CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 13, 2023
CASE: 2022-00107N
Citation: Stoicevski v. Peel Standard Condominium Corporation No. 668, 2023 ONCAT 86

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

Member: Noeline Paul, Member

The Applicant,
Draga Stoicevski
Represented by Renisha Cox, Paralegal

The Respondent,
Peel Standard Condominium Corporation No. 668
Represented by Natalia Polis, Counsel

Hearing: Written Online Hearing – July 20, 2022 to June 19, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] This is a decision for an application brought to the Condominium Authority Tribunal ("CAT") under the *Condominium Act, 1998* ("Act"). The Applicant is a unit owner of the Respondent, which is a residential condominium. She alleges that there has been an odour transfer into her unit from the Respondent's common elements and/or another unit ("Unit X") and this odour transfer is unreasonable and a nuisance, annoyance, or disruption under the Act. The other unit owner is not a party to this application.

[2] The Applicant requests that the CAT find the Respondent to be in breach of sections 117 and 119 of the Act by failing to comply with their by-laws and rules and asks that the CAT order the Respondent to contract specific professionals for the purpose of performing inspections related to the alleged odour transfer. The Applicant further requests that the CAT order the Respondent to comply with recommendations of contractors related to the alleged odour transfer and that the Respondent pay damages of $3,294.72 for costs incurred and costs of this application.

[3] In their closing submissions, the Respondent requested that the CAT order this application be dismissed and that they be provided with an opportunity to make additional submissions related to costs. I have decided this case without further

submissions from the parties and have determined that further submissions are not useful for the final decision, which includes a determination regarding costs.

B. ISSUES

[4] The issues to be decided in this application are as follows:

1. Is there an odour transfer to the Applicant's unit from Unit X and/or the Respondent's common element areas that is unreasonable and a nuisance, annoyance, or disruption under the Act?

2. If there is an odour transfer that is unreasonable and a nuisance, annoyance, or disruption under the Act, has the Respondent met their obligations under the Act and their governing documents?

3. If the Respondent has not fulfilled their obligations under sections 117 and 119 of the Act and their governing documents in terms of the alleged odour transfer into the Applicant's unit, what is the appropriate remedy?

4. Should costs be awarded?

C. DECISION

[5] For the reasons below, I find that the Applicant has not established that there is an odour transfer to her unit from Unit X and/or the Respondent's common element areas that is unreasonable and a nuisance, annoyance, or disruption under the Act. I further find that the Respondent has met their obligations under the Act and their governing documents in terms of the alleged odour transfer into the Applicant's unit. Therefore, the CAT will not order a remedy in this case. Additionally, I find that costs should not be awarded and each party will bear their own costs.

D. BACKGROUND

[6] The Applicant started this application at the CAT on the basis that she was experiencing a breach to her quiet enjoyment of her premises due to smells, specifically laundry exhaust/odours, cooking odours, and musky/sewer-like odours that she claimed entered her unit from Unit X, which is located below her unit, and/or from the Respondent's common element areas. The Respondent contracted specialized inspections to investigate the complaint. The Applicant also contracted inspections and/or services, as noted below.

[7] The Respondent contracted inspections as follows:

1. National Mechanical Air ("NMA") on March 4, 2022, to inspect the Applicant's unit and Unit X;

2. OSB Consulting (“OSB”) on March 25, 2022, to inspect the air quality of the Applicant’s unit; and

3. GTS Services (“GTS”) on May 10, 2022, to inspect the dryer exhaust system in the Applicant’s unit and Unit X.

[8] The Applicant contracted inspections and/or services as follows:

1. Enthalpy Analytical on April 15, 2022, to inspect air quality;

2. Unique Providers in May 2022, to conduct duct and dryer vent cleaning; and

3. Inch by Inch Inspections on July 23, 2022, to conduct thermal imaging of the Applicant’s unit.

[9] The Applicant was ultimately not satisfied with the Respondent’s efforts to address her complaint and pursued her application to the hearing stage at CAT. She requests that the CAT find, and order, as follows:

1. The Respondent has breached the Act as follows:

    a. Section 119 of the Act by failing to comply with section 4.1(a) and (d) of their by-laws;
    b. Section 119 of the Act by failing to comply with section 3(a)(ii) of their rules; and
    c. Section 117 of the Act.

2. The Respondent to commission inspections/investigations as follows:

    a. By NMA, further to its inspections/investigation of odour transfer between the Applicant’s unit and Unit X;
    b. Heating ventilation and air conditioning (HVAC) systems of the common areas, including a back-drafting air-flow analysis, coupled with a camera-snake of the dryer pipe exhaust runs, air ducts, building shared air-ventilation (HVAC) systems, and the owner's shared utility-shaft access; and
    c. Plumbing systems of the Applicant’s unit and Unit X.

3. The Respondent to disclose to the Applicant and fully comply with recommendations made by contractors pursuant to inspections/investigations pertaining to the alleged odour transfer.

4. The Respondent to pay for damages of $3,294.72 for costs incurred and costs of this action.

[10] In deciding this matter, I have considered the evidence that has been filed in this case. This evidence consists of statements by witnesses and supporting documents. The Applicant provided testimony, in addition to evidence from her

son, daughter and a colleague of the Applicant's son. This colleague is a realtor by profession but did not provide evidence in an expert capacity. The Respondent provided evidence from two condominium management staff, specifically one superintendent and a division manager of their condominium management company. The Respondent initially advised that their condominium manager assigned to the building would provide testimony but this person was scheduled for a leave of absence by the time of her testimony. Therefore, the Respondent requested that the division manager provide evidence instead, which I allowed. I have also considered the closing submissions that were provided by both parties in reaching my decision.

[11] As a further note, the Applicant was represented by her son for the majority of the hearing duration but then retained professional legal counsel for the remainder of the hearing.

E. ANALYSIS

[12] The Act limits activity related to odour in section 117(2)(b) of the Act, which is set out as follows:

> **117** (2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,
>
> **...**
>
> (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation. 2015, c. 28, Sched. 1, s. 102.

[13] Odour is specifically prescribed under section 26 of Ontario Regulation 48/01 as a type of nuisance, annoyance or disruption for the purposes of section 117 (2) (b) of the Act.

[14] The CAT has jurisdiction under section 1 (1) (c.1) of Ontario Regulation 179/17 to consider a dispute under section 117(2) of the Act and may also consider other disputes involving odour under section 1 (1) (d) (iii.1) of the same regulation where odour constituting a nuisance, annoyance or disruption is prohibited in the condominium's governing documents.

[15] The Applicant's case started as one involving a nuisance, annoyance or disruption, unreasonable odour, and smoke and/or vapour. While these issues fall within the CAT's jurisdiction as they are nuisances prescribed under section 117(2)(b), the Applicant and her representatives have, at different times, made statements that seem to extend these issues beyond the CAT's jurisdiction. The Applicant's evidence touched upon issues that relate to the Respondent's obligations of maintenance and repair and concerns around fire safety. In her closing

submissions, the Applicant seemed to argue that the alleged odour transfer posed a health risk. The Respondent noted in their closing submissions that the CAT does not have jurisdiction over health and safety matters and their maintenance and repair obligations. In her reply submissions, the Applicant appeared to reduce the scope of her arguments, such that the Applicant was only arguing that the alleged odours constitute a nuisance and that the CAT could exercise its jurisdiction in this case.

[16] To the extent that the Applicant has claimed that the alleged odour and accompanying volatile organic compounds are health risks, I find that the CAT does not have jurisdiction over these concerns. Since the Applicant has clarified her position in reply submissions, I will consider whether the alleged odour is unreasonable and a nuisance, annoyance, or disruption under the Act and the Respondent's obligations concerning the alleged odour.

Issue 1: Is there an odour transfer to the Applicant's unit from Unit X and/or the Respondent's common element areas that is unreasonable and a nuisance, annoyance, or disruption under the Act?

[17] The Applicant has argued that there is odour transfer entering her unit from Unit X and/or the Respondent's common elements. The evidence is that the Applicant and her husband have resided in their unit for over 20 years and first noticed the alleged odours in their unit in the Summer or Fall of 2021. In her cross-examination, the Applicant described the alleged odour as a very strong scented laundry and very strong dryer sheet smell. She stated that she smells the odour in her unit when her windows are closed and in the common elements and that she also cannot go out on her balcony anytime, with the suggestion that the odour would be there too.

[18] The Applicant's son, who also lives with the Applicant and her husband, testified that the alleged odour can be described as a mixture of laundry exhaust odours and strongly scented laundry detergent and/or fabric softener odours. In his sworn statement, he stated that the alleged odour presents itself intermittently, is not constant or consistent, and can occur on a daily or weekly basis. He further stated that he has noticed the alleged odours frequently presenting themselves during evening hours and weekends and that they occur throughout the Applicant's unit, especially in the kitchen, bathrooms, and laundry room. His evidence is that he first notified the Respondent's condominium management via email in September 2021, on behalf of the members of his household.

[19] The Applicant's son has put forth different ideas about the cause of the alleged odour. One such thought is that Unit X is the source. In cross-examination, the Applicant's son stated that he has previously followed the smell to the floor below his unit and noticed that the smell was most pronounced in front of Unit X's door. In cross-examination, he indicated the possibility of occupants of Unit X opening their windows to air out their laundry exhausts. However, he also stated he does

not know for sure that Unit X is the source of the alleged odour and that he has been trying to uncover its source the best that he could. He relies in part on the NMA inspection report, which he states confirms that strong odours are emitted when members of Unit X do laundry.

[20] The Applicant's son has also attributed the alleged odour transfer to repairs that involved a building-wide Kitec system replacement in 2021. The evidence is that the Applicant did not replace her Kitec plumbing. In emails between the Applicant's son and the Respondent's management, the Applicant's son discusses his belief that the alleged odour transfer was a result of this project. He also repeated this in his sworn statement in cross-examination.

[21] According to the Applicant's son, the alleged odour is unreasonable and a nuisance because it is not caused by the actions of his parents or himself and the odours are so strong that the simple act of inhaling is an unpleasant experience. He further stated that he and the members of his household experience health issues, such as headaches and other changes to their health as a result of the alleged odour. The Applicant stated in her evidence that she experienced reactions that feel like a cold.

[22] In their statements, the Applicant's daughter and the colleague of her son supported the Applicant's evidence. Her daughter stated that the Applicant told her about the alleged odour issue repeatedly and that she also experienced the alleged odour in the hallway of the Applicant's floor and in her unit. This witness provided evidence regarding health concerns posed to members of the Applicant's household due to the alleged odour transfer and she described a 911 call made by the Applicant's son on one occasion because of his safety fears. The colleague of the Applicant's son stated that he also experienced the alleged odour in the Applicant's unit and common areas. He provided evidence regarding what he viewed as deficiencies or defects in the Applicant's unit. This witness also gave evidence regarding health and safety concerns caused by the alleged odour. I have not given weight to evidence provided that touches upon issues outside of the CAT jurisdiction, nor evidence from the colleague of the Applicant's son that deals with real estate deficiencies or defects.

[23] Evidence was provided by one of the Respondent's superintendents. In his statement, he noted that he and his wife have been the Respondent's superintendents for 14 years and he has never detected any unreasonable odour during the multiple occasions that he has attended the Applicant's unit. He further stated that he has investigated the vents in the common element hallways of the Applicant's unit and Unit X and did not detect any of the odours alleged by the members of the Applicant's household. In his cross-examination, this witness stated that after the Applicant's son contacted him to complain about the alleged odour, he attended the Applicant's unit and Unit X to follow up but he could not detect any odour and he reported this to management. He stated that management has never directed him to inspect the units for laundry odours during the evening or weekend hours.

[24] In his statement, the division manager of the Respondent's condominium management company confirmed that the Applicant's son had complained about odours and this prompted an investigation by the superintendent and manager. He stated that, upon receipt of the initial complaints, the superintendent and manager investigated and made adjustments to the make-up air unit to assist with additional air flow to dissipate any alleged odours. His evidence is that these adjustments appeared to address the concerns for a period of time but then they again had contact with the Applicant's son toward the end of September 2021. This witness stated that the management company has only received complaints about alleged odours from members of the Applicant's household and that they have not be able to verify the alleged odours. This evidence is supported by the statements of the Respondent's superintendent. The division manager also stated that the company received a call from Brampton By-law Enforcement authorities, further to complaints from the Applicant's son, but that they have never had investigations conducted or compliance orders issued against them.

[25] The division manager of the Respondent's management company stated that, after their initial investigation into the alleged odour complaints in September 2021, they sent a reminder notice to all residents to remind them to check and clean their dryer ducts and remove any lint there. He also stated that, on November 4, 2021, the Respondent sent out a notice to all owners and residents regarding the odour complaints and reminded them to run their exhaust fans when cooking or doing laundry for at least one hour to assist with eliminating odours. He stated that after the OSB report, the condominium manager asked the residents of Unit X to use only unscented products when possible.

[26] The evidence in this case is that the Respondent retained NMA to conduct an odour transfer investigation on March 4, 2022. The documents filed in evidence includes a Work Order from NMA, which sets out the details of the inspection and notes by the contractor who completed the inspection. In this document, the contractor stated that a full load of laundry was done in Unit X during the inspection, with the same amount of detergent and fabric softener used as the normal routine. The contractor noted that, while the dryer was operating, he could smell very strong soap and fabric odour inside Unit X's laundry room, hallways, and entrance door, in addition to the main hallway of Unit X's floor but he could not smell any odour on the Applicant's floor or in her unit. He further stated in this document that, after checking all pipe connections, he found they were sealed or connected properly and that he did not find any opening or cracks that could possibly cause infiltration of laundry odour from Unit X to the Applicant's unit.

[27] The division manager of the Respondent's condominium management company noted in his statement that the condominium manager and superintendent were present during the NMA inspection. He stated that the Applicant's son complained to the manager of a sewage odour coming from the Applicant's sink but the manager did not smell this odour when she put her nose to the sink.

[28] The documentary evidence also confirms another inspection contracted by the

Respondent. Specifically, the Respondent retained OSB to conduct an air quality testing investigation on March 25, 2022. A report from OSB, which has been filed in this case, details the testing of air quality in the Applicant's unit and Unit X. The testing was conducted while laundry was being done in Unit X. This report indicated that carbon dioxide levels in the tested areas fell well below the Health Canada residential long-term exposure limit and carbon monoxide levels were below the Health Canada recommended levels but there were volatile organic compounds found in the Applicant's unit that were above the Health Canada guidelines for suggested targets. The sources of these compounds were not confirmed and the report noted that the compounds generally derive from sources such as diesel exhaust, beauty products, cleaners, laundry additives, and medical products. The report also noted that the resident in the Applicant's unit claimed he could smell laundry odours in various areas of his unit but that the OSB contractor only detected a very slight scent of laundry odour when they sniffed a small hole in the floor of the Applicant's master bedroom closet.

[29] Additionally, the OSB report indicated that there were concentrations of various compounds that may be attributed to products used in the Applicant's unit. The document noted safe levels of acetone and acetic acid, which can be associated with laundry detergents and, notably, very few of the compounds identified in the sample related directly to the laundry products used in Unit X. OSB provided recommendations in their report, which included inspection and proper attachment of any dryer hook-up exhaust in the Applicant's unit, a trial use of scent-free laundry products in Unit X with the possibility of longer-term use of such scent-free products, and an inspection into pipe runs, air ducts, and common walls between the floors.

[30] The Respondent contracted another inspection by GTS and a letter from GTS to the Respondent has been filed in this case. This letter details the results of GTS' inspection of the Applicant's unit and Unit X on May 10, 2022. The contractor noted that he could not smell the laundry odour in the Applicant's unit and only noticed laundry odour, such as detergent and fabric softener, in the laundry room of Unit X after entering this specific room of Unit X. The contractor confirmed that the dryer connections were all secure. He also noted that, in the Applicant's unit, there was an exhaust vent for an old gas fired furnace that was no longer being used by the new furnace and that this duct was still connected to the outside. GTS concluded that the old duct from the old furnace may play a roll in the migration of the alleged laundry odours as this duct allows outdoor air to come into the unit. They suggested in this report that dryer exhaust is blowing out of Unit X's exhaust and then entering the Applicant's unit through the old furnace exhaust duct and they recommended closing off these old furnace ducts so that outside air cannot come through them anymore.

[31] In cross-examination, the Respondent's superintendent stated that he attended the GTS investigation during a weekday, between the hours of 9am to 6pm, and laundry was being done in Unit X during this time but that he could not detect any laundry odour in Unit X.

[32] The division manager stated that more recently the company arranged for contractors to cut holes in the Applicant's unit and Unit X to further investigate if there were any physical connections that were loose or broken and to see if there was any odour present in the cavities behind the walls. He stated that there were no issues found with existing connections and no odour was detected in the unit or within the cavities of the walls.

[33] Based on the evidence in this case, I am not satisfied that the Applicant is experiencing an odour that can be considered unreasonable and, therefore, a nuisance, annoyance, or disruption under the Act. While I appreciate that the Applicant and members of her household notice various smells in her unit and they attribute these smells to laundry odour, the evidence does not support a finding that these smells are consistent. Further, the source of the alleged odour has not been confirmed. While there is suggestion that smells from laundry detergent use by Unit X are coming into the Applicant's unit, the inspections from three different contractors do not sufficiently support such a finding here. The contractors either were not able to confirm a laundry odour or put forth possibilities for how an odour transfer could occur. I accept the statements by the Respondent's witnesses that the superintendent and property manager did not smell the alleged odour during their visits to the Applicant's unit. Moreover, even if the odour comes from Unit X's laundry, it seems more likely that the Applicant and her household members are uniquely sensitive to it, and not that Unit X's laundry usage is unreasonable.

[34] With respect to the evidence from the Applicant's witnesses regarding the alleged odour, these witnesses made statements about the alleged odour that would take this case outside of the CAT's jurisdiction, specifically that the odour posed health and safety concerns. These witnesses may have overstated their claims about the alleged odour and, notably, such a finding would detract from their credibility. However, I am not making such a credibility finding here. I accept that the Applicant and members of her household experience smells that they deem unpleasant but the evidence indicates that these smells do not occur consistently. Therefore, I find that the alleged odour does not rise to the level of being unreasonable, and is not nuisance, annoyance, or disruption under the Act.

[35] In terms of the alleged odour transfer, I note that it is equally possible that any odour transfer could be related to maintenance and repair issues outside of the CAT's jurisdiction. The report from GTS provides suggestions that would fall within that category.

[36] In sum, I am not satisfied that there is an odour transfer to the Applicant's unit from Unit X and/or the Respondent's common element areas that is unreasonable and is a nuisance, annoyance, or disruption under the Act.

Issue 2: If there is an odour transfer that is unreasonable and a nuisance, annoyance, or disruption under the Act, has the Respondent met their obligations under the Act and their governing documents?

[37] Given my finding above that the alleged odour is not unreasonable and does not constitute a nuisance, annoyance, or disruption under the Act, I do not need to consider the Respondent's obligations here. However, I will still do so because the Applicant has expressed a great degree of frustration and effort in attempting to seek a solution to the alleged odour transfer.

[38] The Applicant has requested that the CAT find the Respondent in breach of sections 117 and 119 of the Act by failing to comply with their by-laws and rules. The Applicant argued in her closing submissions that the Respondent has a duty to enforce their by-laws and rules, which contain provisions related to the quiet enjoyment of the property, restrictions on odour and odour transfer. The Applicant's position is that the Respondent did not take sufficient measures to prevent the continuation of the alleged odour transfer to her unit. While the Applicant agrees that the Respondent commissioned an air quality report and mechanical contractors to investigate the issue of the alleged odour transfer, the Applicant argued that the Respondent did not act on the findings and recommendations in the report or attempt to resolve the issue.

[39] The Respondent has argued in their closing submissions that they have met their obligations by following up on the Applicant's complaints, contracting inspections, performing maintenance, and issuing various notices to their unit owners and Unit X. The Respondent has noted that they do not prohibit occupants from using scented laundry products.

[40] I find that the Respondent has taken a number of steps to comply with their obligations under the Act and they have spent time and expense to do so. As described above, three inspections/investigations have been conducted to follow up on the alleged odour. The Respondent has performed maintenance, such as adjusting the make-up air unit, in response to the Applicant's complaints. They have issued notices to the occupants of Unit X regarding their use of laundry detergent and other notices to unit owners regarding odour transfer concerns. Additionally, based on the evidence of the division manager of the Respondent's condominium management company, the Respondent has more recently made further investigations and this confirms that the Respondent has remained responsive to finding solutions to the Applicant's concerns.

[41] Based on the above reasons, I find that the Respondent has met their obligations under the Act and their governing documents with respect to following up on the Applicant's complaints and their enforcement duties.

Issue 3: If the Respondent has not fulfilled their obligations under sections 117 and 119 of the Act and their governing documents in terms of the alleged odour transfer into the Applicant's unit, what is the appropriate remedy?

[42] The Applicant has requested that the CAT order the Respondent to contract multiple inspections/investigations and fully comply with recommendations made by contractors pursuant to the inspections/investigations pertaining to the alleged odour transfer. This request is the sum of the remedies sought by the Applicant.

[43] Given my findings above that the Applicant has not established that there is an odour transfer which is unreasonable and a nuisance, annoyance, or disruption under the Act and that the Respondent has met their obligations under the Act and their governing documents in terms of the alleged odour transfer, a remedy is not appropriate here. Based on the reasons provided above, I am denying the Applicant's request for remedies in this case.

Issue 4: Should costs be awarded?

[44] The Applicant has requested that the Respondent pay damages of $3,294.72 for costs incurred and the costs of this application. I take this as a request for $3,294.72 for expenses incurred, and an award of the costs of this application. The Respondent has requested the opportunity to file additional submissions related to costs but, for the reasons noted below, I have determined that further submissions are not necessary to decide this issue.

[45] The CAT may grant an award of costs for filing fees under Rule 48.1 or legal fees and disbursements under Rule 48.2 of the CAT *Rules of Practice*. The practice of the CAT has been to grant recovery of the Stage 3 application fees to an applicant when that party is successful in the case. With respect to legal fees, the CAT may order one party to pay another party's legal costs in exceptional circumstances, but this is generally not the CAT's practice. The awarding of costs is discretionary.

[46] The Applicant paid $200 to bring her case to Stage 3 Adjudication and she has requested that she be reimbursed her application costs. The Applicant has not been successful in this case. I find no reason to deviate from the CAT's usual practice regarding application costs and, therefore, I am not awarding her filing fees here.

[47] In deciding whether to award costs for legal fees or disbursements incurred during the proceeding, I have considered the factors noted in the CAT's *Practice Direction: Approach to Ordering Costs*, issued January 1, 2022, which provides guidance regarding the circumstances in which such costs may be ordered. I note that one relevant factor to be considered is the parties' behaviour during the hearing. In this case, both parties have argued in submissions that there were delay tactics used by the other side at the hearing stage.

[48] The Respondent argued in their closing submissions that the hearing process was delayed by continual leaves of absences by the Applicant's son, who previously represented the Applicant. While I agree that these absences were numerous and caused multiple periods of delay, I also note that the Applicant's son claimed that he needed time for health or personal reasons, and I am not prepared to find that these absences were deliberate delay tactics on his end.

[49] The Applicant retained professional counsel at the testimony stage of the hearing and this transition also caused a delay in the hearing process. While there were delays in this case caused by the Applicant's representatives, I note that some delay is to be reasonably expected when a self-represented party decides to retain a professional representative after the hearing process is already well underway. I find that the Applicant's behaviour, either directly or through her representatives, did not rise to a level to justify that she should pay costs to the Respondent.

[50] With respect to the Applicant's request, the Applicant asked that the CAT order the Respondent to pay $3,294.72 for expenses. She did not provide a breakdown for these expenses.

[51] In her closing submissions, the Applicant argued that the failure of the Respondent's condominium manager to appear as a witness prejudiced her case and negatively impacted her litigation strategy. She argued that the condominium manager was the only member of senior management who had direct interaction with the matter and her testimony was crucial. The Respondent initially intended to have their condominium manager provide testimony but ultimately advised that the manager was unavailable due to a leave of absence. The Respondent provided sufficient details of this leave of absence to my satisfaction during the hearing and I permitted the Respondent to substitute another senior management staff in place of the condominium manager. I do not agree with the Applicant's view that the lack of this testimony prejudiced the Applicant's case in any meaningful way. The Applicant provided several witnesses and documents in evidence. The Respondent also provided two witnesses, one of whom had direct contact with the Applicant and her son. It does not appear that the condominium manager would have provided any evidence that was stronger than what the Applicant already provided.

[52] Given the above, I find that neither an order for costs nor an order for compensation due to damages is warranted in this case. Each party should bear their own costs.

F. CONCLUSION

[53] Based on the evidence provided in this case, I conclude that the Applicant has not established that there has been an odour transfer to the Applicant's unit from Unit X and/or the Respondent's common element areas that is unreasonable and a nuisance, annoyance, or disruption under the Act. I also conclude that the Respondent has met their obligations under the Act and their governing documents in terms of the alleged odour transfer into the Applicant's unit. As a result, an order regarding remedy is not warranted. Further, I conclude that costs should not be awarded.

[54] Given the findings above, this application is dismissed.

G. ORDER

[55] The Tribunal Orders the application dismissed, without costs.

Noeline Paul
Member, Condominium Authority Tribunal

Released on: July 13, 2023