

Lash / Condo Law

OUR CONDO EXPERTISE

**A DIRECTOR'S
GUIDE TO THE CAT**
(CONDOMINIUM AUTHORITY TRIBUNAL)

A GUIDE FOR BOARD MEMBERS
AND MANAGERS

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In 2017, the Condominium Act was amended to include a new dispute resolution body called the Condominium Authority Tribunal (“CAT”).

CAT has exclusive jurisdiction over the following types of disputes:

- Condominium records;
- Pets and animals;
- Vehicles, parking and storage;
- Noise and nuisance;
- Odours;
- Vibrations;
- Light;
- Smoke and Vapour; and
- Compliance with settlement agreements.

THE CAT PROCESS

The CAT is a three-phase dispute resolution service.

Before entering into Stage 1, it is important for the applicant to determine who the relevant parties are to the application. This involves determining who will be the respondent(s) (for instance, a unit owner and tenant) and who, if any, will be the intervenor(s).

An intervenor is a person or legal entity (including a condo corporation) that has the right to participate in a CAT Case. Under the CAT Rules, an intervenor can be, for instance, an owner (if the application is against a tenant) or a condo corporation, if the application is brought by an owner against another owner.



Stage 1 – Negotiation (\$25):

After filing an application and joining the case, the parties alone try to negotiate and resolve the matter through the online system.

Prior to Stage 1, the parties may have already tried to resolve the matter before filing the application without success. However, once the dispute is framed and the parties have had further opportunities to consider the issues and their positions, the parties may be able to resolve the matter during this negotiation stage.

Stage 2 – Mediation (\$50):

Once the applicant pays the applicable fee, the matter will proceed to Stage 2 – Mediation. At Stage 2, a CAT member is assigned to the case to assist in resolving the matter.

The CAT member explores the issues in dispute and tries to assist in a mediated settlement. If the CAT member determines that there is no likelihood of a settlement, the CAT member will assist the parties in narrowing down the issues for adjudication and preparing the parties for Stage 3.

Stage 3 – Adjudication (\$125)

Once the applicant pays the applicable fees, the matter will proceed to Stage 3 – Adjudication.

At Stage 3, a different CAT member is assigned as the adjudicator. The adjudicator will not have any knowledge of the communications in Stage 1 or 2.



Typically in Stage 3, the adjudicator will ask that the parties outline their respective positions, advise what evidence will be relied on, and who will act as witnesses in the proceeding.

Once the preliminary matters are dealt with, the application generally proceeds as follows (subject to any interim motions):

- Opening submissions;
- Document disclosure;
- Witness statements;
- Cross-examinations of witnesses;
- Closing submissions (or legal arguments);
- Hearing closed and order issued

CAT is an entirely online service, mostly heard in writing, except for circumstances where a party or the CAT member determines that a portion of the proceeding must be heard orally.

Generally, CAT proceeds in an expeditious manner, which can at times be challenging for condo corporations, especially once the application is at Stage 3 – Adjudication. As per the CAT Rules, participants are supposed to review their CAT portal (otherwise known as the Condominium Authority Tribunal Online Resolution system or CAT-ODR) **daily** for updates.



CAT TIPS & TRICKS

Tip #1: Do not ignore a CAT application

Once you have been served with a Notice of Case (the originating document for the application), make sure that you sign on and join the case as soon as possible, or in any event, within 7 days. Failure to join a case can result in the case being heard without your participation. This can also result in costs ordered against you for your failure to meaningfully participate.

Tip #2: Check your CAT-ODR daily

As mentioned above, the CAT process moves fairly quickly and the CAT members can impose very short deadlines for submissions. If you fail to submit your materials by a specified deadline, you may lose your opportunity to do so which can prejudice your position.

Tip #3: Participate meaningfully and respectfully.

Failing to participate in a meaningful way can lead to adverse results. For instance, in the case Peel Condominium Corporation No. 96 v. Psofimis, the respondent only participated in Stage 1 – Negotiation and Stage 2 – Mediation, and despite CAT’s attempts to contact the respondent, the respondent stopped participating in Stage 3. The adjudicator did not hear any submissions from the respondent and made its decision solely based on the applicant’s submissions.

Secondly, participants are required to communicate in a way that is timely, courteous and respectful to everyone. Like any litigation, emotions can run high causing the participants to act out. This could lead to cost consequences as the CAT’s Rules of Practice provide that:



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.

Remember to stay calm, cool and collected.

Tip #4: Beware of Costs

Although CAT typically proceeds in an expeditious manner, significant costs may be incurred to bring or defend an application. The costs tend to quickly increase once the matter proceeds to Stage 3 – Adjudication.

While an award of costs is highly dependent on the unique facts of each case, costs are not automatically awarded to the successful party. Generally legal fees are not fully recoverable.

Tip #5: Need something heard urgently?

It may be beneficial to explore alternate forums if a dispute or issue requires urgent attention. If a dispute involves dangerous activities prohibited by section 117 of the Condominium Act, for example, it is important to remember that the Courts are better equipped to hear matters of this nature and to hear them on an urgent basis.

For instance in Metropolitan Toronto Condominium Corporation No. 1290 v. Singh, the applicant brought an urgent court application against two tenants after one of their Pitbulls attacked another resident and dog in the elevator. Although the case, dealt in part with pets, the Court heard the application as it was primarily a case about dangerous activities.



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