



Obese Resident Awarded Preferred Parking Space

Jeremy Schwartz

Québec's Human Rights Tribunal has ordered a condominium to break a parking spot lease agreement in order to reassign that space to an obese owner. The Tribunal also ordered the condominium, and through the condominium corporation all unit owners (except the complainant and her husband), to pay the complainant \$10,000 in damages.

This case sets an alarming precedent for condominium and apartment owners, directors and residents, and for all property managers and property management companies generally.

The Facts

Ms. Marise Myrand and her husband, Denis Turcotte, own a residential unit in a condominium complex in Saint-Marie, Québec. The condominium complex consists of 6 buildings, with 6 units contained in each. Myrand is morbidly obese, and suffers from fibromyalgia, chronic heart failure, kidney and breathing disorders, severe osteoarthritis and lower back pain. Her conditions have severely limited her mobility. She generally only leaves her apartment accompanied by Turcotte, and she uses at times a cane, a scooter and a wheelchair.

Turcotte had exclusive use of a parking space on condominium property. Unfortunately, Myrand had to traverse 130 feet to and from her unit and his car. Turcotte and Myrand preferred the parking space leased to Ms. Nolet, which was more than 40 feet closer, and asked her several times to exchange. Nolet refused to oblige. Under the Québec *Civil Code*, condominium unit owners have a legal right to one parking space for their exclusive use. Nolet's space in dispute was not that exclusive use space; it was a second space she leased for \$75 per year as a reserved space (her family had two vehicles).

Turcotte and Myrand petitioned the condominium board several times to require Nolet to exchange spots, but the condominium board consistently refused. Each time the board indicated that it did not have the power to break its lease with Nolet, but provided an alternative area closer to Myrand's unit where Turcotte could leave his car. Myrand and Turcotte were not satisfied with this accommodation, because it blocked a pathway and so, in their view, was not an appropriate or safe solution. The issue was brought to the annual general meeting, but a majority of owners rejected the forced exchange.

Myrand initiated a human rights complaint with Québec's Human Rights Commission (in Québec, unlike in Ontario and other provinces, there is no direct access to the Tribunal). After a lengthy process, the complaint reached Québec's Human Rights Tribunal for hearing.

Findings at the Tribunal

The Tribunal found that the condominium violated Myrand's right to equal treatment and accommodation of her disabilities. The Tribunal ordered the condominium board to reassign Nolet's reserved parking space to Myrand, and awarded Myrand \$7,000 in damages for pain, suffering and humiliation, and \$3,000 in punitive damages against the condominium corporation. (The Tribunal specifically held that Myrand and Turcotte, even as owners, would not owe their share of that liability.)

The Tribunal found that the condominium not only had the power, but also the obligation to intervene. This was found, apparently, despite the fact that Nolet had a written lease agreement for the exclusive use of the parking space.

Unresolved Issues

Clearly if, before the spaces were assigned, the condominium refused such an accommodation, a finding of discrimination would be supportable. However, the spaces were already assigned, and Nolet had a signed lease agreement. There is a striking lack of any discussion or consideration by the Tribunal as to the contractual rights of Nolet as an individual.

Most human rights cases before now involving condominiums and apartments have dealt with alleged failures to accommodate access, services and use with respect to common elements. For example, it is trite to say that a condominium must provide a wheelchair access ramp to the building in most cases to accommodate those with disabilities. However, this appears to be the first time that a human rights tribunal has ordered an accommodation that essentially dissolves a pre-existing contract and ignores the contractual rights of an individual owner.

This decision could have very problematic applications. For example, what if Nolet were a resident who sublet the parking space from the owner of her unit? Would the Tribunal have ordered the owner to breach his personal sublet agreement with Nolet? Would the Tribunal have issued the same order if Nolet owned the space instead of simply rented it?

In an employment context, arbitrators, the courts and tribunals have consistently held that it would be inappropriate to order an employer to layoff or displace one worker to accommodate another. The parallels to this case are obvious.

As described above, the *Civil Code* specifically provides that unit holders must be provided with an exclusive use parking space, and rests the responsibility for assigning those spaces (and others) on the directors. There are no such requirements in Ontario. In Ontario it is probably equally common for condominium owners to obtain an easement (*i.e.* right of use) over a particular parking space, as it is for them to obtain exclusive ownership of the parking space (with easements in favour of the condominium for service etc.). These easements or ownership rights are registered on title. As a result, it is unclear how easily this Québec judgement could be imported into Ontario, but the possibilities are alarming.

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