CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 19, 2025
CASE: 2023-00510N
Citation: Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel, 2025 ONCAT 26

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

Member: Ian Darling, Chair.

The Applicant,
Metropolitan Toronto Condominium Corporation No. 1031
Represented by Jessica Hoffman, Counsel

The Respondent,
Evelyn Lengyel
Self-Represented

The Intervenors,
Metropolitan Toronto Condominium Corporation No. 1056
Represented by Rabab Meen, Counsel

Metropolitan Toronto Condominium Corporation No. 965
Represented by Ava Naraghi, Counsel

Hearing: Written Online Hearing – October 11, 2024 to January 20, 2025

REASONS FOR DECISION

A. INTRODUCTION & BACKGROUND

[1] This dispute has been going on for a long time. The Applicant, Metropolitan Toronto Condominium Corporation No. 1031 ("MTCC 1031"), seeks compliance with its parking rules. This decision explains why Evelyn Lengyel, the Respondent, must follow the parking rules.

[2] MTCC 1031 shares a parking garage with two other corporations, Metropolitan Toronto Condominium Corporation No. 965 ("MTCC 965") and Metropolitan Toronto Condominium Corporation No. 1056 ("MTCC 1056"). MTCC 965 and MTCC 1056 are intervenors in the case because they share the parking garage.

They were represented by counsel from the same firm as the Applicant; the Intervenors were aware of the case, and collaborated with the Applicant, but did not make individual submissions in the case.

[3] Each corporation owns specific parking spots within the shared garage. The parking spaces are exclusive-use common elements that each corporation assigns to owners. There are a number of visitor parking spaces and accessible spaces – a portion owned by each corporation.

[4] The Respondent owns a unit in MTCC 1031 and has been assigned a parking spot ("P2-87"). The Respondent owns two cars. The first car was described as "inoperable" by the Applicant and has been located in the assigned parking spot for several years. The second car is used on a regular basis by the Respondent and has been parked in a visitor parking space owned by MTCC 965.

[5] The Respondent has claimed that she requires the accessible spot as an accommodation for a disability.

[6] The Applicant is requesting the CAT issue an order requiring the Respondent to remove the first vehicle, and to stop parking in the accessible parking space.

B. PRELIMINARY ISSUES

Hearing format

[7] The application was filed in October 2023. Between October 2023 and August 2024, the CAT received and decided several motions to adjourn proceedings[1]. The hearing commenced on October 11, 2024, when the CAT sent instructions for the written hearing process.

[8] During the hearing I made decisions consistent with CAT Practice Direction on Active Adjudication. This included adapting the hearing format and identifying questions for each party. I will not restate the decisions here, but the intention was to ensure that all parties could fully and fairly participate in the hearing.

[9] The Respondent asserted that she had several disabilities that affect her ability to

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[1] *Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel*, 2024 ONCAT 10 (January 12, 2024);
Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel, 2024 ONCAT 44 (March 3, 2024);
Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel, 2024 ONCAT 47 (March 25, 2024);
Metropolitan Toronto Condominium Corporation No. 1031 v. Lengyel, 2024 ONCAT 145 (September, 20, 2024).

participate in an oral hearing. The CAT accepts that the documentation she has provided substantiates the disability. The Respondent requested several times that the hearing be adjourned indefinitely or dismissed on the basis of a disability-related accommodation. I did not allow an indefinite adjournment because the existence of a disability does not remove her legal responsibilities, nor does it exempt her from responding to a Tribunal case.

[10] The Respondent did not respond to the notices of case, and did not join the case on the CAT-ODR platform. The case proceeded directly to adjudication as a default proceeding without the Negotiation or Mediation stages.

[11] The Respondent provided several doctor's notes stating that she was unable to attend a tribunal or court proceeding. These notes were provided throughout each stage of the process. They were general in nature, and described how the Respondent could not attend an in-person process. These accommodation requests may have applied to other more traditional tribunal hearing formats (or were provided in support of a different tribunal or court case). I did not place much weight on these notes because the CAT adjudication does not require the parties to attend in-person. The Tribunal's Rules of Practice establish that the process generally occurs in a written format (similar to exchanging messages via email). Ms. Lengyel demonstrated through the many email messages sent to the CAT, that she is capable of responding to written messages.

[12] Rather than delaying the hearing or proceed as a default proceeding on the CAT-ODR platform, the CAT altered the hearing process to accommodate Ms. Lengyel so she could participate in a meaningful way. The process was changed to a written hearing with submissions via email. Both parties provided long and detailed submissions to the Tribunal. I am satisfied that the parties had a fair opportunity to fully participate in the hearing process.

Respondent's objections to the process.

[13] Throughout the pre-hearing motions, and in the hearing, the Respondent made it clear that she objected to the process. She stated that she did not consent to being a party or responding to the Application. She requested that the CAT dismiss the case as a result.

[14] The Tribunal accepts that she did not consent to be a party, but consent is not required when a party is named in a legal dispute. The Tribunal has authority under the *Condominium Act, 1998* (the "Act") and regulations to deal with specific disputes. Ontario Regulation 179/17 sets out the CAT's jurisdiction to deal with disputes related to parking, vehicles and storage. The issues in this dispute clearly

fall within the Tribunal's jurisdiction as the Applicant has alleged that the Respondent is not complying with the parking and storage rules.

[15] The Tribunal accepts, and empathizes with the Respondent, that the process has been stressful, and that the Respondent has experienced negative health consequences during the process. At the same time, the Tribunal has an obligation under s. 1.39(1) of the Act to use an efficient and fair process to decide the dispute, while giving the parties the opportunity to participate.

[16] Further, the Act establishes requirements for parties to follow the Act, its regulations and the condominium's governing documents. This case is a consequence of the Applicant seeking compliance with the rules. Dismissing the case without a hearing would create a situation where the Respondent is not required to comply with the requirements of ownership in a condominium.

[17] Finally, I decided to proceed with the case because the evidence demonstrated that the Respondent had filed cases before courts and other tribunals. I am satisfied that since she was able to commence and maintain several cases when she is an Applicant, she could participate as a Respondent.

[18] Even though the Respondent objected to the case and this process, she provided lengthy submissions. I am satisfied that she was aware of the issues to be decided, and was given an adequate opportunity to make submissions, and bring evidence relevant to those issues. She was also able to respond to the submissions and evidence of the Applicant.

Motion for oral cross-examination of witnesses

[19] The parties' written submissions included evidence in the form of witness statements. The witness statements were intended to establish facts to support the submissions of each party. After reading the Respondent's submissions, the Applicant requested oral cross-examination of the Respondent's witnesses.

[20] I denied the request for the following reasons. As part of her evidence to support a disability, the Respondent provided a report from a registered speech language pathologist. The report establishes that the Respondent has a disability that affects oral comprehension. Since the CAT altered the hearing format to an entirely online process, oral cross-examination would not allow the Respondent to meaningfully participate in the process.

[21] Further, I declined to allow written cross-examination because it would add complexity and further delay the hearing. After reading the statements, I was

satisfied that the information in the witness statements did not help establish facts related to the core of the dispute in this case.

[22] I informed the parties that after reviewing the witness testimonies I would decide the relevancy of the information and credibility of the statements in the context of the decision. Witness cross-examination is not necessary or appropriate in this context because the relevance was limited, and allowing it would make the process unnecessarily complex, which is not consistent with the Tribunal's requirement to run an efficient process.

Respondent's motion to dismiss the case

[23] The Respondent requested the case be dismissed because the parties have an active case before the Superior Court of Justice. Rather than delay the hearing to decide the motion, I requested that the parties address this question in their submissions.

[24] After reviewing the submissions, I dismiss the motion because the issues in the case before the Superior Court of Justice are not related to the issues I have to decide. The existence of an unrelated case does not prevent the CAT from dealing with disputes within the Tribunal's jurisdiction. This case is restricted to issues related to whether the Respondent has failed to comply with provisions in the governing documents related to vehicles, parking and storage.

Confidentiality Order

[25] The CAT has already issued confidentiality orders for materials related to the previous motion orders. I must now consider if the order should be extended to the hearing portion of the process, since both the Applicant and Respondent's submissions contain personal and medical information about the Respondent.

[26] In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada established the standard for issuance of confidentiality orders. Even when the parties consent to the order, the Tribunal still needs to consider the requirement to maintain the "open court principle." I have reviewed the material and have determined that the personal and medical information contained in the submissions meets the standard for a confidentiality order.

[27] The sensitive and personal information is throughout the submissions related to prior motions, and in submissions in the hearing stage. The sensitive and personal information cannot be separated from the other submissions, so it is necessary to extend the order to the entire case.

[28] I extend the prior confidentiality orders related to the motion materials to the whole hearing process. The submissions should be treated as strictly confidential and removed from the public record in this matter. All parties in this case, including the Intervenors, must take all reasonable steps to preserve the integrity and purpose of this order.

C. ISSUES & ANALYSIS

Is the Respondent complying with the parking rules?

[29] The Act establishes obligations for both owners and condominium corporations. Section 119 (1) outlines that owners, residents, and the condominium corporation must adhere to the Act and its governing documents. Subsection 17 (3) says that corporations have a "duty to take all reasonable steps to ensure that the owners … comply with (the) Act, the declaration, the by-laws and the rules." In short, owners are expected to follow the rules, and the corporation is to ensure compliance

[30] MTCC 1031's Rule O (3) says:

> No equipment or machinery, other than motor vehicles, shall be parked or left on any part of the common elements or in any parking unit. No parking areas or parking units shall be used for storage purposes …

[31] Rule O (14) states:

> No owner or occupant shall place, leave, park or permit to be placed, left or parked in or upon the common elements or a parking unit any private passenger automobile which, in the opinion of the Board or the Property Manager, may pose a security or safety risk, either caused by its length of unattended stay, its physical condition or its potential to damage the property.

[32] There are two separate, but related vehicle and parking issues in this case. I will deal with each vehicle in order. It should be noted, however, that because one of the Respondent's cars is located in spot P2-87, she then requires a location to park her second car.

Car #1 – Parking Spot P2-87

[33] The Respondent has been assigned parking spot P2-87. Both parties agree that a car, owned by the Respondent, has been left in parking spot P2-87 for several years. The Applicant describes it as inoperable. The Applicant did not provide any evidence to support this assertion. The Respondent disputes that it is inoperable. The Respondent described it as similar to a classic car – in that it is over 20 years old and has strong sentimental value.

[34] The Respondent stated that the vehicle is regularly maintained and is in working condition. The Tribunal asked for evidence to support this assertion. The Respondent provided a photograph of the front passenger seat covered with a pile of service invoices. The photo was embedded in a word document, and did not provide enough detail to see the dates, or scope of work. The evidence is therefore inconclusive as to whether the car is currently operable or not.

[35] The Applicant asserted that having the car in a parking spot for an extended time creates a safety risk because they cannot clean the parking spot, but did not provide any evidence to support this assertion. I am not satisfied that the corporation has demonstrated that this is a risk.

[36] I can decide if the Respondent is complying with the rules without needing to determine if the car is in working condition or if it is a safety risk.

[37] The question is if the Respondent is complying with the parking rules. I find the most relevant provisions are in Rule O (3), which states: “no parking areas or parking units shall be used for storage purposes.”

[38] The evidence before me establishes that the Respondent does not drive the car on a regular basis. The evidence confirms that the car has been in the parking spot for over six years and has not been driven in that time. Is the car being parked, or stored? The generally accepted definition of “parking” is a car that is left in a designated spot for a short period between uses. By contrast, “storing” a car involves keeping it safe, in a controlled environment for an extended period. Based on the established facts related to how long the car has been in the same place, and the undisputed facts that the car is not regularly driven, I find that the Respondent is storing the car.

[39] The Respondent provided a written statement from a neighbour. The witness described assisting the Respondent in placing a tarp over the car and stated that other cars were covered in tarps in the garage. The apparent intent of the statement was to support the assertion that the vehicle was not derelict, that the Respondent kept it in working condition, and that other vehicles were in similar condition. I accept this testimony as true; however, it is of limited value. It provides a snapshot of the condition of the car on one day in 2024. It does not, however, change my conclusion, based on the totality of the evidence, that the Respondent is storing the car in contravention of the rule. In fact, it supports the conclusion that the tarp was used to protect the car while it was stored.

[40] I also note that the Respondent raised questions about whether the Applicant was applying its rules consistently – since other cars in the garage are covered in tarps and may be being stored. In considering this argument, I note the CAT's decision in *Carleton Condominium Corporation No. 95 v. Frederick*, 2023 ONCAT 74, where an owner alleged that the corporation was unfairly targeting them when enforcing the rules. Similar to that case, whether MTCC 1031 is appropriately enforcing parking rules in relation to other owners is not an issue before me. There is no evidence before me that the enforcement action taken by the board in relation to the Respondent has been targeted or capricious. In this instance, I find that it is appropriate that deference be given to the board's exercise of its enforcement efforts.

[41] I find that the Respondent is storing a car in parking spot P2-87 contrary to the corporation's rules, and order the Respondent to comply with the rules.

Car #2 – Visitor Parking Spot

[42] The Applicant seeks an order with respect to car #2 because it is being parked in a visitor's spot in contravention of the rules. There is no dispute that the Respondent is parking in the visitor's parking spot. The Respondent has claimed that she requires the spot as an accommodation for a disability.

[43] Article III (6) of MTCC 1031's declaration states that:

> Each space in the common elements shown on the description as visitors' parking shall be used only by visitors and guests of the unit owners …, and such spaces shall not be assigned, leased or sold to any unit owner or otherwise.

[44] Rule P (1) states:

> Each owner, resident, or occupant shall park their vehicle(s) in their exclusive use parking unit and/or leased or rented unit(s) and are prohibited from using Visitor Parking spaces at any time, unless a special visitor parking permit has been obtained from the Management Office, or other owner's exclusive use parking unit(s) without their express permission. In default, improperly parked vehicles may be ticketed and/or removed at the owner's expense, with no liability to the Corporation.

[45] The Respondent is seeking to use a visitor parking space as a disability-related accommodation. The Applicant stated that the accessible spots have already been designated for other owners, so if the Respondent's request is to be accommodated, it will require using a visitor parking spot.

[46] The evidence shows that the dispute regarding access to an accessible parking space has been ongoing for several years. The evidence shows that the Applicant has at times complied with the rules. The history establishes that the requests for disability-related accommodations for the second car have remained unresolved throughout the dispute.

[47] Evidence and submissions show that the issue started in 2016 when the Respondent first provided a doctor's note to MTCC 1031 that identified a mobility-related disability. The Applicant did not consider it a valid request because the Respondent "did not formally request an accommodation." The Respondent also requested to use a visitor parking space in January 2017 but was denied. The Respondent used a visitor parking space from the initial request in 2016 until May 2017. The Applicant asked for more information to justify the accommodation request in July 2017 (even though the Respondent was in compliance with the rules at the time).

[48] Between May 2017 and January 2019, the Respondent parked in a different assigned parking spot, with permission from another owner. In January 2019, the Respondent started using the visitor parking spot again.

[49] This time, when, the Applicant tried to get the Respondent to comply with the visitor parking rule, she produced an accessible parking permit. MTCC 1031 responded again to request a medical letter from the Respondent's physician confirming that the Respondent had "a recognized disability requiring the use of the visitor's parking space."

[50] Between January 2019 and February 2023, the Respondent parked in various vacant parking spots on level P3 (in contravention to the rules). The parties also exchanged further correspondence about the request for medical documentation.

[51] The Respondent provided a medical note dated April 23, 2023. The note said that the Respondent had a medical condition which affects her mobility and that she required the use of an accessible parking space. The Applicant found this was not sufficient because it "did not establish a nexus between any disability and the need for an accessible parking space, especially considering that the Respondent's assigned space is closer to the elevators" than the visitor's spot where she was parking.

[52] This application was filed in the fall of 2023.

[53] It is clear, from reading the evidence and submissions, that the Respondent thought she had provided enough information in the form of several doctors' notes that clearly stated that she had a disability. It is also clear that the Applicant sought proof that the Respondent required that specific parking spot as an accommodation. The Applicant's use of "nexus" between the disability and the specific space was an attempt to get information on why the Respondent needed that specific parking spot. The effect of this request made it appear that the Respondent needed to provide proof that she had a disability – however, the intent was to understand how using the specific spot requested would accommodate the disability.

[54] The Respondent's medical documentation established that she has mobility-related disability. It does not however say why the Respondent requires an accommodation to be allowed to park in the specific visitor's spot.

[55] Having reviewed the correspondence from the corporation, I conclude that they could have been clearer about what information they needed. The Applicant's request for additional information was presented in a letter from counsel and appeared to be asking for the same information that had already been provided. It also used complex language and was seeking further proof of the disability, rather than inquiring into how the requested accommodation – use of the visitor parking space – would address the disability-related need. I find that the Applicant is partially responsible for creating this situation. The letters are complex in their wording, repeat the same language from prior letters, and do not clearly explain why they found the multiple doctors notes insufficient.

[56] The Applicant wanted to know why the Respondent could not park her car in spot P2-87. It wanted to know why the Respondent needed the specific accommodation to park in the visitor's spot, but the legal letters made it unclear what specific information MTCC 1031 needed to make the assessment. The Applicant's inquiries came across as doubting that the Respondent had a disability. It is not inappropriate that MTCC 1031 asked for more information – however, if they had been clearer about what was needed, it might have brought this to a faster resolution.

[57] The Applicant has asserted that the Respondent is parking in a spot that is further away from the entrance than the spot she was assigned by the corporation (P2-87). The Respondent has not provided any information to refute this, so I accept it as fact. It was reasonable to ask why the Respondent cannot use the spot assigned to her unit.

[58] Having reviewed all the evidence, I conclude that the Respondent has not provided enough information to establish that she needs a disability-related accommodation for use of the visitor parking spot. The Respondent has not provided information to establish that her own parking spot is insufficient for her disability-related needs. It appears that the Respondent is requesting accommodation to allow her to park the second car in the visitor's spot – rather than a disability-related accommodation to allow her to fully access a parking spot.

[59] The *Ontario Human Rights Code* establishes that people are entitled to request accommodations to allow them to participate in society with dignity. The evidence show that the Respondent has a disability, and there is a mobility component, which may entitle her to an accommodation. The Respondent has not established that she has a disability-related need for the specific visitor parking spot. The question of why the Respondent requires an accommodation to park in a spot that is further away than her assigned parking spot has not been answered.

[60] I accept the Applicant's framing of the issue – that the Respondent is seeking an accommodation for the purposes of securing a second parking spot through a request for a disability-related accommodation. I will order the Respondent to comply with the Visitor Parking rules.

Should the Tribunal award any costs?

[61] The Applicant requested costs associated with this application. The determination of costs is discretionary, and is informed by the CAT Rules of Practice, and the "Approach to Ordering Costs" Practice Direction.

[62] The Applicant was successful, so I order the Respondent to pay $150 to reimburse the Tribunal fees. The fee incorporates $25 to file the application, and $125 to move the case to Stage 3 – Tribunal Decision.

[63] The Applicant also requested costs related to legal fees associated with participating in the Tribunal process. The CAT Rules of Practice set out the CAT's ability to order one party to reimburse another party for costs that are the result of "behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense."

[64] The Applicant provided a bill of costs for legal fees in the amount of $19,738.85. This represents the legal fees for the Applicant and the Intervenors in the case. The bill of costs demonstrates that the Applicant and Intervenors reduced legal fees by collaborating on submissions and having the bulk of the work completed by a lawyer with a more recent call to the bar, and consequently lower fees. The Applicant did not request that costs be reimbursed on a full indemnity basis, they provided a breakdown of substantial (90%) and partial (60%) indemnity.

[65] The Applicant did not claim costs related to their efforts to enforce compliance with the rules prior to the commencement of the CAT application.

[66] The bill of costs breaks down the activities by stage in the CAT process (application, pre-hearing motions, and adjudication).

[67] I am prepared to award $1,286 on a substantial indemnity basis for costs related to reviewing, considering and responding to the requests for indefinite adjournments. These requests delayed the hearing and caused additional costs to the Applicant.

[68] I note that the Applicant incurred approximately $10,000 in costs related to participation in the hearing. The Stage 3 hearing consisted of a 15-page opening submission, a response to member questions, and a five-page conclusion. The Applicant also provided close to 150 pages of additional evidence – much of which had already been provided as part of the responses to pre-hearing motions. I do not find the costs claimed proportionate to the complexity of the hearing.

[69] The Practice Direction on costs allows the tribunal to consider "how the parties attempted to resolve the issues in dispute before the case was filed and before costs were incurred." I hold the Applicant partially responsible for the issue of the request for an accommodation to park in the visitor parking space coming to the CAT. I have already noted my observations about the lack of clarity on their requests for information. The lack of clarity in these responses was a factor in this case coming to the CAT, and in the Applicant incurring costs.

[70] Following all of these considerations, I award $2,000 in costs related to participating in the hearing.

D. ORDER

[71] The Tribunal Orders that:

1. The Respondent must comply with the parking rules and shall stop storing her vehicle in her parking spot.

2. The Respondent must comply with the visitor parking rules and must not park in the visitor parking spot without permission of the Applicant, or Intervenors.

3. Within 90 days of the date of this decision, the Respondent must pay $3,436 to the Applicant to reimburse Tribunal fees, and legal expenses associated with this case.

4. Case submissions and documents are strictly confidential and are subject to this order restricting their release. All parties in this case, including the Intervenors, must take all reasonable steps to preserve the integrity and purpose of this order.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: February 19, 2025