

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 13, 2024

CASE: 2023-00690N

Citation: Benoit v. Peel Condominium Corporation No. 129, 2024 ONCAT 124

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

Member: Mary Ann Spencer, Member

The Applicant,
Sharon Benoit
Self-Represented

The Respondent,
Peel Condominium Corporation No. 129
Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – April 23, 2024, to July 31, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Sharon Benoit (the “Applicant”) is an owner of a unit of the Respondent, Peel Condominium Corporation No. 129 (“PCC 129” or “the corporation”). Ms. Benoit alleges that, without proper authority, PCC 129 implemented parking policies and procedures which resulted in owners paying unauthorized rental fees to the corporation and receiving parking tickets issued by the municipality. She requests the Tribunal order the corporation to reimburse owners for these fees and tickets. She also requests that the Tribunal order PCC 129 to conduct a review of its governance practices and order the members of its board of directors to take further training. Finally, she requests \$2,500 as compensation for the time she has spent on this matter.
- [2] PCC 129 requests that the Tribunal dismiss this application. It acknowledges that there were process irregularities but submits that the parking control measures were put in place in good faith. It has now ceased collecting rental fees and enforcing the parking pass policy that resulted in parking tickets. It requests no costs in this matter.
- [3] For the reasons set out below, I find that the corporation did not have the authority

to neither charge rental fees for the reserved use of its non-exclusive use residents' parking spaces, or to have residents ticketed for failure to display a parking pass in their vehicles. While the corporation has discontinued both practices, for certainty, I am ordering it to cease both practices until such time that its governing documents permit them. I am also ordering the corporation to reimburse Ms. Benoit the parking rental fees she paid for the period December 1, 2023 to June 30, 2024. Finally, I am ordering the corporation to pay Ms. Benoit \$200 in respect of the Tribunal fees she paid.

B. BACKGROUND

- [4] PCC 129 is a 125-townhouse community. There are 200 outdoor parking spaces situated in six areas. Access to the parking areas is not restricted.
- [5] Section 1 (iii) of PCC 129's Declaration provides each of the corporation's 125 units with the exclusive use of one common element parking space. The corporation parking rules, dated February 2020, state that an additional 48 of the 200 spaces are designated for resident use. The rules prohibit these spaces from being used by a resident for more than 72 hours. The rules also state that 20 spaces are designated for visitor parking. Owners are prohibited from parking in visitor spaces.
- [6] In June 2020, a notice to residents from Victoria Kaye, then the president of PCC 129's board of directors, advised that effective July 4, 2020, it would begin to enforce its visitor parking rules. The notice advised that visitor parking was for visitor use only and that unregistered visitors and/or residents parking in the visitor spots would be subject to ticketing.
- [7] On July 4, 2020, Ms. Kaye sent a further notice to residents which explained that after consultation with the municipality with respect to visitor parking requirements, PCC 129 had divided its parking into three areas: 125 exclusive-use parking spaces, 53 non-exclusive use spaces for resident use, and 22 visitors' spaces. The notice explained that the system had been designed to address long-standing parking issues which included the use of the parking spaces – including those designated for owners' exclusive use – by non-residents and/or visitors and the extended use of some non-exclusive use spaces by residents. The notice stated that residents must register their vehicles and that those who registered a second vehicle could use the 53 non-exclusive use spaces on a 'first come, first serve' basis, although it also noted that the corporation was considering charging for these spaces. The notice also included the warning that an unregistered vehicle could be ticketed even in the case of an owner parking in their exclusive-use spot. At this time, parking enforcement was contracted by the corporation with Park

N'Go. The notice states "Your Board was very fair when creating these new Parking Rules & Regulations"; however, there is no evidence that the corporation amended its rules in accordance with the requirements set out in s. 58 (6) of the *Condominium Act, 1998* (the "Act").

- [8] In March 2021, in a notice entitled "Budget Notes", to explain a new income budget line item, PCC 129's board of directors advised that parking violations by residents were continuing and that it would now be renting out the non-exclusive use parking spaces designated for residents. It stated that "second vehicle parking fees, parking rules and regulations, as well as parking policies will be introduced late March/early April 2021."
- [9] In August 2021, PCC 129 sent a notice to owners advising that effective October 1, 2021, the non-exclusive use resident parking spaces would be rented to residents on a 'first come, first served' basis for the monthly fee of \$50. Reminder e-mails were sent to residents on September 29, 2021 and October 18, 2021 by condominium manager Jennifer Noel. The October 18th reminder advised that unregistered vehicles using the non-exclusive use spaces would be ticketed. On October 25, 2021, Ms. Noel sent a further reminder that visitors may not use the reserved spots and would be ticketed. Ms. Noel testified that all of the spots were quickly rented and the corporation had a waiting list.
- [10] Effective May 1, 2023, PCC 129 retained parking enforcement services by TSD, a company authorized to issue municipal parking tickets. Before enforcement began, PCC 129 conducted an audit, asking all residents to verify their vehicle and parking space information. On September 20, 2023, Ms. Noel notified residents that with the audit complete, parking enforcement would now be patrolling the parking areas and ticketing vehicles found to be parked in spots for which they were not registered.
- [11] On October 25, 2023, PCC 129 introduced a parking pass system; residents were issued tags with their parking space number on them and instructed to hang them on their vehicle's rear view mirror. They were advised that vehicles would be ticketed if the space they were parked in did not match the space number on the tag. Ms. Noel testified that this system was put in place with the intent to ease enforcement. Parking issues included units with multiple cars trading spots, residents trading spaces among themselves and residents allowing visitors to park in their exclusive use space.
- [12] On November 9 and 10, 2023, the Applicant received municipal tickets for illegally parking on private property. However, the Applicant's registered vehicle was

parked in her exclusive-use space. She disputed the tickets with the municipality. She also organized other residents who had received similar tickets. Fifteen tickets, including the Applicant's, were cancelled.

[13] On November 15, 2023, PCC 129 advised residents again through a posting on BuildingLink, the resident's portal, that failure to display a parking pass would result in ticketing.

[14] Ms. Benoit filed her application with the Tribunal on December 8, 2023.

[15] PCC 129 ceased collecting rent for reserved non-exclusive use spots effective July 1, 2024 and has also ceased using the parking pass system.

C. ISSUES & ANALYSIS

[16] The issues to be decided in this matter are:

1. Has the Respondent Corporation failed to uphold its obligations under s. 119 (1) of the Act by enforcing new parking rules, including collecting new fees from owners without passing any bylaws?
2. If so, what remedies should the Tribunal order?
3. Should the Tribunal award costs?

[17] Four witnesses testified on behalf of the Applicant and six witnesses testified on behalf of PCC 129. However, with the exception of the Applicant, Ms. Noel and Genevieve Van Klink, a member of the corporation's board of directors, the witnesses' testimony generally related to whether they support the programs introduced by the corporation and/or their personal experience vis à vis those programs and not to the issues to be decided in this matter.

Issue 1: Has the Respondent Corporation failed to uphold its obligations under s. 119 (1) of the Act by enforcing new parking rules, including collecting new fees from owners without passing any by-laws?

[18] Section 119 (1) of the Act states:

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.

[19] The Applicant alleges that the corporation failed to comply with s. 119 (1) of the Act because it has no by-law in place permitting it to lease residents' non-exclusive use spaces and no rule requiring residents to display a parking tag in their vehicles.

Leasing Residents' Non-Exclusive Use Spaces

[20] Article IV 2 (b) of PCC 129's By-Law No. 6 sets out the powers of the corporation. These include:

To lease, or to grant or transfer an easement or license through any part or parts of the common elements by way of a special by-law, except those parts of the common elements over which any owner has exclusive use.

The undisputed evidence is that on October 1, 2021, PCC 129 began to lease its common element parking spaces designated for the non-exclusive use of residents on a reserved basis for a monthly fee of \$50 and that it did not enact the special by-law required to permit this leasing. Therefore, I find that PCC 129 failed to comply with the requirements set out in its By-Law No. 6, in violation of s. 119 (1) of the Act.

[21] Furthermore, there is no evidence before me to indicate that PCC 129 made any amendments to its February 2020 parking rules to reflect the leasing program. Rule 6.II (a) states that residents may park in the non-exclusive use resident spaces on a 'first-come, first-serve' basis. Rule 6.II (c) states that residents may not use the spaces for more than 72 hours. Section 58 (6) of the Act sets out the process corporations must follow to make, amend or repeal a rule. In summary, this includes providing notice to owners of a proposed rule change along with a copy of the proposed rule and its proposed effective date. Owners then have 30 days within which to requisition a meeting. If no meeting is requisitioned, the rule becomes effective. The evidence is that PCC 129's board of directors simply announced the leasing program in August 2021 with an effective date of October 1, 2021.

Parking Enforcement

[22] The requirement for residents to display a parking tag in their vehicles is not the primary issue in this matter; rather, the issue is that failure to display the tag resulted in municipal tickets being issued to residents for illegal parking on private property. Both Ms. Benoit and another witness testified that they received tickets for parking their registered vehicles in their exclusive-use spots when they neglected to display the tag.

[23] The right of the corporation to enforce compliance with its governing documents is set out in s. 119 (3) of the Act:

A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require that a person who is required to comply with this Act, the declaration, the by-laws and the rules shall do so.

And, s. 17 (3) of the Act states:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

PCC 129 announced the requirement that residents display a parking tag in their vehicles in October 2023 and began to enforce it in November 2023. However, as noted above in paragraph 19, there is no evidence that any amendments to its February 2020 rules have been made in accordance with the requirements of s. 58 of the Act. As the Tribunal noted in its decision in *Boodram v. Peel Standard Condominium Corporation No. 843*, 2021 ONCAT 31 (CanLII), a case which addressed an issue related to visitor parking, s. 119 (3) and 17 (3) of the Act only provide a corporation the authority to enforce compliance with the declaration, by-laws and rules. The requirement to display a parking tag was not enacted as a rule. Therefore, I find that PCC 129 did not have the authority to enforce it.

Issue 2: What remedies should the Tribunal order?

[24] PCC 129 does not dispute that it does not have authority to lease its non-exclusive use common element parking spaces. It has taken steps to address the situation: on April 22, 2024 it sent owners a notice of special meeting to be held on May 30, 2024, the purpose of which was to pass four by-laws, including one that would permit the leasing. However, the by-law was not passed. It will be presented to owners again at the corporation's Annual General Meeting. In the interim, the corporation ceased collecting rental fees effective July 1, 2024. While I have no reason to believe that the corporation will recommence the leasing program before there is a by-law in place to permit it, for certainty, I will order that it cease renting the common element non-exclusive use parking spaces until such time that its governing documents permit it to do so.

[25] The corporation has also ceased enforcement of its parking tag system. In her testimony dated May 29, 2024, Ms. Noel indicated that enforcement had stopped at that time. The Applicant indicated it did not stop until July 1, 2024. Regardless of

the date, until the corporation amends its rules to include the requirement for residents to display parking tags in their vehicles, it has no authority to enforce it. Again, for certainty, I will order the corporation to cease enforcing compliance until such time that its governing documents permit it to do so.

- [26] The Applicant requests that the Tribunal order the corporation to: (i) reimburse residents the fees they paid to rent a non-exclusive use common element parking space and the amounts they paid in tickets issued by the municipality and associated fees; (ii) conduct a review of its governance practices; and (iii) order members of the board of directors to take the Condominium Authority of Ontario's director training.
- [27] Counsel for the Respondent submits that the corporation should incur no "penalty", arguing that it introduced the rental space program and the parking tag system in good faith to attempt to resolve long-standing parking issues. Counsel also argues that the Tribunal has no authority to order the corporation to pay compensation to anyone other than the Applicant in this matter.
- [28] I agree with Counsel for the Respondent's submission that the Tribunal does not have jurisdiction to order the corporation to pay compensation to non-parties to this proceeding. Section 1.44 (1) 3 of the Act states that the Tribunal may order compensation for damages arising from an act of non-compliance to a party to the proceeding. Counsel submits that while s. 1.44 (1) 2 and 7 of the Act respectively state that the Tribunal may order a party to "take a particular action" and order whatever other relief it "considers fair in the circumstances", the fact that costs and compensation for damages are specifically addressed in other sections indicates these sections should not be interpreted to include payments. In this regard, he cites *Roumy v. York Condominium Corporation No. 50*, 2022 ONCAT 109 (CanLII), a case in which the Tribunal found that a penalty could not be awarded under s. 1.44 (1) 7 because 'penalty', like 'compensation for damages' and costs, are specifically addressed elsewhere in the Act. Therefore, I am only considering the compensation the Applicant requested on her own behalf.
- [29] Counsel for the Respondent submitted that reimbursement of the rental fees Ms. Benoit paid would not be fair to the residents who did not make payment and therefore did not receive the benefit of a reserved space on the corporation's property. Ms. Noel testified that the corporation maintained a waitlist for the reserved spots. Owners had previously been able to park at a church across the street, but the church had disallowed it because the demand for on-site parking exceeded the available supply. While I have found that PCC 129 did not have the authority to collect rental fees, Ms. Benoit did receive the benefit of a reserved spot

in exchange for the fees she paid. She did not contest those fees until more than two years after they were introduced. She explained that she only discovered that a by-law was required and raised this with the corporation when she began to conduct research after receiving tickets in November 2023. She filed her application with the Tribunal on December 8, 2023. In these circumstances, I find that reimbursement of the payments she made for the period December 1, 2023 until the corporation ended the program effective July 1, 2024 to be reasonable. It is unclear whether Ms. Benoit continued to pay the fees during this period, therefore I am ordering PCC 129 to review its records and to reimburse her the amount of rental fees she paid for the period December 1, 2023, to June 30, 2024.

- [30] With respect to parking tickets, it does appear that the corporation's initial roll-out of the parking tag system was somewhat imperfect. The Applicant noted that the notices did not advise residents that vehicle registration was no longer sufficient, and she received parking tickets on November 9 and 10, 2023 for parking in her exclusive-use spot when she did not display a parking pass, even though the vehicles had been registered with the corporation. She testified that she was informed by the municipality that the corporation could cancel the ticket within five days of its issuance but that PCC 129's board refused to intervene. She also expressed concern that when she first raised this with Ms. Noel, she did not receive an empathetic response. However, she also testified that she successfully disputed a total of 15 tickets, including her own, with the municipality, and the tickets were cancelled. The Applicant was not required to pay the tickets she received and therefore there is nothing to be reimbursed.
- [31] I am also not ordering that the corporation undertake a governance review or that its directors retake director training and/or be instructed in "transparency and conduct" as Ms. Benoit requested. I agree with her observation that the corporation's actions in introducing the parking space rental program without first passing the required by-law and introducing the parking tag system without amending its rules demonstrate that its board of directors lacked understanding of both the corporation's governing documents and their responsibilities under the Act. Ms. Van Klink offered some explanation for the failure to pass a by-law, testifying that the corporation was without the benefit of the advice/assistance of a condominium manager for some months during the Covid pandemic at the time the rental system was introduced. This does not, however, explain the introduction of the parking tag system without amendment of the rules which Ms. Noel testified the board had been reviewing for some time.
- [32] However, PCC 129's directors have had the benefit of consultation with the corporation's counsel as a result of this case. The corporation has also retained a

new condominium management firm effective July 1, 2024. The fact that the corporation has ceased both the rental program and enforcement of the parking tag system and has attempted to have a leasing by-law passed indicates that it now understands its responsibilities. Ms. Benoit went as far as suggesting that the directors' actions in implementing the two programs at issue in this case constituted a form of fraud. I find this characterization to be overdrawn; while mistakes were clearly made, I accept that the board's actions were made in good faith to benefit its residents, a number of whom testified on the corporation's behalf about their support for the programs.

Issue 3: Should the Tribunal award costs?

[33] Ms. Benoit is requesting costs of \$2,700, comprised of \$200 in Tribunal fees and \$2,500 as compensation for her time. The corporation requested no costs.

[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.

49.1. The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

[35] Ms. Benoit was successful in this matter. While PCC 129 has ceased both leasing its non-exclusive use parking spots and enforcing its parking pass system and the orders I am issuing are for clarity and certainty only, it did not cease the leasing program until July 1, 2024, some two months after this Stage 3 – Tribunal Decision proceeding began. Similarly, while it is somewhat unclear when the corporation discontinued enforcing the parking pass requirement, there is no evidence to indicate this occurred before the Stage 3 proceeding began. Therefore, I am ordering PCC 129 to pay Ms. Benoit \$200 representing her Tribunal fees.

[36] The award of costs is discretionary. In considering Ms. Benoit's request for compensation for her time, 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.

[37] I find no reason to order compensation for the time Ms. Benoit may have spent on this matter. The hearing, while lengthy due to vacation absences, was straightforward and there were no issues with the conduct of the parties. The fact that Ms. Benoit was required to spend time related to this proceeding is to be expected.

D. ORDER

[38] The Tribunal Orders that:

1. PCC 129 shall immediately cease leasing its non-exclusive use common element parking spaces to residents until such time that its governing documents permit this program.
2. PCC 129 shall immediately cease enforcement of the requirement that residents display a parking pass in their vehicles until such time that a rule(s) respecting this requirement is enacted.
3. Within 30 days of the date of this decision, PCC 129 shall pay Sharon Benoit \$200 in respect of the Tribunal fees she paid.
4. Within 30 days of the date of this decision, PCC 129 shall reimburse Sharon Benoit the parking rental fees she paid for the period December 1, 2023, to June 30, 2024.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: August 13, 2024