CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 6, 2025
CASE: 2025-00089N
Citation: Li v. Toronto Standard Condominium Corporation No. 2205, 2025 ONCAT 128

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

Member: Nicole Aylwin, Vice-Chair

The Applicant,
Ni Li
Represented by Merve Ozdemir, Paralegal

The Respondent,
Toronto Standard Condominium Corporation No. 2205
Represented by Michael Daniel Pascu, Counsel

Hearing: Written Online Hearing – April 1, 2025 to July 7, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ni Li, is the owner of a unit of the Respondent, Toronto Standard Condominium Corporation No. 2205, which is a residential and commercial condominium corporation. The Applicant is the owner of a commercial condominium unit located on the ground floor of the condominium Respondent.

[2] The Applicant alleges that the Respondent has improperly accused her of creating or allowing the creation of odour nuisances contrary to s. 117 (2) (b) of the *Condominium Act, 1998* (the "Act") and the governing documents of the Respondent. She further submits it has improperly charged back legal fees related to enforcing these provisions. She has asked that the Tribunal order these fees to be refunded to her.

[3] The Respondent takes the position that it acted reasonably to enforce the Act and its governing documents, arguing that it acted on verified complaints of odour nuisance. They maintain that the Applicant did create odour nuisances and in doing so breached the Act and its governing documents. It submits it is entitled under the indemnification provisions in its declaration to charge back the cost of enforcement to the Applicant.

[4] I have reviewed all the evidence and submissions provided to me. I will only refer to those necessary to make my decision. For the reasons set out below, I find that for a period between November 2023 and April 2025, the Applicant was responsible for allowing an activity that created nuisance in the form of odour. However, I find no remedy is necessary as the activity that was causing this nuisance odour has ceased. I further find that the Respondent did not act reasonably in incurring the fees it charged back to the Applicant, and I order those fees refunded to her. I award no costs to either party.

B. BACKGROUND

[5] From February 2012 to November 2022, the Applicant's unit operated as a fast-food restaurant serving pizza and burgers. During this period the parties agree there were no complaints regarding odour. In November 2022, the Applicant leased her unit to a corporation operating a takeout hamburger business, called "Burger Bros". The alleged odour issues began approximately a year later when in October 2023, the Respondent received the first complaint regarding odour. This complaint came from the owner of the adjacent unit, whose unit was operating as a dry cleaner. This unit owner wrote to condominium management once to raise a concern about "some greasy smell [that] comes from the next unit, which is a hamburger shop".

[6] Shortly after this, the adjacent unit was sold to Helen Santos, who had previously been a tenant of a different commercial unit in the building operating a hair salon. After doing some renovations, Ms. Santos began operating her hair salon ("En Vogue"). It is after Ms. Santos took possession of the adjacent unit that the odour complaints began in earnest. Nearly all the odour complaints received by the Respondent are from Ms. Santos.

[7] Between January 20, 2024, and April 7, 2025, 11 incident reports were generated by condominium staff in response to complaints made by Ms. Santos. Each of the incident reports indicate that Ms. Santos called to report what is described consistently in the reports as a "strong oily and greasy smell in her unit" which she always identified as coming from the "Burger Bros unit". At times, the incident reports log other details such as Ms. Santos' belief that the smell was causing

discomfort for both her staff and her clients and was negatively impacting her business.

[8] In most of incident reports, the author of the report (who was a member of staff), indicates that they visited the Burger Bros unit and/or the general location to verify the complaint. Each time the person verifying the complaint was able to trace the odour to the Applicant's unit. In the reports, the description of the smell varies. In a couple, the smell is reported simply as being present, i.e. "could smell some frying and oil," but in most of the other reports the smell is described as ranging from "strong" to "very strong", "quite intense" or "overpowering."

[9] There is one complaint from Ms. Santos and an accompanying incident report that is worth noting separately for reasons I discuss below in my analysis of the issues. On April 7, 2025, Ms. Santos once again called the front desk to report "a strong and greasy odor in her salon" which again she identified as coming from the Burger Bros unit. However, Burger Bros was no longer operating in the Applicant's unit. Its lease expired on March 31, 2025, and a new restaurant had taken over the unit as of April 1, 2025. That restaurant was not yet in operation. Nonetheless, personnel attended the location and "observed a faint smell of cooking oil, though it was not intense". The incident report also indicates that Ms. Santos was told that Burger Bros no longer operated in the unit.

[10] In response to a question from me regarding any recent complaints, the Respondent indicated that after the April 7, 2025 complaint from Ms. Santos, they received only two other complaints on April 10 and 11, 2025 (it did not elaborate on the details of these complaints). Since April 2025, and as of the close of this hearing in July 2025, there had been no further complaints of odour coming from the Applicant's unit.

[11] Beyond Ms. Santos' complaints, the only other complaint received about odour from this unit (aside from the original complaint from the previous owner of Ms. Santos' unit), came from another commercial unit owner – whose complaint was not only about odour, but covered a wide array of issues with the Burger Bros restaurant.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Applicant created or allowed the creation or continuation of a nuisance in the form of odour, contrary to the Act and the Respondent's governing documents?

[12] The Respondent submits that by allowing the food odours to transfer from her unit to that of Ms. Santos, the Applicant has failed to comply with s. 117 (2) (b) of the Act, which, prohibits the creation or continuation of activities that create nuisances, annoyances or disruptions. Section 117 (2) (b) of the Act reads:

> (2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,
>
> …
>
> (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[13] The other prescribed nuisances, annoyances, and disruptions are set out in s. 26 of Ontario Regulation 48/01 ("O. Reg. 48/01") and include odour.

[14] The Respondent further submits that the Applicant has failed to comply with sections 3.1 (c) and 4.1 (a) of its declaration – both of which prohibit any use of a unit in a manner that is likely to unreasonably interfere with the use or enjoyment by other owners. Section 3.1 reads,

> Subject to the provisions of the Act, this Declaration, the By-Laws and any Rules, each Owner has the full use, occupancy and enjoyment of the whole or any parts of the Common Elements, except as herein otherwise provided.
>
> However, save and except as expressly provided or contemplated in this Declaration to the contrary, no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the common elements that:
>
> …
>
> (c) will unreasonably interfere with the use and enjoyment by the other Owners of the Common Elements and/or their respective Units; …

[15] Section 4.1 (a) reads, in part:

> No Unit shall be occupied or used by an Owner or anyone else, in such a manner as is likely to damage 'or injure any person or property (including any other Units or any portion of the Common Elements) or in a manner that will impair the structural integrity, either patently or latently, of the Units and/or Common Elements, or in a manner that will unreasonably interfere with the use or enjoyment by other owners of the Common Elements or their respective Units …

[16] It was also argued that the Applicant had breached section 4.3 (a), which provides that:

> … no commercial unit shall be used as full-service restaurant, which however shall not prevent commercial establishment from providing food services including cafes, coffee shops or such services provided there is no significant cooking or baking of food on the premise.

[17] While not the primary focus of their evidence and arguments, both parties referenced and made submissions on allegations that "significant cooking" was happening on the premises contrary to this provision. I make no findings related to section 4.3 (a) of the Respondent's declaration, as whether the Applicant's unit is being used for purposes contrary to this provision is not an issue properly before me.

[18] Based on the evidence before me, I find that the Applicant did allow the creation of a nuisance, in the form of unreasonable odour, that did interfere with another unit owner's use and enjoyment of their unit.

[19] To support a claim of nuisance the interference caused by the activity must be substantial and unreasonable. The requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

[20] In this case, the evidence demonstrates that the odour transferring from the Applicant's unit was frequent and intense. There are 11 instances within just over a year period where complaints regarding the strong smell of grease and frying were investigated and verified. It is also probable that there are more instances than the ones documented, as these incident reports only document the times when complaints were called into staff and immediately investigated. For instance, the Respondent provided a statement from Frank Luchin, who is a residential owner in the Respondent and director on the corporation's board, wherein Mr. Luchin stated that he has noticed cooking odour emanating from the Applicant's unit for the past three years. and while at times he says the odours were not as noticeable, there were many times such on March 2, May 18, August 31 and November 5, 2024 when they were "quite extreme". The dates Mr. Luchin lists as smelling these strong odours differ from the days of the complaints logged by Ms. Santos – but they all correspond with the tenancy of the Burger Bros restaurant.

[21] The Applicant argues that the incident reports cannot be relied on as objective evidence because the writers are employees of the Respondent. Here the Applicant referred me to *Wu v Peel Condominium Corporation No. 245*, 2015 ONSC 2801 ("Wu"), which she indicated stood for the proposition that a "finding of a nuisance requires more than mere perception, it must be based on objective credible evidence" and that "statements from individuals who are financially and professionally beholden to the Corporation do not satisfy the threshold objective credible evidence". Notwithstanding the fact that Wu does not consider the question of nuisance (there is not a single reference to nuisance in the whole of the decision), but rather makes findings related to oppression, Wu does not conclude, as the Applicant claims, that individuals – such as, in this case, condominium staff – cannot be relied upon to provide objective investigation. It does not stand for such a proposition and thus I have placed no weight on this submission.

[22] The Applicant further submits that Ms. Santos is sensitive to smells and that she became zealous in her pursuit of complaints against the Applicant. Here the Applicant points to the fact that Ms. Santos made a complaint about the "Burger Bros" unit when they were no longer operating in the unit. The Applicant submits that this undermines the credibility of Ms. Santos' complaints. I disagree. According to the evidence submitted by the Applicant, the owner of the new restaurant occupying her unit had conducted a "brief cooking trial" that involved the heating of sauce around the time of the complaint. It is not unreasonable to infer that, in doing so, some of the greasy smell, perhaps left in the ventilation system, was transferred between the units. In any event, even if this final documented complaint from Ms. Santos is discounted, I am not persuaded that her complaints are not credible. They were verified by several different staff members, and there is evidence that other residents have either complained about odour or experienced it. The fact that Ms. Santos made most of the complaints is understandable given her unit's proximity to the Applicant and the potential impact of the odour on her business.

[23] Based on the evidence above, I find that the Applicant did allow the creation of unreasonable odours that were a nuisance in contravention of the Act and the governing documents of the Respondent.

[24] The Respondent has asked that I order that the Applicant take all reasonable steps to ensure there are no unreasonable odours emanating from the unit, which interfere with the use and enjoyment by owners of common elements or their respective units. The evidence provided to me suggests that the odour issue has been resolved; there have been no complaints since April 2025. However, I will order that the Applicant comply with s. 117 (2) (b) of the Act, and sections 3.1 (c) and 4.1 (a) of the Respondent's declaration.

Issue No. 2: Is the Respondent entitled to claim indemnification costs related to the allegations of non-compliance? Were they entitled to chargeback these costs?

[25] The Applicant submits that the Respondent has improperly charged back fees to her unit under its indemnification provisions, related to the alleged incidents of non-compliance. These fees were in the amount of $2,665.84, which she paid in November 2024, and $1,525.50, which she paid in January 2025. She submits that she paid these fees 'under protest' as the Respondent threatened to place a lien on her property if she did not pay them by the dates specified in their demands.

[26] The Applicant argues that the Respondent acted unreasonably in its enforcement efforts in applying these chargebacks and threatening a lien. She submits she was never provided any evidence that she was creating a nuisance in the form of odour, and she cooperated with the Respondent and took several steps to abate the odours despite the Respondent not providing her with proof of them. She further asserts that the Respondent was not legally allowed to charge back amounts related to compliance with the governing documents without a court or Tribunal order.

[27] The Respondent does not dispute it charged back these amounts to the Applicant and that they represent legal costs associated with enforcing compliance with the provisions in the governing documents and the Act related to nuisance. Rather, it argues that it was entitled to do so under its indemnification provision, as it had evidence of non-compliance and acted reasonably to enforce its governing documents and the Act.

[28] Section 2.2 of the Respondent's declaration contains the following indemnification provision:

> Each Owner shall pay to the Corporation his or her proportionate share of the common expenses and the assessment and collection of contributions toward common expenses may be regulated by the Board pursuant to the By-laws. In addition to the foregoing, any losses, costs or damages incurred by the

> Corporation by reason of a breach of any provision of this Declaration, or in any By-laws or Rules in force from time to time by any Owner, or by such owner's tenants, and/or their employees, and/or their respective invitees or licensees, or as a result of any breach or non-compliance with any applicable zoning by-laws, or other laws or regulations, or by reason of an Extraordinary Expense and which is directly attributable to the use made by any owner of a Unit or by such owner's tenants, employees, as aforesaid end/or their respective invitees or licensees, shall be borne and paid for by such owner and may be recovered by the Corporation against such owner in the same manner as common expenses.

[29] The Respondent submits that it communicated openly and regularly with the Applicant about the complaints but that the Applicant took no meaningful steps to address the odour. It further submits that it did not require an order from this Tribunal to charge back the amounts related to compliance and the Tribunal has no authority to 'retroactively' assess the quantum of costs that the corporation was entitled to collect under its indemnification provisions. It further submits that the Tribunal "… only has the jurisdictional authority to deal with, and assess, legal costs incurred by the parties during the Tribunal proceedings."

[30] I note that after the close of the hearing, the Applicant posted a message in the CAT-ODR system indicating that she had received a further chargeback from the corporation in the amount of $7,017.30 for fees incurred by the Respondent in this proceeding. On this message, the Applicant expressed concern that the Respondent was attempting to collect such fees, when the matter of costs was an issue to be determined in this proceeding and was still pending.

[31] As the hearing was closed, and both parties aware that the issue of costs and indemnification of those costs was a matter that was already to be determined as part of this decision, no action was taken regarding this notice. I will address the issue of legal costs related to the proceedings further in the decision (beginning at paragraph 56 below).

[32] I will first address the jurisdictional arguments raised by the Respondent. The Respondent's counsel has argued that the Tribunal's authority with respect to indemnification is restricted to the making of a costs order relating to the costs of the proceedings. This is incorrect.

[33] The Tribunal's authority with respect to indemnification is set out clearly in s 1 (1) (d) (iv) of Ontario Regulation 179/17 ("O. Reg. 179/17"), which states that the Tribunal may address provisions of a condominium's declaration, by-laws, or rules "that govern the indemnification or compensation of the corporation, an owner or a mortgagee" regarding any of the disputes described in the balance of

s. 1 (1) (d), which includes disputes relating to governing documents' provisions that address any of the activities prohibited under s. 117 (2) of the Act (in s. 1 (1) (d) (iii.1) and (iii.2)).

[34] Thus, if the Respondent was to have relied solely on the provisions of the Act in addressing the odour caused by the Applicant's unit and there were no relevant provisions of its governing documents, there might be an argument that the application of the indemnity provisions falls outside the purview of the Tribunal's jurisdiction; however, to the extent there are, and the Respondent sought to enforce, provisions of its declaration that "prohibit, restrict or otherwise govern" the creation of an odour nuisance (amongst other things), the matter of indemnification is brought clearly within the scope of the Tribunal's authority to address.

[35] The Respondent argues that its indemnity provision allows it to simply chargeback any and all costs incurred in its attempt to secure compliance, without the requirement to first obtain a compliance order. It submits that in the event that the Applicant has been found to be in breach of the governing documents and the Act that "this ends the matter." It does not. While, as the Respondent suggests, it is entitled to some discretion in how it enforces its governing documents and, by extension, the costs associated with enforcement, the courts (see for example, *Amlani v. York Condominium Corporation No. 473*, 2020 ONSC 194 ("Amlani")) and this Tribunal (see for example, *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 13) have been consistent in determining that in seeking compliance, boards must act reasonably, will only be entitled to damages or costs associated with non-compliance insofar as they were reasonably incurred, and must not seek to collect or enforce collection by way of lien provisions under the Act without obtaining an order from a court or applicable Tribunal.

[36] In this case, I have found that the Applicant has breached the Act and sections 3.1 (c) and 4.1 (a) of the Respondent's declaration, and I find that the provisions of the Respondent's declaration do allow it to recover expenses associated with obtaining compliance. However, based on the evidence before me, I do not find that the legal costs charged back to the Applicant in relation to the breach of these provisions were incurred reasonably, nor should a lien have been threatened.

[37] The evidence is that during October 2023 and November 2023, in response to the complaints it had begun to receive, management for the Respondent traded a series of emails with the Applicant about the specifications and efficacy of the HVAC system in the Applicant's unit. In this exchange, Applicant was asked to provide confirmation that her HVAC system met the appropriate standards (i.e. was a special ecology unit for kitchen exhaust) and was asked to confirm that it

had been recently cleaned. The Applicant confirmed both. Also, in response to these early emails, the evidence demonstrates that the operators of Burger Bros increased the cleaning of the ventilation system to attempt to minimize odours.

[38] Unfortunately, the problem was not resolved and in January 2024 after continuing to receive complaints, management sent another letter to the Applicant informing her of the additional complaints and requesting that the Applicant have the HVAC system checked by the City of Toronto to ensure it was functioning correctly and asked her to provide proof of such. The Applicant responded that she was willing to do so, but it might take several weeks to get the inspection done. Management responded, indicating that a few weeks “seemed like a long time” so instead they offered to have their own HVAC contractor assess the unit, free of charge, on January 31, 2024. The Applicant agreed and the inspection was conducted. After the inspection, management wrote to the Applicant to thank her for her cooperation and indicated that the contractor would be preparing a report and that they would be in touch about next steps.

[39] However, the Respondent did not get in touch about the results of the report or next steps. Rather, the evidence is that the next correspondence with the Applicant was in March 2024. This correspondence was much more formal than the previous ones. The email (referred to as a letter) acknowledged that the Applicant’s HVAC equipment was up to standard but nonetheless indicated it had received “multiple complaints” about nuisance cooking odours. It pointed the Applicant to the declaration provision section 4.2 (d) which sets out that if the board determines, in its sole discretion and acting reasonably, that there is a nuisance (including odour) being created by a unit owner and/or their tenant, that it can require the unit owner at their expense to take steps necessary to abate the nuisance to the satisfaction of the board. It further indicates that in the event the unit owner fails to abate the nuisance the board will take the steps necessary to resolve the issue and the unit owner will be liable to the corporation for any related expenses. The letter also references an alleged violation of the significant cooking rule. The letter ends by providing the Applicant with a deadline of April 10, 2024 to either address the issue or indicates the corporation will require her to “cease operation of the unit.”

[40] In response, the Applicant wrote to management indicating that she had doubts about the complaints and she had taken all steps “within her capacity” to address the issue. She stated that she did not believe that she was in violation of the rule. In her letter, she notes that the only complaints are from En Vogue hair salon and suggested that the owner may be sensitive to smells. She also indicates she has a desire to resolve the issue amicably and will cooperate with any further investigations required.

[41] In response, on April 22, 2024, the Respondent sent another formal letter from management. It again advised her that nuisance odour was coming from her unit. It referred to the dates of two complaints of odour in the neighbouring unit and the common elements, and this time stated that the odour was confirmed by two separate security guards. The email requested that the Applicant take one of two actions: “eliminate or greatly reduce the nuisance odour” as per the governing documents of the corporation or terminate the lease with the tenants. It demanded she do so by May 2, 2024.

[42] In response, the Applicant replied that she could not simply terminate the lease with her tenant and would take no further steps without a court order as she did not believe she was in breach of the governing documents and had taken all steps necessary to address the odours.

[43] The next letter to the Applicant was from legal counsel on July 30, 2024. This letter indicates that because the Applicant “refused to address” the smell nuisances and that the corporation continues to receive complaints, the corporation has retained counsel to assist in resolving the issue. The letter points the Applicant to s. 117 (2) of the Act and the nuisance provisions in its declaration. It indicates that if the Applicant fails to address the odour nuisances, the “Corporation reserves the right to request that your tenant cease the cooking activities in the unit.” This letter also, for the first time, directly advises the Applicant that she will be held responsible for costs incurred for any legal action related to enforcement including any legal costs incurred to date. It provides no indication of what those costs are beyond the general assertion that they may be up to $20,000.

[44] At this point, the Applicant retained counsel, who wrote to the corporation (after having a phone call with the Respondent’s counsel). In the letter of August 21, 2024, the Applicant’s counsel reiterates that the Applicant’s HVAC unit is up to code and has been cleaned and inspected by the City of Toronto and that there are no issues with the system. The letter also requests a copy of the report that was prepared by the Respondent’s HVAC company after the January inspection of the unit. Finally, counsel suggests in the letter that the odours in the En Vogue hair

salon may be the result of renovations that the salon made to their HVAC unit, as there had been no complaints prior to En Vogue's possession of the unit. The letter requests that the Respondent explore potential solutions related to the positioning of En Vogue's HVAC intake system as a means to address the issues.

[45] The Respondent's counsel responded on October 8, 2024. In this letter counsel stated that:

1. The Corporation has confirmed that Ms. Santos did not change the location of the fresh air intake valve when doing renovation in preparation for the opening of En Vogue. The renovation plans were provided to support this.

2. "Contrary" to the belief of the Applicant, the Respondent's HVAC company did not provide an inspection report but only provided "an estimate of the costs of essentially installing a baffle at the exit of the exhaust smells away from Unit 105." It further notes that "The corporation's board did not consider that the suggested installation would adequately address the smell nuisance, and in any event the Corporation has no intent to retain any contractor to carry out work to Unit 104 to address the smell nuisance nor dictate to you client what steps should be taken."

[46] The letter also included copies of some of the incident reports that confirmed the odours, as noted by security.

[47] Finally, a letter was sent to the Applicant from management on November 26, 2024. This letter does not mention odour but instead accuses the Applicant of contributing to "elevated levels of Total Volatile Organic Compounds (TVOC), Formaldehyde (HCHO), Carbon Monoxid and Carbon Dioxide" in the air of the neighbouring unit and the common elements. It notes that these chemicals exceed the acceptable thresholds and pose a potential health risk to residents. The letter makes no mention of how it came to the conclusion that the Applicant unit was responsible for such chemicals in the neighbouring units, or how and when they measured these. The letter also indicates that the Applicant will be charged back for any amounts to address the issue "as per the condominium corporation's policies".

[48] After this, the remaining correspondence in evidence between the two parties relates to the chargebacks. Although neither party submitted as evidence the letters detailing the chargeback costs and the reasons for them, two letters were submitted into evidence wherein the Respondent advised the Applicant that they are in arrears due to unpaid common elements and if they are not paid, a lien will be placed on the unit (the first letter was sent on November 5, 2024 requesting

payment of $2,665.84; the second on January 15, 2025 requesting payment of $1,525.50). Neither party disputed that these letters refer to chargebacks related to the issue of the odour nuisance.

[49] The Respondent claims that this evidence demonstrates that it acted reasonably when incurring legal fees, as it initiated legal action only after the Applicant "refused" to take steps to address the issues. I do not agree with the Respondent's interpretation of the evidence. In fact, the Applicant always appeared to be amenable to finding a solution. She responded to every request made of her. What the above demonstrates is that both the Applicant and the Respondent, after confirming the HVAC system was up to code, were at a loss for what to do. So instead of waiting for the Applicant to provide a further inspection report on the system, which she had agreed to do, the Respondent offered to have its own HVAC company inspect the unit and propose solutions. Yet, the Respondent never did provide the report it obtained, including that they failed to disclose that the report actually recommends some maintenance be done to the En Vogue system, and ultimately dismissed the report as irrelevant without explanation.

[50] I do not find it reasonable or in good faith that the Respondent offered to conduct its own inspection of the Applicant's unit after she had already agreed to do so and then refused to provide the Applicant with the findings, which would have allowed her to act on them. Rather, it simply dismissed the potential solutions as 'ineffective' with no explanation as to why.

[51] I further note that the letter of October 8, 2024 was the first time that the Respondent provided any of the incident reports to the Applicant, despite the fact that the Applicant had been clearly questioning the validity of the complaints and it was only in response to a question from me at the end of the hearing, that the Respondent disclosed that it did not provide the HVAC report prepared by the HVAC company until March 2025, long after the dispute escalated and the Tribunal proceedings had begun.

[52] Finally, I find that the letter sent to the Applicant regarding the hazardous air quality in the neighbouring units in November 2024 appears to be completely without substantiation and can only be understood as additional effort to put pressure on the Applicant. It makes an allegation without any indication of a nexus between the Applicant's unit and the alleged poor air quality (and provides no indication of how it came to this conclusion). The suggestion that the Applicant would be subject to the costs associated with resolving a problem that the condominium offered no proof existed and no proof that the Applicant's unit was responsible for (particularly given that by this point the Applicant had her

ventilation system inspected by the City of Toronto) is not acting in good faith.

[53] As the Respondent suggests, it is entitled to some discretion in how it enforces its governing documents and by extension the costs associated with enforcement. This is often referred to as the "business judgment rule" which is applicable in the context of business corporations and is also applicable to condominium corporations. The business judgment rule holds that if board decisions are made honestly, prudently, in good faith and on reasonable grounds, they should not be second-guessed by the courts or Tribunals.

[54] I do not find that the Respondent acted honestly or in good faith in this situation. All the evidence suggests that the Applicant was willing to cooperate with the Respondent to explore solutions to the issue. Yet, instead of allowing the Applicant to view the results of the inspection that it offered to conduct (which offered solutions that could resolve the issue), it chose to pursue legal remedies against the Applicant, including sending legal letters, imposing chargebacks and threatening to place liens on the Applicant's unit if she did not pay, an action that the courts have been clear (as per Amlani) upheld on appeal at the Divisional Court. If the Respondent's counsel was not aware of Amlani before first threatening a lien in November 2024, it was brought to their attention by the Applicant's counsel in a letter sent to them on December 16, 2024 disputing the chargebacks.

[55] So, while the Respondent is afforded the discretion to decide how it enforces its rules, its actions must be reasonable. Based on the actions of the Respondent described above, I find that the Respondent's own actions likely led to the legal costs associated with securing compliance and its action to enforce, and the chargebacks and threats of lien were not done in good faith. I have no evidence in front of me as to exactly what the $4,191.34 consist of, other than "legal costs" associated with compliance with nuisance odors. Thus, I will order that they refund the Applicant this amount in full.

Issue No. 3: Is any party entitled to costs?

[56] Both parties requested costs. The Applicant did not provide the amount of costs she is seeking. The Respondent is seeking costs on a full indemnity basis in the amount of $10,780.20.

[57] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding."

[58] Section 1.44 (2) of the Act states that an order for costs "shall be determined in accordance with the rules of the Tribunal".

[59] 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.

[60] The Respondent argues that it would not be fair to the other owners of the condominium to have to bear the costs of seeking compliance with its governing documents and the Act, when it is required to enforce them. It submits that other unit owners should not be responsible to bear the cost of having to deal with "bad apples" who "refuse" to abide by the governing documents. Here the Respondent referred me to *Chan v. Toronto Standard Condominium Corporation No. 1834*, 2011 ONSC 108 and *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48. I find neither of these cases applicable here. The behavior that led to the costs awards in these cases was egregious and not at all comparable to the behavior of the Applicant. In this case, the Applicant was willing and cooperative in attempting to address the issues; it was only after the Respondent failed to provide the HVAC report and began sending formal letters demanding that if she couldn't resolve the odour issues that she terminate the lease of her tenant that positions hardened.

[61] Costs awards are discretionary. In this case I have found the Applicant did breach the Act and the governing documents related to nuisance, but I have also found that the Respondent did not act in good faith or reasonably in incurring and charging back costs. Thus, given that both parties were partially successful, I find that it is fair and appropriate that they each bear their own costs.

[62] Finally, as noted in paragraph 31, after the close of this hearing, the Applicant apparently received a letter from the Respondent requesting that she pay $7,017.30 for fees incurred by the corporation for participating in this Tribunal proceeding and threatened to place a lien on the Applicant's unit if the amount remained unpaid by July 31, 2025. It is inappropriate for a condominium to seek to

enforce collection of a chargeback or indemnification of an amount that remains at issue in proceeding before the Tribunal. Given that I have not awarded costs, if the Applicant has paid any amount of the costs demanded in relation to the legal costs associated with these proceedings, I will order that that amount be refunded to the Applicant. I will further order that the Respondent provide the Applicant with notification in writing rescinding the communication regarding any chargebacks related to the legal costs associated with these proceedings.

D. ORDER

[63] The Tribunal orders that:

1. Under s. 1.44 (1) 1, the Applicant shall comply with s. 117 (2) (b) of the Act and sections 3.1 (c) and 4.1 (a) of the Respondent's declaration.

2. Under s. 1.44 (1) 2, within 30 days of the date of this decision the Respondent will refund the Applicant the amount of $4,191.34 representing the fees it charged back to the Applicant to enforce compliance.

3. Under s. 1.44 (1) 2, if the Applicant has paid any amount of the $7,017.30 requested by the Respondent as payment for legal fees related to this proceeding, the Respondent shall reimburse the amount paid within 30 days of the date of this decision.

4. Under s. 1.44 (1) 7, within 30 days of the date of this decision the Respondent will provide the Applicant with notification in writing rescinding the communication regarding any chargebacks related to the legal costs associated with these proceedings.

Nicole Aylwin
Vice-Chair, Condominium Authority Tribunal

Released on: August 6, 2025