

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 17, 2023

**CASE:** 2023-00254N

**Citation:** Ottawa-Carleton Condominium Corporation No. 558 v. El-Hajjar et al., 2023 ONCAT 114

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

Ottawa-Carleton Condominium Corporation No. 558

Represented by David Lu, Counsel

**The Respondents,**

Nathalie El-Hajjar

Self-Represented

Salvatore Sergio

Not Represented

**Hearing:** Written Online Hearing – June 20, 2023 to August 3, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] The Applicant, Ottawa-Carleton Condominium Corporation No. 558 (“OCCC558” or the “corporation”), is requesting the Tribunal order Respondent Salvatore Sergio to comply with its rules. It alleges that Mr. Sergio has breached the provisions of its governing documents related to noise, smoking, storage, pets and parking. It is also requesting that Mr. Sergio and Respondent Nathalie El-Hajjar be ordered to pay its costs in this matter jointly and severally.

[2] Ms. El-Hajjar is the non-resident owner of a unit of OCCC558. Effective November 1, 2022, she leased her unit to Mr. Sergio. Ms. El-Hajjar does not dispute OCCC558’s allegations that her tenant has breached various corporation rules and she supports its request for a compliance order. However, her position is that she has made all reasonable efforts to obtain Mr. Sergio’s compliance and that only he

should be held responsible for the corporation's costs. She also requests costs in this matter.

- [3] For the reasons set out below, I find that Salvatore Sergio has failed to comply with the provisions of the corporation's smoking, storage, pet, and parking rules and I order him to do so. I also order Salvatore Sergio to pay \$4,059.50 and Nathalie El-Hajjar to pay \$3,325 to OCC558 within 30 days of the date of this decision.

## **B. BACKGROUND**

- [4] Effective November 1, 2022, Ms. El-Hajjar leased her unit on a monthly tenancy basis to Mr. Sergio and another tenant, both of whom signed a standard lease form. Sometime in December 2022, the other tenant moved out and a new co-tenant moved in. A new lease, effective January 1, 2023, and also on a monthly tenancy basis, was signed. Mr. Sergio is now the only occupant of the unit: the other tenant moved out sometime in February 2023.
- [5] The evidence is that the corporation's condominium manager began to notify Ms. El-Hajjar about incidents of rule non-compliance by her tenants within a week of them moving in. Ms. El-Hajjar attempted to address each issue as it arose but the non-compliance continued and she decided the tenancy needed to be terminated. On March 3, 2023, Mr. Sergio signed the Landlord and Tenant Board's ("LTB") N11 form, "Agreement to Terminate the Tenancy". The effective termination date was March 14, 2023. However, Mr. Sergio did not vacate the unit. On April 12, 2023, the corporation advised Ms. El-Hajjar that if her efforts to have Mr. Sergio vacate the unit were not successful, it would file an application with the Tribunal. Its subsequent e-mail correspondence with Ms. El-Hajjar indicates that if the corporation received a compliance order, it would then seek an eviction order from the Court.
- [6] On April 18, 2023, Ms. El-Hajjar served Mr. Sergio with an N7 form, the LTB's "Notice to End your Tenancy for Causing Serious Problems in the Rental Unit or Residential Complex". On May 8, 2023, she served him with an N4 form, the LTB's "Notice to End your Tenancy Early for Non-Payment of Rent." On May 23, 2023, she filed an application to evict a tenant for non-payment of rent (LTB Form 1) with the LTB. As of August 1, 2023, Mr. Sergio remains in the unit and owes Ms. El-Hajjar \$9,500 in rent. The LTB has scheduled a hearing date of October 11, 2023.
- [7] Mr. Sergio did not participate in this matter. When he failed to join at the onset of the Stage 3 - Tribunal Decision proceeding, I asked Tribunal staff to contact him. They received no response to voice and e-mail messages. Counsel for OCC558

confirmed that the notices of the proceeding were sent to Mr. Sergio by both e-mail and regular mail and I am satisfied that he was properly served and is aware of this matter. Therefore, the hearing proceeded without his participation and my decision is based on the evidence and submissions of the corporation and Ms. El-Hajjar.

### **C. ISSUES & ANALYSIS**

[8] The parties confirmed that the issues to be addressed in this matter are:

1. Is Salvatore Sergio creating unreasonable noise, smoke and/or odour in violation of s. 117(2) of the *Condominium Act, 1998* (the "Act") and the corporation's rules respecting noise, smoking and storage/disposal of garbage?
2. Is Salvatore Sergio in violation of the corporation's pet rules?
3. Is Salvatore Sergio in violation of the corporation's parking rules?
4. If Salvatore Sergio is found to be in violation of either s. 117(2) of the Act or the corporation's rules, what remedy should the Tribunal order?
5. Should the Tribunal award costs in this matter?

[9] Jane Wilson, OCCC558's condominium manager, testified on behalf of the corporation. Ms. El-Hajjar testified on her own behalf. I note that two witness statements prepared by neighbours of Mr. Sergio were submitted by OCCC558. However, the witnesses' names were redacted, which Counsel for the Applicant advised had been done at their request because they feared reprisal from Mr. Sergio. I advised Counsel that I could not accept anonymous statements but was prepared to anonymize the witnesses' names in this decision. Counsel chose to withdraw the statements.

[10] Ms. Wilson included a chronology of what the corporation submits are incidents of Mr. Sergio's failure to comply with the corporation's rules. However, some of the evidence provided by both Ms. Wilson and Ms. El-Hajjar addresses issues outside of the Tribunal's jurisdiction, which is established in Ontario Regulation 179/17 (O. Reg 179/17). These include details about Mr. Sergio's apparent failure to supervise his young daughter, an incident which resulted in police being called when she was found wandering alone outside. While this evidence may speak to a pattern of behaviour, in this decision I only address the allegations that relate to the issues within my jurisdiction as set out above in paragraph 8.

**Issue 1: Is Salvatore Sergio creating unreasonable noise, smoke and/or odour in violation of s. 117(2) of the Condominium Act, 1998 (the “Act”) and the corporation's rules respecting noise, smoking and storage/disposal of garbage?**

[11] Mr. Sergio is required to comply with OCC558's governing documents. Section 119 (1) of the Act requires all occupants of a condominium unit to comply with a condominium corporation's governing documents:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

I address each of the allegations of Mr. Sergio's failure to comply with the governing documents separately below. Where applicable, I address both s. 117 (2) of the Act and the relevant rules of the corporation. I also indicate the remedy where I find there has been a breach of the governing documents.

[12] Section 117 (2) of the Act states:

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,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or

(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.

The nuisances, annoyances and disruptions prescribed in s. 26 of Ontario Regulation 48/01 (O. Reg 48/01) include unreasonable smoke and odour.

Noise

[13] Ms. Wilson testified that the tenants of Ms. El-Hajjar's unit cause excessive noise. She indicated that there was “high traffic of individuals coming and going to the unit” and that the tenants were repairing vehicles on the common elements creating “an intolerable situation for adjacent unit owners/residents.” For a finding that noise is a nuisance, annoyance or disruption under s. 117 (2) (a) of the Act, there needs to be evidence that an individual in a unit has been affected by it. Other than Ms. Wilson's witness statement, there is no such evidence in this case;

it may be that the two neighbours who were only prepared to testify if they could do so anonymously would have provided it.

[14] The chronology in Ms. Wilson's witness statement includes only one incident of noise which was created by a vehicle owned either by a tenant or visitors of Ms. El-Hajjar's unit on November 15, 2022. Further, there is no evidence that either Ms. El-Hajjar or Mr. Sergio were informed that excessive noise was an issue until they were sent a letter from the corporation's legal counsel on April 12, 2023. I note that the only noise infraction set out in this letter is the November 15, 2022 incident. While that noise may well have disturbed Mr. Sergio's neighbours and generated a complaint to the corporation's management, when and how often noise occurs and how long it lasts must be considered in determining whether there is unreasonable noise which constitutes a nuisance, annoyance or disruption to an individual under s. 117 (2) (a) of the Act. No detail was provided with respect to the November 15, 2022 incident. Based on the evidence before me, one incident is insufficient to support such a finding.

[15] Similarly, the evidence of only one incident does not support a finding that Mr. Sergio has breached Rule 3 (a) of the corporation's rules which states that tenants may not create disturbing noise:

Owners and their families, guests, visitors, tenants, servants and agents shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board of the manager, may or does disturb the comfort or quiet enjoyment of the property by other owners of their respective families, guests, visitors, servants and person having business with them.

While the rule provides the corporation's board and manager the discretion to determine what comprises disturbing noise, that discretion must still be exercised reasonably. In the absence of any record of complaints other than the November 15, 2022 incident, about which there is no detail, I cannot find that the evidence supports ordering Mr. Sergio to comply with the noise rule.

### Smoke

[16] The evidence with respect to smoke is more extensive. Ms. Wilson testified that Mr. Sergio has been observed smoking both cigarettes and marijuana. Neighbors reported Mr. Sergio and/or his visitors smoking on the front steps of the unit on January 12 and July 3, 2023.

[17] The corporation rules dated October 31, 2018, state:

a) Smoking includes but is not limited to the smoking of cigarettes, cigars, pipes, cannabis, vaping with electronic cigarettes or any other heated or lit product.

b) Except as provided in sections d), e) and f) regarding grandfathering and exemptions for medical reasons, smoking is not permitted in any residential unit, or in the common elements, including the exclusive use common elements (including residential balconies, patios).

[18] Evidence of smoking was first found less than a week after the tenants moved into Ms. El-Hajjar's unit. Ms. El-Hajjar's testimony is that she was notified of cigarette debris outside the unit on November 8 and December 12, 2022 and on January 15, May 24, and May 31, 2023 and that each time she contacted her tenants immediately and reminded them of the rules.

[19] It is unclear whether Mr. Sergio was provided with a copy of the corporation's rules when he took possession of the unit on November 1, 2022. Ms. El-Hajjar's testimony is that she 'believes' she provided them. The standard lease form the tenants executed cites provincial law that forbids smoking indoors but "none" is marked under "the tenant agrees to the following additional rules on smoking." Ms. El-Hajjar's testimony indicates that she herself does not understand the corporation's rules. Notwithstanding that the rules forbid smoking on balconies and terraces, she appears to understand that they only forbid smoking indoors and that the corporation's issue was that smoking debris was left on the common elements. When asked about the fact that the lease did not include reference to the corporation's rules, she stated this was not necessary because there were no restrictions in addition to the provincial law.

[20] However, even if Ms. El-Hajjar did not provide Mr. Sergio with the rules, they are set out in the April 12, 2023 letter the corporation's counsel sent to them both. Given the evidence indicates both that residents reported Mr. Sergio smoking on the front steps and that cigarette debris was found on more than one occasion after the letter was sent, I find, on a balance of probabilities, that Mr. Sergio has been smoking in violation of the corporation's smoking rules and that this comprises an annoyance under s. 117 (2) (b) of the Act. I will order him to cease smoking on the corporation property.

#### Storage/Disposal of Garbage

[21] Rule 7 (a) of OCC558's rules states:

No owner shall place, leave or permit to be placed or left in or upon the common elements any debris, refuse or garbage. Residents are encouraged

to visit the City of Ottawa website for a complete garbage schedule and residual garbage pick-ups.

Rule 5 (g) states:

No goods or chattels may be left or stored on the common elements including exclusive use common elements except as specifically authorized by the Declaration, by-laws and rules of the Board.

Ms. Wilson testified that Ms. El-Hajjar's tenants have been leaving garbage bags on the unit's balcony/deck or in front of the building. She noted that this "poses a nuisance to others (due to the odour)." The evidence is that garbage was found to be inappropriately stored on November 15, 2022, February 19 and February 21, 2023. In addition to Ms. Wilson and Ms. El-Hajjar's testimony, photographs submitted as evidence show what appears to be a recycling blue bin, a chair and other items on the common element shared landing outside the doors of Ms. El-Hajjar's and an adjacent unit. Further, on April 28, 2023, Ms. Wilson conducted an inspection and found garbage stored in the unit's backyard, which I note is an exclusive use common element. Ms. El-Hajjar was duly informed but Mr. Sergio failed to clean the yard. OCCC558 then hired a contractor to do so at a cost of \$169.50 which Ms. El-Hajjar subsequently paid.

[22] No evidence other than Ms. Wilson's statement quoted above in paragraph 21 was submitted with respect to odour and therefore, I make no finding under s. 117 (2) (b) of the Act. However, I do find that the evidence indicates that Mr. Sergio has inappropriately stored garbage and other items on the common elements. Accordingly, I will order him to comply with Rules 7 (a) and 5 (g) of OCCC558's rules. I note that the fact that a dog leash was tied to the railing of the unit's front landing was submitted as an example of inappropriate storage. Ms. Wilson testified that this represented a tripping hazard. However, the submitted photographs indicate that the leash was either hanging over the railing into the yard or was along the wall of the Applicant's unit. While this is a technical violation of Rule 5 (g), I question that it would have merited highlighting had it been the sole breach of the rule.

## **Issue 2: Is Salvatore Sergio in violation of the corporation's pet rules?**

[23] The corporation's pet rules require that pets be leashed at all times on the common elements and that they not be tied up on the common elements. Rule 2(b) states, in part:

All permitted pets or animals must be controlled by hand-held leash or caged when on the common elements. No owner shall tie up a pet or animal on the common elements or leave a pet or animal unattended thereon.

Rule 2 (c) requires owners to clean up after their pets:

Pet owners **are required** to 'stoop and scoop' on the property each and every time. Pet owners should also ensure that the eventual disposal of pet waste (including disposal of cat litter) is performed in a sanitary manner.

[24] I find that Mr. Sergio has breached the pet rules cited above and therefore I will order his compliance. The evidence is that on December 12 and 22, a dog belonging to the tenants of Ms. El-Hajjar's unit was found freely roaming the common elements. On February 23, 2023, Ms. El-Hajjar was notified that her tenants were failing to clear dog feces from the common elements. Ms. El-Hajjar's testimony and her correspondence with Ms. Wilson indicates that she believed the dog in question belonged to tenant P.B. who moved out of the unit sometime in late February, 2023 and that the problem was therefore solved.

[25] However, Ms. Wilson testified that she found a dog tied up outside the unit when she conducted a site inspection on April 28, 2023. And, as noted above in paragraph 22, photographs indicate that a leash was tied to the railing of the front landing on more than one occasion suggesting that the dog may have been tied up more frequently. This is supported by Ms. El-Hajjar's testimony that she personally attended at the property on May 24, 2023 and again on May 31, 2023 to clean up dog feces from the front yard. I note Ms. El-Hajjar indicated that she had done so "numerous" times and was only citing some examples of the specific occasions she had done so.

### **Issue 3: Is Salvatore Sergio in violation of the corporation's parking rules?**

[26] The evidence is that Mr. Sergio has breached OCC558's parking rules on multiple occasions. Rule 8 (e) prohibits parking in common element areas including visitors' parking spaces:

No owner or occupant shall park a motor vehicle on any part of the common element and without limited the generality of the foregoing, fire zone, traffic lane, delivery or garbage pick up areas, roadway areas designated by the Board as posing a security risk, or visitor's parking spaces or on any parking space or parking unit other than his or her own parking unit or other than one which he or she has leased.



Ms. El-Hajjar's unit has one designated parking spot which she testified she had shown to Mr. Sergio when he moved in. On November 7, 2022 Ms. Wilson first notified Ms. El-Hajjar that her tenants were parking in visitors' parking. The evidence is that there were further occurrences of either parking in visitors' parking or in fire routes on November 21 and 22, 2022, December 12, 22, 23 and 28, 2022, May 15, 16 and 29, 2023, and June 26, 2023. Ms. El-Hajjar was notified of these incidents either by letter or e-mail from Ms. Wilson on November 7, December 12 and December 28, 2022 and on May 17 and 31, June 27 and July 4, 2023. With the exception of the first two letters sent in 2022, all of the correspondence includes photographs of the parking infractions. Ms. El-Hajjar's evidence is that she notified the tenants each time she was advised of infractions by the corporation, but the behaviour persisted.

- [27] Further, one of the photographs sent with Ms. Wilson's July 4, 2023 letter to Ms. El-Hajjar indicates Mr. Sergio has breached Rule 8 (b) which prohibits the repair or servicing of vehicles on the common elements:

No servicing or repairs shall be made to any motor vehicle, trailer, boat, snowmobile or equipment of any kind on the property without the express written consent of the manager or the Board. No car washing shall be permitted.

While the photograph shows what appears to be an individual only changing a tire, the rule requires management's permission for any servicing. Further, while this is the only photographic evidence of a breach of rule 8 (b), I note that Ms. Wilson's letter dated June 27, 2023 also refers to repairs being made to the tenant's vehicle on the common elements.

- [28] The undisputed evidence is that Mr. Sergio has breached the corporation's rules 8 (e) and 8 (b) relating to parking and I will order his compliance.

**Issue 4: If Salvatore Sergio is found to be in violation of either s. 117(2) of the Act or the corporation's rules, what remedy should the Tribunal order?**

- [29] I am ordering Mr. Sergio to comply with OCCC558's rules relating to smoking, storage, pets and parking. While I have found the evidence submitted in this case supports breaches of only those rules, the parties' submissions describe an ongoing pattern of behaviour that makes it clear that Mr. Sergio has little respect for his neighbours and little regard for the rules that are necessary for harmonious living in a multi-residential community. I note that Ms. El Hajjar's testimony was that Mr. Sergio reacted in an aggressive and vulgar manner when she brought various infractions to his attention. The fact that Mr. Sergio has ignored the N11

document he signed in which he agreed to vacate the premises by March 14, 2023 and the fact that his rent arrears now total \$9,500 demonstrate that he also has little regard for his obligations as a tenant. Both OCCC558 and Ms. El-Hajjar made it clear that their ultimate goal is to have Mr. Sergio vacate the premises. However, as the corporation is aware, and as I advised Ms. El-Hajjar, the Tribunal cannot order an individual to permanently vacate a condominium unit.

#### **Issue 5: Should the Tribunal award costs in this matter?**

[30] OCCC558 is requesting costs of \$10,315.42, comprised of \$10,165.42 in legal fees and disbursements and \$150 in Tribunal filing fees to be paid by Mr. Sergio and Ms. El-Hajjar jointly and severally.

[31] Ms. El-Hajjar submits that Mr. Sergio should be responsible for any costs the Tribunal awards to the corporation. In addition, she requests the Tribunal order Mr. Sergio to pay the \$9,500 rent owing as of August 1, 2023 and to reimburse her the \$186 LTB filing fee she has paid. She also requests that the Tribunal order Mr. Sergio to reimburse her \$169.50, the amount she paid OCCC558 after it hired a contractor to clean her unit's backyard. She also asked the Tribunal to order that Mr. Sergio pay any future costs for damages to the common elements that she may be assessed. Finally, she requests that the Tribunal order both Mr. Sergio and OCCC558 to pay her \$2,000 for "pain and suffering."

[32] Ms. El-Hajjar provided a lengthy submission with respect to costs. I appreciate that she represented herself in this matter and therefore may not fully understand the Tribunal's jurisdiction. While I will consider her arguments with respect to which party should be held responsible for any cost award I make and her request that the corporation pay her \$2,000 for damages, I cannot consider her requests that I order Mr. Sergio to pay his rental arrears and reimburse her for the fees she paid to the LTB or for costs she has paid for damages he has caused, including "pain and suffering." Mr. Sergio's rental agreement with Ms. El-Hajjar is outside of the jurisdiction of this Tribunal and is a matter to be addressed by the LTB. This case is not about Mr. Sergio's failure to pay rent or about any other costs Ms. El-Hajjar has incurred or may incur related to his tenancy; it is about his failure to comply with the corporation's rules and about the costs associated with obtaining his compliance.

[33] Ms. El-Hajjar also made extensive submissions arguing that the corporation should have allowed her to file the Tribunal application, presumably in the belief that this would reduce the corporation's legal fees and any liability she might have with respect to those fees. For Ms. El-Hajjar's information, while she potentially

could have filed an application, the corporation would have been part of that case. She also argued that the corporation should have named her as an intervenor in this matter rather than a respondent, apparently in the mistaken belief that the Tribunal could not order costs to be paid by an intervenor.

[34] 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.

OCCC558 is successful in this matter and therefore, pursuant to rule 48.1, I will order that it be awarded \$150, the amount of the Tribunal fees it paid. I address who should pay this cost below.

[35] The \$10,165.42 OCCC58 requests for legal fees and disbursements is comprised of \$1,505.61 it incurred in attempting to obtain Mr. Sergio's compliance before it filed its application with the Tribunal and \$8,659.81 incurred in the course of this proceeding. It submits that it is entitled to its costs pursuant to the indemnification provisions of its declaration and rules. Article 8.1 of its declaration states:

Each owner shall indemnify and save harmless the Corporation from and against any loss, cost, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such owner, his family or any member thereof, any other resident or occupant of his unit or any guests, invitees or licensees of such owner or resident to or with respect to the common elements and/or all other units, except for any losses, cost, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and Insured against by the Corporation.

All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and be recoverable as such.

[36] Ms. El-Hajjar submits that she does not understand the basis on which the corporation is requesting she be held responsible for their costs. She argues that she made all reasonable efforts to obtain Mr. Sergio's compliance consistent with her obligation under s. 119 (2) of the Act which states:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

The evidence in this matter indicates that Ms. El-Hajjar took steps to try to obtain Mr. Sergio's compliance each time the corporation notified her of a breach of the rules. In addition to notifying him of the infractions and requesting his compliance, and in some cases, attending personally to address them by cleaning the property, those steps included obtaining his agreement to vacate the unit when he signed the LTB's N11 form on March 3, 2023. She also offered to pay him two months' rent if he would vacate, an offer she testified he refused. As set out in the background section of this decision, she subsequently served him with both an N7 and N4 form from the LTB and has made application to the LTB for a hearing.

[37] The \$1,505.61 in legal fees that OCC558 incurred before it brought its application to the Tribunal is with respect to correspondence its counsel had with both the corporation and Ms. El-Hajjar and includes the cost of the compliance letter sent by counsel Nancy Houle to Mr. Sergio and Ms. El-Hajjar on April 12, 2023. That letter acknowledges Ms. El-Hajjar's efforts. At page 3, it states:

While the Corporation appreciates your cooperation in attempting to find a resolution to these matters, it appears that the Tenants/Occupants are now refusing to vacate the Unit. Accordingly, the Property Manager sent you (Owner) a final notice on March 29th requesting that the Tenants/Occupants vacate by March 31st; otherwise, the Corporation would have no alternative but to commence legal action and all related costs would be charged back to the Unit.

At page 16, the letter states:

All costs incurred by the corporation as a result of these matters are the responsibility of the Owner(s) of the Unit and are added to the common expenses of the Unit. Because the corporation has been required to involve legal counsel in these matters, the corporation has incurred legal costs of \$650 plus HST (for a total of \$734.50) up to delivery of this letter. [The other owners in the condominium should not be put to expense as a result of these matters.] The Corporation is not intending to charge you the costs of this letter,

at this time, as long as you are taking the necessary steps to evict the Tenants/Occupants. However, should these issues continue, and further legal action be required, the Corporation may have no alternative but to seek recovery of all such costs.

Finally, the letter states that Ms. El-Hajjar is to notify counsel by no later than April 19, 2023, of the status of the eviction proceedings, including an LTB file number, or the corporation would proceed to file an application with the Tribunal.

[38] On April 18, 2023, Ms. El-Hajjar contacted Ms. Houle and inquired about the best way to proceed with the LTB, indicating she was uncertain of what form she should file next. On April 25, 2023, she wrote again to Ms. Houle and asked whether a CAT application would be faster than an LTB application and how much it would cost. Ms. Houle's response was that she expected a CAT application would be faster given the LTB's backlog and that if Ms. El-Hajjar did not oppose the application, she anticipated it would be handled by an articling student at the estimated cost of \$2,000. Ms. El-Hajjar subsequently inquired whether she herself should file the CAT application. On April 30, Ms. Houle replied that the corporation would file the application and that it would be seeking its costs. It was not until this date that counsel made it clear that they could not provide advice to Ms. El-Hajjar.

[39] OCCC558 is now seeking recovery of costs, at least in part, for the correspondence it had with Ms. El-Hajjar when she was trying to determine the best way to proceed is unreasonable. Notwithstanding that Ms. El-Hajjar may have been somewhat naïve in her apparent belief that the corporation's counsel was working in partnership with her, counsel did not clearly apprise her that each e-mail she sent them was adding to the costs they would ultimately be seeking. Further, as the Tribunal noted at paragraph 22 of its recent decision in *Frontenac Condominium Corporation No. 56 v. Patterson et. al*, ONCAT 35 [CanLII], the corporation has a duty to seek compliance:

While it is unfair for unit owners to bear some of those costs when they are caused by the serious misconduct or negligence of another owner, it is fundamental to the idea of condominiums that owners are to share a portion of one another's regular burdens of property ownership when acting in good faith. While a unit owner who rents their unit cannot avoid the responsibility to deal with the misconduct of their tenants, this does not eliminate the condominium's corresponding duty, or the landlord unit owner's right to rely in good faith on the performance of that duty in addition to their own diligent efforts.

Until the April 12, 2023 letter was sent to Mr. Sergio, the corporation placed the

entire burden of seeking compliance on Ms. El-Hajjar who did take immediate and reasonable steps to try to obtain it. While dealing directly with Mr. Sergio may not have changed his behaviour, the corporation made no effort until April 12, 2023 to apprise him of the multiple rule infractions that began in November, 2022. For these reasons, I find that the corporation is entitled to only \$734.50 of the \$1,505.61 in legal fees it incurred before application to the Tribunal was made.

[40] I also find that Mr. Sergio should be held responsible for paying the \$734.50 I am awarding: it was his disregard for the corporation's rules that created the need for the letter. The corporation, as the April 12, 2023 letter indicates, was well aware of Ms. El-Hajjar's ongoing efforts to obtain his compliance and arguably led her to believe that she would not be charged for costs of producing the letter if she was taking the necessary steps to evict Mr. Sergio. While the fact that the application to the Tribunal was filed on May 8, 2023 indicates that the corporation was not prepared to wait for an outcome from the LTB, Ms. El-Hajjar did take those steps, if not by the most expedient route.

[41] OCCC558 also seeks to recover the \$8,659.81 in legal fees it incurred with respect to this proceeding from Ms. El-Hajjar and Mr. Sergio. Counsel for the corporation submits that it would be unfair to make the corporation's owners responsible for the costs associated with obtaining the compliance of one owner's tenant. I acknowledge that costs not awarded in this matter will ultimately be expensed to those owners and agree that in the circumstances of this case, it would not be fair for those owners to pay for the costs caused by the behaviour of one owner's bad tenant.

[42] Counsel for OCCC558 suggested that Ms. El-Hajjar should be held responsible for the corporation's legal fees not only on the basis of the indemnification provision of its declaration but also because of shortcomings in her actions. He suggested that the efforts she took to screen Mr. Sergio's rental application were inadequate and that she should have filed application with the LTB pursuant to the N11 form signed by Mr. Sergio rather than later serve him with both N7 and N4 forms, the latter of which ultimately led her to file an application for a hearing. I note that she now has an October 11, 2023 hearing date at the LTB. While she may have received an earlier hearing date had she filed an application pursuant to the N11 form, it is not a given that the corporation's application to the Tribunal followed by an application to the Court will result in an earlier eviction order as Ms. Houle suggested.

[43] The indemnification provision of OCCC558's declaration is clear in that it makes a unit owner responsible for the actions of their tenants. However, while Ms. El-

Hajjar likely should have sought independent legal advice immediately upon receipt of the April 12, 2023 letter, and likely did make mistakes in not following the most expedient route to obtain a hearing at the LTB, based on the efforts she made to obtain Mr. Sergio's compliance and when that failed, the termination of his tenancy, I find that she should only be held responsible for a portion of the costs in this matter. It was Mr. Sergio who regularly breached the rules of OCC558 and by so doing demonstrated his disdain for both Ms. El-Hajjar and the corporation. I am ordering Ms. El-Hajjar and Mr. Sergio to each pay 50% of the corporation's legal fees with respect to this proceeding that I am awarding.

[44] I have reviewed the \$8,659.81 in legal fees submitted by OCC558 and find that the 42.45 hours work it represents to be high for what was, other than on the issue of costs, an uncontested matter that proceeded directly to Stage 3 – Tribunal decision, notwithstanding that Ms. El-Hajjar's submission was lengthy and somewhat repetitive and required some time to review. I find an award of legal fees of \$6,500 to be appropriate. Therefore, I am ordering Mr. Sergio and Ms. El-Hajjar to each pay OCC558 \$3,250.

[45] In summary, I am ordering Mr. Sergio to pay \$734.50, the cost of the April 12, 2023 legal letter to OCC558 as compensation for damages. I am also ordering Mr. Sergio and Ms. El-Hajjar to each pay \$3,325 representing 50% of the \$150 Tribunal filing fees paid by OCC558 and 50% of the \$6,500 in legal fees I am awarding with respect to this proceeding.

[46] I recognize that there is some probability that Mr. Sergio, who already owes significant rent arrears, will not willingly pay the corporation as I am ordering. I also recognize that were I to order costs be paid by the respondents jointly and severally as the corporation requests, it is likely that Ms. El-Hajjar would be required to pay all of those costs. That would place the burden on Ms. El-Hajjar of pursuing Mr. Sergio for reimbursement. I find it more appropriate to place that potential burden on the corporation given it made no compliance efforts directly with Mr. Sergio for a period of almost 5 months after he moved in and then, after it did make its one effort by sending him the April 12, 2023 letter, it chose to file its application with the Tribunal almost immediately, giving Ms. El-Hajjar little time to deal with the LTB.

[47] Finally, as I have found Ms. El-Hajjar to be partially responsible in this matter, I need not consider her request for \$2,000 compensation from the corporation for "pain and suffering." However, I make the following observations. Ms. El-Hajjar suggests that she was misled by the corporation's condominium management and

by its counsel. She submits that counsel did not provide her with the information she sought on what application to submit to the LTB when she replied to their April 12, 2023 letter. As noted above in paragraph 38, she could and likely should have sought independent legal advice which she did not do until May 28, 2023. I also note that she appears to have placed too much reliance on the corporation in general. For example, with respect to the fact that Mr. Sergio's lease does not address the corporation's smoking rules, she submitted that because the corporation was provided with a copy of the lease it should have advised her if it was inadequate. While I have no doubt that Ms. El-Hajjar has found Mr. Sergio's behaviour and this proceeding to be stressful, the corporation is not responsible for that stress. It is her responsibility to ensure she understands her obligations both as a landlord and as a condominium unit owner.

#### **D. ORDER**

[48] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act: Salvatore Sergio shall immediately comply with the rules of Ottawa-Carleton Condominium Corporation No. 558. In particular, he shall:
  - a. Immediately cease smoking both in the unit he occupies and on any part of the corporation's common elements;
  - b. Immediately cease storing garbage and other items on the common elements;
  - c. Ensure his dog is not allowed to be loose on the common elements but is controlled by hand-held leash at all times; ensure that his dog is not tied up on the common elements; and, clean up all pet waste each time it is deposited on the property and dispose of it in a sanitary manner;
  - d. Immediately cease parking his vehicle in any spot on the common elements other than the designated parking space for the unit he occupies; and, neither service nor repair any vehicle on the common elements without the express permission of the corporation.
2. Under section 1.44 (1) 3 of the Act: Within 30 days of the date of this decision, Salvatore Sergio shall pay \$734.50 to Ottawa-Carleton Condominium Corporation No. 558 as compensation for damages.



3. Under section 1.44 (1) 4 of the Act: Within 30 days of the date of this decision, Salvatore Sergio shall pay \$3,325 in costs to Ottawa-Carleton Condominium Corporation No. 558.
4. Under section 1.44 (1) 4 of the Act: Within 30 days of the date of this decision, Nathalie El-Hajjar shall pay \$3,325 in costs to Ottawa-Carleton Condominium Corporation No. 558.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: August 17, 2023