in this matter opened on October 25, 2022. Witness testimony was completed on November 28, 2022. Part of Ms. Vianellis’ testimony was that Mitsey had been a support dog for her late husband and continued to act as a support to her. Ms. Vianellis disclosed a physician’s letter which indicated that Mitsey was also a service animal and alerted Ms. Vianellis when she needed to take medication for a medical condition. YCC 385’s representative advised that the corporation assumed that Ms. Vianellis was making a request for accommodation for a disability in accordance with the *Human Rights Code*. While I note that YCC 385’s rules permit pets on its premises, I asked if Ms. Vianellis had asked or intended to ask YCC 385 to allow her to keep

Mitsey as a specific accommodation. I was advised that she intended to submit such a request to the board of directors. With the consent of the parties, the hearing was adjourned to allow Ms. Vianellis to submit the request and to provide YCC 385's board of directors adequate time to consider it.

- [3] The parties requested a number of extensions of the adjournment which I approved, given they apprised me that they had resolved a number of issues and their discussions were ongoing. However, when it became clear that they were unable to reach full agreement, I asked if they would consider mediation/adjudication. The parties agreed and executed a formal mediation/adjudication agreement.
- [4] During the subsequent mediation, the parties reached agreement on the conditions under which Mitsey may remain on YCC 385's premises. However, while both parties demonstrated their willingness to compromise, they were unable to reach agreement on the issue of a lien which was placed on Ms. Vianellis' unit in 2020 with respect to unpaid carpet cleaning bills. They agreed that I would adjudicate this remaining issue. They further agreed that the terms on which they had reached agreement would form an order of the Tribunal.
- [5] The outstanding issue between the parties is the amount required to be paid by Ms. Vianellis to YCC 385 in order to have the lien discharged. I requested written submissions on both this issue and on the issue of costs related to the Tribunal proceedings. I have made my decision based only on those submissions and on the evidence which was submitted in this proceeding.
- [6] For the reasons set out below, in addition to ordering the terms to which the parties agreed during mediation, I order that the amount of the lien on the Respondent's unit be reduced to \$1,898.35. I further order YCC 385 not to take any enforcement action on the lien for 12 months from the date of this decision, a period during which Ms. Vianellis may make equal installment payments on the amount owing and, at the end of which, YCC 385's lien may begin to accrue interest. YCC 385 shall register the discharge of the lien immediately on receipt of full payment of the amount owing. I order no costs in this matter.

B. BACKGROUND

- [7] On April 14, 2020, Ms. Vianellis received a letter from Frank Travelho, YCC 385's former condominium manager, which stated that the corporation was receiving "numerous complaints" about her dog "constantly peeing on the 3rd and 1st floors." He advised she would be receiving charges for carpet cleaning and that the issue was being escalated to the corporation's counsel. It is Ms. Vianellis' testimony that

on receipt of the letter, she asked Mr. Travelho to substantiate the complaints; in particular, she asked to see security videos. She states that he refused to provide any further information.

- [8] On July 24, 2020, YCC 385's counsel, Benjamin Rutherford, wrote to Ms. Vianellis and advised that her dog had soiled carpets on the common elements on January 6, March 6, and April 15, 2020. He enclosed three carpet cleaning invoices totaling \$1,197.80. He referred to Rule (f) under "Animals" in the corporation's rules which were then in place and noted that Mr. Travelho's April 14, 2020, letter served as the referenced warning letter. The former Rule (f) stated:

Warning letters will be issued with respect to infractions of these Rules. Failures to comply will result in further action involving the Corporation's lawyers. The Board is obligated to enforce all rules and the Declaration and will instruct the Corporation's lawyers to commence legal action whenever it deems such action necessary and appropriate. All administrative, security and clean up costs attributable to a breach of any of the Pet Rules and all costs necessarily incurred in enforcing said Rules shall be charged to the unit owner and occupant in whose unit the animal is resident or which unit the pet is visiting.

The letter also referred to the former Rule (k) under the "General Rules and Costs" which states:

Any losses, costs, or damages incurred by the Corporation by reason of a breach of the Condominium Act, the Declaration, the By-laws or any of the Rules and Regulations in force from time to time by any owner, or by his family, guests, servants, agents or occupants of his unit, shall be borne and paid by such owner together with any administrative fees, cleanup fees or other fees arising from such breach and all legal fees of a solicitor.

The letter requested payment of \$1,806.31 within 10 days. The \$1,806.31 was comprised of the \$1,197.80 in carpet cleaning bills and \$608.51 for the legal fees to produce the letter. Mr. Rutherford noted that failure to pay the amount "will constitute a default in the payment of your common expenses and YCC 385 will register a condominium lien on title to the Unit to secure and enforce payment through power of sale if necessary."

- [9] I note that YCC 385's "Animals" rules did not specifically indicate that owners must not allow their pets to damage the common elements. Rather, the rules addressed the type and number of animals which residents could keep, prohibited dangerous animals, and prohibited excessive noise. While the pet rules were amended effective April 17, 2021, to include a clause prohibiting urination on the common

elements, Mitsey's accidents were not breaches of the pet rules in force in 2020.

- [10] Neither of the above-quoted rules provides the authority to add the \$1,806.31 to the common expenses payable by an owner. However, Clause XI (1) of YCC 385's declaration requires owners to indemnify the corporation for damages to the common elements. This states, in part:

Each owner shall indemnify the corporation from any loss, costs, damages...the corporation may suffer or incur resulting from or caused by an act or omission of such owner...to or with respect to the Common Elements...

Any legal or collection costs incurred by the Corporation to collect such sums of money, and all such sums of money shall bear interest at twelve per cent (12%) per annum, or such lower cost as the Board of Directors of the Corporation may decide. The Corporation may collect such money in such installments as the Board of Directors may decide upon which installments shall be added to the common expenses of such owner, after receipt of notice from the Corporation thereof. All payments pursuant to this sub-clause (1) are deemed to be additional contributions towards the common expenses and recoverable as such.

Ms. Vianellis did not pay the requested amount. On October 22, 2020, Mr. Rutherford sent Ms. Vianellis a Notice of Lien. The lien amount totalled \$2,125.12, comprised of the \$1,806.31 cited in Mr. Rutherford's July 24, 2020 letter, \$35.31 in interest accrued at the rate of 12% per annum compounded monthly, and \$242.50 for "reasonable legal costs and reasonable expenses incurred by the corporation." It advised that if payment was not received by November 2, 2020 that the corporation would be entitled to register the lien and that additional costs associated with registration would be secured by the lien. The lien was registered on November 4, 2020.

- [11] On May 28, 2021, Kelment Lleshanaku, YCC 385's current condominium manager, wrote to Ms. Vianellis about a May 27, 2021, incident of Mitsey urinating on the common elements. He reminded her of the pet rules, requested her compliance, and advised that she would be charged for the required carpet cleaning. On June 10, 2021, he again wrote to Ms. Vianellis, enclosed the cleaning invoice and advised that a second incident had been recorded by security cameras on June 3, 2021 for which she would be sent a cleaning bill. The second bill was sent on June 11, 2021. On July 9, 2021, Ms. Vianellis paid the two carpet cleaning invoices, both of which indicated they were for cleaning urine stains in the corridor in which Ms. Vianellis' unit is located.

- [12] On April 8, 2022, Ms. Vianellis received a letter from YCC 385's counsel, Jennifer Trunk. The letter stated that the problem of Mitsey's accidents on the common

elements was ongoing and stated that the most recent incident had taken place on April 4, 2022. The letter directed that Mitsey be permanently removed from YCC 385's premises within two weeks and demanded payment of \$621.50 in legal fees, the cost of preparation of the letter. I note that Ms. Trunk incorrectly cited the pet rule which was in effect in 2020 as the authority for the demand to remove the dog rather than YCC 385's revised pet rules which became effective April 17, 2021. Finally, the letter noted that YCC 385 had a lien on Ms. Vianellis' unit for unpaid carpet cleaning bills but, given the fact that the lien had already been registered on November 4, 2020, incorrectly stated YCC 385 would register a certificate of lien if the amounts owing were not paid.

- [13] Ms. Vianellis testified that a Notice of Mediation under s. 132 of the Act was enclosed with Ms. Trunk's April 8, 2022 letter. The Notice of Mediation is dated January 22, 2022 and, among the disputes to be addressed, includes that YCC 385 requires Ms. Vianellis to "permanently remove her dog from the property" and "pay YCC 385's cleaning costs." I note that it is somewhat surprising YCC 385's condominium law firm was apparently unaware that s. 132 of the Act no longer applied given the Tribunal assumed jurisdiction for disputes related to pets on October 1, 2020, the date when amendments to O. Reg 179/17 came into effect.
- [14] On April 12, 2022, Ms. Vianellis replied to Ms. Trunk by e-mail. She denied that Mitsey was a nuisance and advised that the dog was diapered when on the common elements. She further stated that she had paid carpet cleaning bills. Finally, she requested that a payment plan be arranged for the payment of the \$621.50 in legal fees. On April 13, 2022, Ms. Vianellis e-mailed the same response to counsel Benjamin Rutherford. When she received no reply, she wrote again on April 19, 2022, to both Ms. Trunk and Mr. Rutherford, advised she would not remove the dog and asked to see video verifying Mitsey had caused further accidents. Mr. Rutherford responded by e-mail on April 20, 2022, and indicated he would seek instructions. On May 24, 2022, he again e-mailed Ms. Vianellis and advised that YCC 385 would not allow her to keep Mitsey and that, because the Tribunal had now taken over jurisdiction for pet disputes, an application would be made to the Tribunal. YCC 385's application to the Tribunal was accepted on June 1, 2022.

C. ISSUES & ANALYSIS

- [15] The parties have resolved the conditions under which Mitsey may remain on YCC 385's premises. They have agreed to terms which include that Mitsey shall be diapered at all times while on the interior common elements, that YCC 385 shall be notified immediately if Mitsey has an accident, and that Ms. Vianellis shall pay for the reasonable costs the corporation incurs to repair any damage caused by an

accident. The outstanding issues to be addressed in this matter are:

1. What amount is to be paid to discharge the lien on Ms. Vianellis' unit?
2. Should an award of costs be ordered?

Issue 1: What amount is to be paid to discharge the lien on Ms. Vianellis' unit?

[16] YCC 385 is requesting payment of the full amount of the lien which Matthew Varao, YCC 385's representative, advised totaled \$5,851.71 as of April 1, 2023. He explained that the increase from the \$2,125.12, set out in the October 22, 2020 Notice of Lien represents further accrued interest and additional legal costs of \$819 and \$357 which were added to the amount owing in February 2022 and April 2022, respectively. Christina Nastas, Ms. Vianellis' representative, submitted that Ms. Vianellis is responsible for \$435.05, the amount of one carpet cleaning invoice.

[17] The lien was placed and subsequently registered because Ms. Vianellis did not pay three carpet cleaning invoices. The evidence is that the letter sent to Ms. Vianellis from Frank Travelho on April 14, 2020, advised her that she would be charged for carpet cleaning but it did not set out the dates of the alleged incidents:

We have been receiving numerous complaints about your dog constantly peeing in the common elements specifically on the 3rd and main floors. Due to this frequent occurrence we have had to call in a contractor to machine clean the carpeting in the previously mentioned areas. We will be doing so once more due to the on-going pee incidents with your dog.

Notwithstanding Mr. Varao's submission that Ms. Vianellis' was sent this letter because she disputed the cleaning bills, I note the letter also states:

You will be receiving a charge-back notice shortly for all carpet cleaning completed and in relation to this infraction. As well, this is being escalated to the Corporation's lawyer to address with you immediately. Any costs for their services will be charged back to you as well.

Ms. Vianellis testified that on receipt of the letter she approached Mr. Travelho and asked to see the videos which would substantiate that Mitsey was responsible for the required carpet cleaning but he refused her request. Her position is that it was not until she received counsel Benjamin Rutherford's letter dated some three months later on July 24, 2020, that she was advised of the dates of the incidents and was sent the carpet cleaning invoices.

[18] Mr. Rutherford's July 24, 2020, letter sets out the dates of three incidents:

As you have been made aware by my client's property management by way of letter dated April 14, 2020, you are permitting your dog to urinate on the common elements. Specifically, your dog has been seen urinating on the main floor and inside the hallways on the third floor of the property on January 6, 2020, March 6, 2020 and April 15, 2020.

The letter enclosed three carpet cleaning invoices totalling \$1,197.80, the amount that was subsequently included in the lien at issue:

- March 18, 2020: \$435.05 (HST included) for cleaning the carpet in the corridor in which Ms. Vianellis resides,
- May 1, 2020: \$542.40, for cleaning the carpet in the corridor in which Ms. Vianellis resides. This invoice is divided into two parts: \$195 (excluding HST) for "spot treatment, animal urine trail, 2 additional stained spots" and \$285 (excluding HST) for "spot treatment, 8 additional stained spots", and
- June 20, 2020: \$220.35 (HST included) for "spot treatment" on the corridor in which Ms. Vianellis resides.

YCC 385 submitted security videos dated January 6, 2020, and March 6, 2020, as evidence in this hearing which substantiate that Mitsey urinated on the common elements on those dates. The January 6, 2020, video shows Mitsey urinating in front of the elevators on the floor on which Ms. Vianellis resides. However, this is a tiled area and therefore no carpet cleaning would have been required. The March 6, 2020, video shows Mitsey urinating as she is walked along the carpet towards the elevator in Ms. Vianellis' corridor. I note that Ms. Vianellis identified the individual with Mitsey in both videos as her niece, lending credence to her testimony that she was unaware of these incidents until the videos were submitted as evidence in this proceeding.

[19] Mr. Rutherford's July 24, 2020, letter draws no obvious nexus between the cited incident dates and the enclosed cleaning bills. For example, it is unclear what incident the June 20, 2020, invoice relates to given April 15, 2020, was the latest of the cited dates and an invoice dated May 1, 2020, was also enclosed. However, the video evidence does persuade me on a balance of probabilities that the March 18, 2020, cleaning was performed to address staining following Mitsey's recorded accident on March 6, 2020, and that Ms. Vianellis is responsible for this cleaning cost in accordance with Article XI (1) of YCC 385's declaration.

[20] There is no evidence before me to persuade me that Ms. Vianellis is responsible for the cleaning which took place on May 1, 2020, and June 20, 2020. Notwithstanding that Mr. Travelho's letter of April 14, 2020, refers to "numerous

complaints”, the evidence is that no detail documenting these complaints was provided to Ms. Vianellis at the time they were received; nor was any evidence submitted to the Tribunal in this proceeding. I recognize that the alleged incidents to which the complaints presumably referred may not have been recorded by security cameras; however, a log of complaints and the time and location of the incidents could and likely should have been maintained. I note that Mr. Travelho is no longer employed at YCC 385 and did not testify in this matter.

[21] While the fact that the May 1, 2020, invoice sets out that part of the cleaning on that date was to address urine stains may suggest that Mitsey was responsible, the invoices only provide evidence that the corporation had the carpet cleaned; they are not evidence of Mitsey’s culpability. In this regard, both Ms. Vianellis and a resident neighbour who resides in the same corridor testified that there are other pets living in units in that corridor. This raises the possibility that animals other than Mitsey were responsible for soiling the carpet. The resident neighbour’s testimony dated November 12, 2022, was that “just the other day” an unsupervised cat was in the corridor and had defecated in front of the elevators.

[22] Because there is no evidence to support that the carpet cleaning invoiced on May 1, 2020, and June 20, 2020, was required as a result of an accident of Mitsey’s, I find that those invoices were improperly added to the common expenses payable for Ms. Vianellis’ unit. Therefore, I find that the principal amount of the lien, representing cleaning bills, should be reduced from \$1,197.80 to \$435.05, the amount of the March 18, 2020, invoice.

[23] There are four components to the portion of the lien in respect of legal and administrative costs: \$608.51, representing the legal fees incurred by YCC 385 for Mr. Rutherford’s July 24, 2020, letter; \$1,463.30 for legal costs associated with preparing the Notice of Lien and registering the lien; \$819 added in February, 2022 for legal fees, and a further \$357.50 for legal fees added in April, 2022.

[24] Section 85 (3) of the Act sets out what is covered by a registered certificate of lien:

A certificate of lien when registered covers,

(a) the amount owing under all of the corporation’s liens against the owner’s unit that have not expired at the time of registration of the certificate;

(b) the amount by which the owner defaults in the obligation to contribute to the common expenses payable for the owner’s unit after the registration of the certificate; and

(c) all interest owing and all reasonable legal costs and reasonable expenses

that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it.

A corporation may add reasonable legal costs incurred to collect amounts owing to the lien. I note that Clause XI (1) of YCC 385's declaration, set out above in paragraph 12, does not provide the corporation with the authority to add legal costs incurred to secure an owner's compliance to its rules to the common expenses owed by an owner. The clause only addresses the "legal or collection costs incurred by the Corporation to collect such sums of money" where the sums of money are the costs or damages resulting from an owner's act or omission.

[25] The evidence is that Ms. Vianellis was not apprised of either the dates of Mitsey's alleged accidents or the amounts of the carpet cleaning invoices until she was sent Mr. Rutherford's July 24, 2020, letter. While it is speculation that she would have paid the invoices had YCC 385 provided them to her at the time they were received together with substantiation of Mitsey's culpability, the evidence is that she did pay two cleaning invoices in 2021 when presented with proof that Mitsey was responsible. While YCC 385 may well have been frustrated by the recurring need to clean carpets, and a legal letter about compliance with its pet rules may well have been in order, I find it was not reasonable for the corporation to combine its compliance demand with its request for payment and then to seek to characterize this as correspondence for which a charge-back could be demanded. As noted above, clause XI (1) of the declaration, as well as s. 85 (3) of the Act, only permit the corporation to demand indemnification of its costs of collection, not its costs of seeking compliance with the corporation's rules. To the extent Mr. Rutherford's letter requested compliance, no indemnification is available under either provision; and, given this letter was Ms. Vianellis' first notification of the amounts owed, it cannot reasonably be characterized as a collection letter. For this reason, I find that Ms. Vianellis should not be responsible for the \$608.51 cost of the legal letter and I am not including this amount in the lien amount owing.

[26] I also find that Ms. Vianellis should not be responsible for the \$819 and \$327 added to the lien for legal costs incurred in February 2022 and April 2022 respectively. In response to my question asking what these costs represented, Mr. Varao indicated it was for "various correspondence between our office and YCC 385 and drafting the second compliance letter to Ms. Vianellis dated April 8, 2022." There is no evidence that the corporation made any collection efforts after November 4, 2020, the date the lien was registered. I note that its condominium manager sent letters to Ms. Vianellis on May 28, 2021, June 10, 2021, June 11, 2021, and October 25, 2021. The May 28, 2021, letter advised her that she would

be sent a carpet cleaning invoice as a result of an incident of Mitsey's and that further incidents would result in "the corporate solicitor's involvement". Both the June 10 and June 11, 2021, letters enclosed carpet cleaning invoices and warned that the amounts would be added to the common expenses payable for Ms. Vianellis' unit if unpaid. The October 25, 2021, letter warned again about following the corporation's pet rules. None of the letters mention the existing lien.

- [27] The next correspondence Ms. Vianellis received was the April 8, 2022, letter from counsel Jennifer Trunk which demanded that Mitsey be permanently removed from YCC's premises. The existing lien was only referred to in the context of the demand that Ms. Vianellis pay \$621.50 for the production of the letter and as previously noted above in paragraph 14, was in fact, incorrect, and arguably misleading:

As you are aware, YCC 385 has a lien on your Unit for unpaid charges related to cleaning fees for which you are responsible. YCC 385 will register a certificate of lien if you fail to pay those amounts. Similarly, if you default in the payment of these legal costs, these amounts will be added to the lien.

A warning that amounts may be added to a lien does not constitute an effort to collect that lien. The April 8, 2022, letter was about compliance with YCC 385's pet rules and a demand that Mitsey be removed from YCC 385's premises; it was not about the lien.

- [28] I do find that Ms. Vianellis is responsible for the \$1,463.30 in legal fees and associated expenses associated with preparing the Notice of Lien and registering the lien. While it is possible that she did not fully understand the implications of a prospective lien, she could and likely should have sought advice when she received Mr. Rutherford's July 24, 2020, letter in which he wrote with respect to the enclosed cleaning bills and the cost of producing the letter itself:

Please note that this amount is hereby added to the common expenses payable in respect of the Unit and failure to pay in the manner and time as aforesaid will constitute a default in the payment of your common expenses and YCC 385 will register a condominium lien on title to the Unit to secure and enforce payment through power of sale if necessary. Please note that the costs of any such collection steps will be added on to the amount in default.

Ms. Nastas submits that Ms. Vianellis did approach Mr. Rutherford for details of the alleged incidents set out in the letter but she received no response. However, there is no documentary evidence to support that she contacted Mr. Rutherford. Ms. Nastas further submits that Ms. Vianellis did not receive the October 22, 2020,

Notice of Lien, which I note was sent to her in accordance with s. 85 (4) of the Act. Notwithstanding that I have found issues with both the amount of the lien and the way in which YCC 385 communicated with Ms. Vianellis before it was registered, I conclude that it was not unreasonable that YCC 385 did proceed to register the lien in the absence of any formal response from Ms. Vianellis.

- [29] In summary, I find that Ms. Vianellis is responsible for a total of \$1,898.35, comprised of \$435.05 for the May 18, 2020, cleaning bill and \$1,463.30 for legal fees to prepare the Notice of Lien and register the lien.
- [30] Ms. Nastas submits that Ms. Vianellis wrote to Mr. Rutherford on November 20, 2020, to address the lien. In her letter, Ms. Vianellis refers to a notice to encumbrancer which had been addressed to her parents, suggests it contains inaccuracies, denies Mitsey was responsible for all accidents at YCC 385 and asks that her father be allowed to speak to Mr. Rutherford. By that date, however, the lien had been registered. On January 5, 2021, she sent an e-mail to Mr. Rutherford in which she wrote that YCC 385's condominium manager had told her that the board had met and discussed the issue in December 2020 but she had been advised that they had "nothing to do with this situation anymore" and she should deal directly with counsel. She requested she be allowed to pay half of the amount owing due to her personal financial situation. There is no evidence that Ms. Vianellis received a response to this e-mail.
- [31] I am ordering YCC 385 to reduce the lien amount to \$1,898.35 as of the date of this decision. Clause XI (1) of YCC 385's declaration allows for the addition of accrued interest to the lien amount. Because the evidence indicates that no proof substantiating Mitsey's responsibility for the cleaning invoices was provided until this proceeding, and the fact that YCC 385 was apparently unresponsive to her attempts to negotiate the lien in early 2021, I am not including any accrued interest in the amount owing.
- [32] Clause XI (1) of YCC 385's declaration also allows for installment payments. In view of the fact that Ms. Vianellis works only part-time and has a medical condition, I am ordering that the \$1,898.35 may be paid in equal installments over a 12-month period and that YCC 385 shall not enforce the lien during that 12-month period. I am ordering that YCC 385 shall not accrue any interest owing during the 12-month period.
- [33] I am also ordering YCC 385, at the end of each three-month period, to provide Ms. Vianellis with a statement of the lien's value. Those statements shall set out the opening balance of \$1,898.35 and shall itemize the payments received. On receipt

of the full amount owing, YCC 385 shall immediately discharge the lien on Ms. Vianellis' unit and shall provide Ms. Vianellis with a copy of the discharge registration. Any cost of discharging the lien shall be paid by YCC 385.

[34] Finally, I note that the terms to which the parties agreed provide that in certain circumstances further cleaning bills may be added to the common expenses payable for Ms. Vianellis' unit. Ms. Vianellis should be aware that, in accordance with s. 85 (3) (b) of the Act, YCC 385 may add the amount of any common expenses which she does not pay by their due date to the existing lien or, if that lien is paid off, may register a new lien.

Issue 2: Should an award of costs be ordered?

[35] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (1) 4 states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44 (2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

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 caused a delay or additional expense.

[36] YCC 385 requests costs of \$19,792.62 representing its legal fees for 94.8 hours of work, and \$234.50 in disbursements, both inclusive of HST, in accordance with its indemnification provisions. Ms. Vianellis requests her legal fees \$12,147.50, inclusive of HST, representing 43 hours of work. Neither party submitted legal invoices to support their cost requests and therefore it is difficult to assess the reasonableness of the amounts requested. I do note that Ms. Vianellis did not retain legal representation until the Stage 3 – Tribunal Decision proceeding which would account, at least in some part, for the very significant difference in the number of hours work the parties' requests represent.

[37] YCC 385 brought this case to the Tribunal seeking an order that Mitsey be

permanently removed because of recurring accidents. The lien placed for unpaid carpet cleaning bills only became an issue when the parties were unable to finalize the terms on which Mitsey could remain on YCC 385's premises. YCC 385 submitted that its owners should not be held responsible for the legal fees which resulted from Ms. Vianellis' non-compliance with its pet rules. Ms. Vianellis submitted that she would not have needed to incur legal fees if YCC 385 had provided proof of her dog's responsibility for the carpet cleaning bills at the time the alleged accidents occurred in 2020.

- [38] Rule 48. 2 is clear that the Tribunal will generally not order a party to reimburse another party for its costs. In considering whether an award of costs should be assessed in this case, I am guided by the Tribunal's "Practice Direction: Approach to Ordering Costs" which, among the factors to be considered, includes the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed; the potential impact an order for costs would have on the parties; and, the provisions of the governing documents and whether the parties had clear understanding of the potential consequences for contravening them.
- [39] I award no costs in this matter. With respect to both the Tribunal fees paid by YCC 385 (and the legal fees requested by both parties), there is no "successful party" in this case. YCC 385 is not receiving the order to remove Mitsey from its premises as it sought in its application because the parties themselves negotiated that Mitsey could remain on agreed terms. Whether YCC 385 would have been successful if that issue had been adjudicated is moot. Further, I note that the outcome of the issue of the amount of the lien, the only issue adjudicated in this matter, has in effect been a compromise between the amounts the parties sought.
- [40] There were no issues with the conduct of the parties or their representatives during this proceeding. While there were some minor delays in receiving responses from Ms. Nastas, these did not unreasonably delay the proceeding and I found both parties' representatives to be co-operative throughout both the mediation I conducted and the adjudication.
- [41] As the evidence in this matter indicates, there were communication lapses by both parties which contributed to the issue of the amount of the lien which, notwithstanding that no legal bills were submitted, I presume represents a significant portion of the parties' claimed costs given the issue was mediated and then later required written submissions. While it is unknown whether better communication between the parties would have resolved that particular issue back in 2020, I find that each party bears some responsibility for the fact that the issue

escalated.

[42] Finally, while I acknowledge that YCC 385's owners will ultimately be responsible for the costs which I do not award to the Applicant in this case, I also note that Ms. Vianellis also incurred significant costs which arguably will represent a greater burden to her as an individual than YCC 385's costs will represent to its owners.

[43] For the above reasons, I am ordering that each party shall be responsible for their own costs in this matter.

D. CONFIDENTIALITY

[44] Ms. Vianellis submitted a physician's letter into evidence which contains personal information about her medical condition. Rule 21.5 of the Condominium Authority Tribunal Rules of Practice states:

The CAT may take any steps and make any directions or Orders that are needed to protect the confidentiality of personal information. The CAT may do this after a request or without a request from a Party, in accordance with the CAO's Access and Privacy Policy.

Having reviewed the physician's letter, and the proposed cross-examination questions for the physician that were posted by Mr. Varao, I have determined that it is appropriate to protect the confidentiality of the personal information they contain. Therefore, I am ordering that the letter, marked as Exhibit 24, and the questions, marked as Exhibit 30, are deemed confidential and shall not be made available as part of the public record in this matter.

E. ORDER

[45] The Tribunal orders,

Under section 1.44 (1) 2 of the Act:

1. Diane Vianellis, or any person responsible for taking care of Ms. Vianellis' dog Mitsey in Ms. Vianellis' absence, shall ensure that Mitsey wears diapers at all times when Mitsey is on YCC 385's interior common elements, including but not limited to the hallway, elevators and lobby areas which lead from Ms. Vianellis' unit to the building's entrance/exit doors.
2. If an accident does occur, Ms. Vianellis, or the person in charge of Mitsey at the time of the accident, shall immediately inform YCC 385's condominium management staff.

3. Ms. Vianellis shall inform any person she places in charge of Mitsey in her absence of the requirements set out above in paragraphs [47] 1 and [47] 2.
4. Within 30 days of receipt of an invoice, Ms. Vianellis shall reimburse YCC 385 for the reasonable costs it incurs to repair any damage to the common elements caused by Mitsey -- for example, the cost of cleaning carpet or replacing damaged sections of carpet which do not respond to cleaning. If the damage does not relate to an incident reported by Ms. Vianellis, the invoices are to be supported by documents and/or videos which substantiate that Mitsey is responsible for the damage. If the costs are not paid within thirty (30) days, YCC 385 may take further action in accordance with the indemnification provisions set out in Clause XI (1) of its declaration.

Under section 144 (1) 7 of the Act:

5. Effective the date of this decision, YCC 385 shall reduce the amount of the lien registered on Ms. Vianellis' unit on November 4, 2020, to \$1,898.35.
6. YCC 385 shall not take any enforcement action on the lien for twelve months from the date of this decision, during which period, Ms. Vianellis may make equal installment payments on the amount owing. YCC 385 shall accrue no interest on the lien during this 12-month period but, at the end of the 12-month period, may begin to accrue interest on any amount then owing.
7. Three months after the date of this decision, and at the end of every following three months, YCC 385 shall provide Ms. Vianellis with a written statement setting out the opening and closing balances of the lien which itemizes any interest accrued and any payments made during the 3-month period.
8. Upon receipt of payment in full of the lien, YCC 385 shall immediately register its discharge and shall provide a copy of the registration to Ms. Vianellis. YCC 385 shall be responsible for the cost of discharging the lien.
9. YCC 385 and Ms. Vianellis shall individually be responsible for the costs they incurred in this matter.
10. Exhibits 24 and 30 are deemed confidential and are not to be made available as part of the public record in this matter. The parties in this case must take all reasonable steps to ensure that these records remain private.

Mary Ann Spencer
Member, Condominium Authority Tribunal