



**LAND AND PROPERTY RIGHTS TRIBUNAL**

**Citation:** Edmonton (City) v Autobuy Leasing Corp., 2021 ABLPRT 890

**Date:** 2021-12-16

**File No.** NM2021.0005 (Related File No. DC2014.0050)

**Order No.** LPRT2021/EX0890

The Land Compensation Board ("LCB") is continued under the name Land and Property Rights Tribunal ("Tribunal"), and any reference to Land Compensation Board or Board is a reference to the Tribunal.

**In the matter of a proceeding commenced under** sections 27(1) and 29(1) and (2) of the *Expropriation Act*, RSA 2000, Chapter E-13 (the "*Act*") and rules 7, 10 and 17 of the *Expropriation Act Rules of Procedure and Practice*, AR 187/2001 (the "*Rules*").

**And in the matter of** an Application by Notice of Motion.

BETWEEN:

The City of Edmonton

Applicant/Respondent

and

Autobuy Leasing Corp.

Claimant

BEFORE: Shannon Boyer, Presiding Member  
(the "Panel")

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**ORDER**

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**APPEARANCES**

**Written Submissions only were filed by:**

For the Applicant/Respondent: Jacob Marchel, The City of Edmonton Law Branch

For the Claimant: No submissions filed by the Claimant

**Introduction**

[1] The Applicant, City of Edmonton (the "Applicant" or "Respondent"), filed a Notice of Motion on June 18, 2021 requesting an Order under rules 7 and 10 of the *Expropriation Act Rules of Procedure and Practice*, AR 187/2001 (the "*Rules*"), appointing the time and place for the compensation hearing, direction as to costs under Rule 17, and an Order under sections 27(1) and 29(1) and (2) of the

*Expropriation Act*, RSA 2000, c E-13 (the "*Act*"), disposing of this action without need of further hearings or applications if the Claimant fails to make submissions in the compensation hearing.

[2] The Tribunal orders the matter to be set for a compensation hearing by written submissions, the compensation hearing will proceed peremptory on the Claimant, and costs will be determined at the compensation hearing.

### **Background**

[3] The Claimant, Autobuy Leasing Corp. (the "Claimant" or "Owner"), served an Application for Determination of Compensation ("ADC") on the Applicant on October 17, 2014, and the ADC was filed with the Tribunal on October 20, 2014. The Applicant served its Reply to the ADC on December 18, 2014, and the Reply was filed with the Tribunal on December 23, 2014. The Claimant has taken no steps in the action. The Applicant filed an application to strike the ADC on February 8, 2019 because the Claimant failed to do anything to advance this action since serving the ADC. The Claimant did not file submissions, send representation or attend the hearing on October 7, 2019. The Claimant has not done anything to advance this action to date.

### **Issue(s)**

1. Should the Tribunal set a hearing for final determination of compensation and if so, should the hearing proceed by written submissions or oral hearing?
2. Should the Tribunal dismiss the ADC without need of further hearings or applications if the Claimant does not make submissions with respect to the compensation hearing?
3. Should the Tribunal provide direction as to costs under Rule 17?

### **Decision**

1. The Tribunal orders a hearing for determination of compensation in this action, Tribunal File No. DC2014.0050 to be considered by written submissions. The Claimant and the Respondent must furnish to the Tribunal and to each other all written submissions, affidavits, and other documentary evidence that they intend to rely upon on or before February 1, 2022, and this date is peremptory on the Claimant.
2. To predetermine the matter or to dismiss the ADC in advance of the scheduled proceeding may deprive the Claimant of a final opportunity to advance evidence to support its claim for compensation and costs at a hearing and may fetter the discretion of the Tribunal.
3. Costs will be determined in the hearing for compensation.

### **Service and Submissions**

[4] The Applicant served the Notice of Motion and supporting Affidavit of Saquiah Kamal dated June 14, 2021, via registered mail, to the Claimant's two last known addresses, in compliance with the service provisions under section 67 of the *Act*. The Applicant filed the Revised Affidavit of Oprah Matara sworn June 18, 2021 attesting to service of the Notice of Motion and supporting Affidavit on the Claimant and the Claimant's Director Ray Kover, by registered mail. Tribunal administration sent a letter acknowledging receipt of the Notice of Motion and the Notice of Hearing for the Notice of Motion to the

corporate address for the Claimant and to the last known address for Ray Kover, Director of the Claimant, via registered mail, and the letters were unclaimed and returned to the Tribunal office.

[5] The Notice of Hearing invited submissions from the parties due October 1, 2021.

[6] The Claimant did not file submissions.

[7] The Applicant filed submissions on October 1, 2021 (the “Brief”) and the Affidavit of Saquiah Kamal sworn June 14, 2021.

[8] The Applicant argued a hearing date for final determination of compensation should be set because the Claimant has not taken any steps to advance its claims since it filed the ADC in 2014 and there has been no explanation or justification provided for this failure. The extraordinary delay in moving this action forward and the inability to have meaningful discussions toward resolution, justifies a hearing date to determine compensation.

[9] The Applicant submitted it has taken numerous meaningful steps to advance this action toward a resolution. On December 7, 2018, the Applicant requested the Claimant's Affidavit of Records and production of documents, which were never provided. On October 5, 2018, the Applicant made a settlement offer, which has not been acknowledged. In 2018, the Applicant attended a Dispute Resolution Conference (“DRC”) before the Tribunal, but the Claimant did not attend. On January 10, 2019, the Applicant served a Notice of Motion petitioning the Tribunal to strike the action for delay. The Claimant did not attend the hearing held in October 2019.

[10] On December 21, 2018, counsel for the Claimant, notified the Applicant and the Tribunal that it was withdrawing from representation with immediate effect. Since December 21, 2018, there is no evidence that the Claimant retained new counsel, appointed an agent, or corporate representative.

[11] The Applicant argued the Claimant will not likely take future action because the Claimant was struck from the corporate registry and the director and sole shareholder is likely deceased. Ms. Kamal attested an Alberta corporate registry search conducted on June 4, 2021 states the sole director and shareholder of the Claimant was/is Mr. Ray Kover. The Claimant's legal entity status was struck on May 2, 2016 and it has not filed an annual corporate return since 2013. On July 25, 2016, the Edmonton Journal newspaper published an obituary announcing the death of a Raymond Kover, which occurred on June 30, 2016, and this is likely the same Raymond Kover identified as the sole director/shareholder of the Claimant.

[12] Rules 7 and 10 of the *Expropriation Act Rules of Procedure and Practice* allows a party to apply for an order setting a hearing date, subject to the procedures and practices as determined by the Tribunal. The Tribunal is the master of its own procedure, subject only to obligations of procedural fairness and natural justice (*Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560). Rule 17 of the *Rules* states that any proceedings before the Tribunal must be in accordance with the procedures directed by the Tribunal.

[13] The Applicant argued it faces the prospect of never being able to resolve or conclude this matter without a formal decision by the Tribunal to dispose of it. Under sections 27(1) and 29(1) and (2) of the *Act*, the Tribunal can dispose of this action without need of further hearings or applications if the Claimant fails to make submissions with respect to the compensation hearing. It is unlikely the Claimant will move the action forward or engage in any constructive and amicable discussions to resolve this matter, without the intervention and direction of the Tribunal, therefore, the Tribunal should dispose of this action without need of further hearings or applications.

[14] The Applicant argued no costs should be payable to the Claimant or that costs should be reduced. Rule 17 of the *Rules* allows the Tribunal to provide direction as to costs in this action. The Claimant bears the onus of proving that costs are reasonable. Costs under section 39(1) of the *Act*, may also be denied or reduced in "special circumstances", if they are "improper, unnecessary, excessive or a mistake", or if they lack sufficient explanation or supporting evidence. Since no documentation speaking to costs has been provided, this is sufficient for the Tribunal to deny, or in the alternative reduce, costs against the Applicant.

### Reasons

*Should the Tribunal set a hearing for final determination of compensation and if so, should the hearing proceed by written submissions or oral hearing?*

[15] The Tribunal orders a hearing for determination of compensation in this action, Tribunal File No. DC2014.0050, to be considered by written submissions. The hearing to determine compensation pursuant to section 29 of the *Expropriation Act* and Costs shall be scheduled peremptory on the Claimant.

[16] The *Expropriation Act* provides a mechanism for owners to be fairly compensated when land is taken by an expropriating authority. Section 29 of the *Expropriation Act* requires the Tribunal to determine compensation when the parties have not agreed. The *Act*, *Rules* and procedures must be interpreted and applied in keeping with the purpose of the *Act*. The Tribunal is the master of its own procedure, subject to procedural fairness and natural justice, and proceedings before the Tribunal must be held in accordance the procedures directed by the Tribunal. The Tribunal conducts case management through the DRC process to ensure actions filed under the *Expropriation Act* are ready for compensation hearings. Generally, when parties complete all procedural steps and apply for a hearing, the Tribunal sets a hearing to determine compensation.

[17] The Panel considered whether it would be fair to the Claimant to set this action for a hearing to determine compensation. The Panel finds the Claimant did not take any steps or participate in Tribunal procedures to advance its claims since filing an ADC on October 20, 2014. The Panel gave significant weight to the affidavit evidence of Ms. Kamal who provided an insightful time line of events in this action. The Owner filed an ADC, but took no further steps or other action to advance its claims. The Applicant initiated case management in 2019, but the Owner did not participate. The Applicant applied to have the action struck in 2019, but the Owner did not participate. The Applicant demanded an affidavit of records and production of documents, but the Owner did not comply. To date, the Claimant has not complied with the Applicant's demands, it has not replied to the Applicant's offer, nor has it provided expert reports or other documentation in support of its claims.

[18] The Panel also gave significant weight to Ms. Kamal's evidence that the Claimant Corporation was struck on May 2, 2016, and it has not filed an annual corporate return since 2013. The Claimant Corporation no longer exists and it is highly unlikely it will take any steps or engage in any constructive and amicable discussions to resolve this matter.

[19] The Tribunal finds the Applicant is entitled to closure after taking several steps to bring the action to resolution and since there is little prospect the Claimant will take steps or participate in resolving the matter. The Tribunal notes the Notice of Proposed Payment dated October 21, 2013 was for \$0.00, and no payment of compensation was ever made to the Claimant.

[20] For all of these reasons, the Tribunal orders a hearing for determination of compensation in this action, Tribunal File No. DC2014.0050, by written submissions and the hearing will proceed peremptory on the Claimant. The purpose of the *Act*, *Rules* and Tribunal procedures is to ensure owners are compensated, but owners have an obligation to participate and to advance their claims in compliance with the steps and procedures under the *Act* and *Rules*. The Tribunal determines the Claimant had adequate

time and opportunity to complete the procedural steps under the *Act, Rules* and Tribunal procedures, therefore setting a hearing for compensation is reasonable and does not breach the principles of natural justice.

[21] The deadline to file written submissions and other Rule 9 documents for both parties is February 1, 2022. Service of the hearing notice, the written submissions and other Rule 9 documents shall be by regular mail at the last known address for the Claimant and Mr. Kover.

*Should the Tribunal dismiss the ADC without need of further hearings or applications if the Claimant does not make submissions with respect to the compensation hearing?*

[22] The Tribunal Panel assigned for the compensation hearing will determine compensation based on the evidence before it. The parties are ordered to file submissions simultaneously as directed below.

[23] To predetermine the matter or dismiss the ADC in advance of the scheduled proceeding may deprive the Claimant of a final opportunity to advance evidence to support its claim for compensation and costs claim at a hearing and may fetter the discretion of the Tribunal.

*Should the Tribunal provide direction as to costs under Rule 17?*

[24] It is appropriate and reasonable that the costs in this action be determined at the same time as the compensation hearing.

## **Order**

1. The Tribunal orders a hearing for determination of compensation in this action, Tribunal File No. DC2014.0050, to be considered by written submissions.
2. Notwithstanding Rule 9 of the *Expropriation Act Rules of Procedure and Practice*, the Claimant and the Respondent must furnish to the Tribunal and to each other all written submissions, affidavits, and all other documentary evidence that they intend to rely upon on or before February 1, 2022, and this date is peremptory on the Claimant.
3. The issue of costs payable will be determined as part of the hearing for compensation by written submissions and the schedule for written submissions will also apply to the issue of costs.

Dated at the City of Edmonton in the Province of Alberta this 16<sup>th</sup> day of December, 2021.

**LAND AND PROPERTY RIGHTS TRIBUNAL**



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Shannon Boyer, Member