

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 26, 2024

**CASE:** 2024-00209N

**Citation:** Middlesex Standard Condominium Corporation No. 643 v. Faqiri, 2024 ONCAT 92

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

**Member:** Ian Darling, Chair

**The Applicant,**

Middlesex Standard Condominium Corporation No. 643

Represented by Denise McAsey, Agent

**The Respondent,**

Mohammad Faqiri

**Submission Dates:** June 6, 2024 to June 13, 2024

### **MOTION ORDER**

- [1] An application was submitted to the Condominium Authority Tribunal (CAT) on April 9, 2024. The CAT has reviewed the application and has raised a potential jurisdictional issue because some parts of the dispute fall outside of the CAT's jurisdiction. This motion order clarifies which aspects of the Application can be heard by the CAT.
- [2] The Application includes a range of issues related to compliance with parking and storage rules. However, the Tribunal has identified a possible jurisdictional issue with the last portion of the Problem Description, where the Applicant mentions an alleged violation of Section 3.1 (a) of its Declaration due to the use of the garage as "unauthorized air conditioning business" by Unit 23.
- [3] Under Rule 19.1 of the CAT's Rules of Practice, the CAT can close a case if the CAT has no legal power to hear or decide upon the dispute. In this case the CAT is limiting aspects of the problem description because the Tribunal has no authority to decide the issue.
- [4] The Tribunal's jurisdiction is established in Ontario Regulation 179/17 ("O. Reg.

179/17"). Section 117 (2) of the *Condominium Act, 1998* (the "Act") and Section 26 of Ontario Regulation 48/01 ("O. Reg. 48/01") identify specific nuisances over which the Tribunal has jurisdiction. These include noise; odour; smoke; vapour; light; vibration. O. Reg. 179/17 also gives the Tribunal jurisdiction to deal with other nuisances under certain circumstances.

- [5] The Application falls under different aspects of the CAT's jurisdiction. Concerns related to Parking and Storage of garbage appear to fall under Section 1 (1) (d) (iii) of O. Reg. 179/17 relating to:

Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.

- [6] Aspects of the Application relating to the alleged use of the garage would fall under Section 1 (1) (d) (iii.2) of O. Reg 179/17 – which relates to "Provisions (of the declaration, by-laws or rules) that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation."
- [7] This means that the corporation must have provisions in their governing documents that specifically restrict an activity that causes a nuisance, annoyance or disruption. The Applicant identified provisions of the governing documents that restrict use of the units to a "private single-family residence", but none of the identified provisions appear to establish that the air conditioning business is creating a nuisance, annoyance or disruption. Further, the Applicant has not identified provisions that restrict, prohibit or otherwise govern nuisances, annoyances or disruptions caused by the business.
- [8] The CAT identified these jurisdictional concerns to the parties, and requested submissions on how the CAT should treat these issues. The parties did not respond to the submissions.
- [9] The CAT will allow the Application to proceed because most of it falls clearly under the Tribunal's jurisdiction. I will exercise the Authority under the Tribunal rules to limit the application to issues that the CAT has the authority to decide. Therefore, the components of the problem description that relate to the operation of the Air Conditioning business are excluded from the application.
- [10] If the case proceeds to Mediation or Adjudication, the CAT Members assigned to the case may make additional orders to ensure the case remains within the Tribunal's jurisdiction.

**ORDER**

[11] The Tribunal dismisses aspects of the problem description that relate to operation of a business in the parking garage.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: June 26, 2024