

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 15, 2021

CASE: 2021-00179N

Citation: Halton Standard Condominium Corporation No. 490 v. Paikin, 2021 ONCAT 95

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

Member: Brian Cook, Member

The Applicant,

Halton Standard Condominium Corporation No. 490

Represented by Erik Savas, Counsel

The Respondent,

Marta Paikin

Self-Represented

Hearing: Written Online Hearing – August 31, 2021, to September 24, 2021.

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Halton Standard Condominium Corporation No. 490, applies to the Tribunal for an order for the removal of a dog owned by the Respondent, Marta Paikin. The Respondent initially joined the case but did not subsequently participate.

[2] The condominium consists of 112 units within two blocks that are each four levels high. The Respondent owns a unit that is on the second level. Her unit has a balcony. The Applicant alleges that the Respondent permits her dog to urinate and defecate on the balcony floor and that she permits the waste to drop down or wash down onto the patio of the unit below. The owner of that unit is referred to as “the complainant” in this decision. The evidence of the Applicant, supported by evidence from the complainant, is that this is an on-going situation has continued. The Applicant’s board of directors has determined that the dog is a nuisance. Under the provisions of the condominium declaration, it has directed the Respondent to remove the dog from the condominium. The Respondent has not done so. The Applicant seeks an order directing the Respondent to remove the

dog and an order for costs.

B. PARTICIPATION BY THE RESPONDENT

[3] As noted, the Respondent initially joined the case when it was filed at the CAT. The case moved to Stage 2 – Mediation but the Respondent did not participate, and the case moved to Stage 3 – Tribunal Decision and was assigned to me on August 31, 2021. At that time, I issued instructions to the parties, explaining how adjudication works at the Tribunal. I noted that the Respondent had not participated at Stage 2 and directed as follows:

My understanding from the Stage 2 mediator's order is that the respondent, Ms. Paikin did not participate in Stage 2. Ms. Paikin must confirm that she intends to participate in the hearing in Stage 3. I have created a message topic for that purpose.

If Ms. Paikin does not confirm that she intends to participate, the hearing may proceed without her. She may be deemed to have accepted the applicant's allegations as true and a decision may be reached on that basis.

[4] The Respondent did not communicate with the Tribunal in response to this direction or at any time since. As a party to the case, the Respondent has continued to have access to the Tribunal's on-line dispute resolution system, including access to the evidence and submissions filed by the Applicant.

[5] I find that the Respondent had notice of this case and chose not to participate. The case has accordingly been determined on the basis of the evidence provided by the Applicant.

C. ISSUES

[6] The issues in this case are as follows:

1. Does the Applicant have the authority to order the Respondent to remove her dog from the condominium?
2. If so, is that order justified in this case?
3. Is the Applicant entitled to costs for letters sent by the Applicant's legal counsel to the Applicant concerning the dog?
4. Is the Applicant entitled to its legal costs in relation to this Application?

[7] There are some related issues that are *not* before me. These include whether the Respondent's dog is a breed that is prohibited under section 16(d) of the

Applicant's declaration. This issue arose only in the Applicant's final submissions and the Respondent had no notice that this was a possible issue. For reasons explained below, issues about whether there are any rights or obligations under the Ontario Human Rights Code in relation to the Respondent and her dog are also not before me.

D. GOVERNING DOCUMENTS

[8] Section 12(g) of the corporation's declaration provides as follows:

No animals other than a pet (as hereinafter defined) are permitted within the units or upon the common elements, and the number of pets shall be limited as hereinafter set out. The board of directors of the condominium shall have the authority to deem a pet to be a nuisance and to demand the removal of the pet from the Condominium, on such terms as it may decide. Unit owners, their residents or permitted occupants, owning or responsible for a pet, are required to immediately clean any part of the interior or exterior common elements where their pet has soiled such common elements. All pets must either be on a leash or physically constrained when on the common elements.

[9] The corporation's rules include relevant provisions about pets and balconies:

7. No Owner shall do, or permit anything to be done, in his unit or exclusive use balcony or exclusive use patio, or bring or keep anything therein, which will in any way increase the risk of fire or the rate of fire insurance on the building, or on the property kept therein, or obstruct or interfere with the rights of other Owners, or in any way injure or annoy them, or conflict with the laws relating to fire, or with the regulations of the Fire Department, or with any insurance policy upon the building or any part thereof, or conflict with any of the rules and ordinances of the Board of Health or with any statute or municipal or City By-Law.

12. Owners, their families, guests, visitors and servants shall not make or permit the creation or continuance of any noise or nuisance which, in the opinion of the board, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners, their families, guests, visitors, servants and persons having business with them.

24. Unit Owners, their residents or permitted occupants, owning or responsible for a pet, are required to immediately clean any part of the interior or exterior common elements where their pet has soiled such common elements. All pets must either be on a leash or physically constrained when on the common elements.

[10] The governing documents clearly authorize the board to deem a dog to be a

nuisance and to demand the removal of the dog from the condominium.

E. SHOULD THE TRIBUNAL ORDER THE RESPONDENT TO REMOVE HER DOG?

- [11] The complainant's evidence is set out in an affidavit dated September 21, 2021, with accompanying photos. His evidence is that he first became aware that the Respondent had a dog in her unit in about March 2020. His evidence is that sometime later he began to notice dog excrement on his patio and dog urine dripping on to patio area from the balcony above and that this happened on a regular and frequent basis. This not only impaired his ability to enjoy his patio, but also created a potential health hazard. In addition, he is bothered by a strong odour coming from the dog waste on the Respondent's balcony. The complainant's evidence is that this situation is on-going. His evidence is that when he confronted the Respondent about the problem, she denied that the issue was related to her dog but also claimed that it had "not happened in forever". The complainant also indicates that the Respondent had previously told him that her dog is a pit bull breed. However, he notes that apart from the issues of dog waste, he has never had any encounter with the dog where he felt threatened.
- [12] Attached to the complainant's affidavit are emails he sent to the condominium manager about the situation, with photos attached. The photos show what appear to be dog excrement on his patio area. In a May 27, 2020, email, he indicates he "did some recon" and took a photo of the Respondent's balcony. The photo confirms the presence of significant amounts of dog excrement on the Respondent's balcony. As well, he notes some staining of walls from urine and the photos provided appear to support this. In his affidavit, the complainant states that on September 14, 2021, he looked again at the Respondent's balcony and found it to be "littered with dog feces" and he provided photos to support this.
- [13] I accept the evidence of the Applicant and find that the Respondent has allowed her dog to defecate, urinate and soil the balcony attached to her unit and that she has failed to clean up the resulting mess and staining. I find that this has continued to the present. This situation is clearly not acceptable.
- [14] The Applicant has provided an affidavit from the condominium manager. It confirms the complaints that were received from the complainant which she brought to the attention of the board of directors. There is no indication that the condominium manager communicated with the Respondent at any time. The board directed the manager to contact the corporation's law firm and on October 21, 2020, the Applicant's legal counsel wrote to the Respondent to advise that the situation was serious and unacceptable. Counsel warned that if the situation

persisted, the dog could be deemed to be a nuisance and that the board could require that it be removed. Minutes for the board meeting of January 27, 2021, indicate that the board declared the Respondent's dog to be a nuisance because of continued complaints. The corporation's counsel wrote to the Respondent again on February 23, 2021, to advise that there had been continuing complaints:

Accordingly, the Board of Directors, pursuant to its authority contained in section 16(d) of the Declaration, has deemed your animal a nuisance. You are hereby required to permanently remove the animal on or before March 8, 2021.

Should you fail to remove the animal on or before the requested date, the Corporation will take legal action against you, pursuant to the terms of the *Condominium Act, 1998*. The Corporation would seek payment from you in respect of its legal fees.

- [15] On March 8, 2021, the day by which the dog was to be removed, the Applicant received a letter from a lawyer on behalf of the Respondent. The lawyer advised that following the initial warning in October, "the dog has not once done its business on the balcony, in other words, the practice has ceased. The dog has not been permitted to urinate or defecate [on the balcony]." On the basis of the evidence before me, it appears that this was not correct.
- [16] The letter from the Respondent's lawyer advised that the dog was a support animal. According to the affidavit from the condominium manager, the board does not accept that the Respondent requires a support animal and that even if she does, this would not provide a valid justification for the fact that the Respondent allows the dog to make a mess on the balcony and not properly deal with the mess.
- [17] The letter from the Respondent's lawyer included a letter from a social worker, dated March 5, 2021. The letter indicates that the social worker has been treating the Respondent since 2015 for a medical condition for which the Respondent is also receiving treatment from a psychiatrist. The letter states that the social worker prescribed an emotional support animal and requests "a reasonable accommodation to permit [the Respondent] to be accompanied by her dog". She indicates that the dog has been beneficial for the Respondent in regard to her medical condition.
- [18] The letter indicates that the Respondent has "certain limitations related to her ability to care for herself, as well as to live independently". If this is true, it suggests that the Respondent's failure to properly care for her dog may not be entirely due to negligence. On the other hand, the social worker advised that the Respondent

“understands that all local and provincial laws regarding animal registry and maintenance is the sole responsibility of her as the handler.”

[19] From the evidence provided by the Applicant, it appears that there has been no communication with the Respondent except the two letters sent to her from the Applicant’s legal counsel. It is unfortunate the Applicant did not take steps to better understand the situation and to explore solutions other than removal of the dog. It is also of course very unfortunate that the Respondent chose to not engage in this hearing. As a result, it is not possible to understand why the Respondent has not been a responsible dog owner. There are a number of other unresolved issues, including the breed of the dog, whether the Respondent is capable of responsibly caring for a dog, whether there are rights and obligations under the Human Rights Code that need to be considered, and how the process of implementing the board’s order that the dog be removed from the condominium will unfold.

[20] All that is clear is that the Respondent has allowed her dog to defecate and urinate on her balcony, that she has not cleaned up the resulting mess, and that this has a significant impact on the neighbour below. This is unacceptable and must be remedied. In addition, the corporation has a duty to ensure that owners follow the rules as set out in the governing documents and owners are obliged to follow those rules (sections 17(3) and 119(3) of the *Condominium Act, 1998* (the “Act”). As noted in *York Condominium Corporation No. 26 v. Daniela Ramadani* (2011 ONSC 6726):

It is quite obvious that unless the corporation takes reasonable steps to enforce its rules, in a reasonable matter, chaos will result. Owners and occupiers are entitled to expect that others will observe the rules and that if they fail to do so, the corporation will take measures to enforce the rules.

[21] Section 1.44(1) of the Act allows the Tribunal to make orders in a proceeding, including the following:

An order directing one or more parties to the proceeding to comply with anything for which a person may make an application to the Tribunal.

An order prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action.

An order directing whatever other relief the Tribunal considers fair in the circumstances.

[22] Article 12(g) of the declaration gives the board of directors of the condominium the authority to deem a pet to be a nuisance and to demand the removal of the pet

from the Condominium, on such terms as it may decide. The board has deemed the Respondent's dog to be a nuisance and informed the Respondent that she must remove the dog from the condominium.

- [23] An order requiring a person to remove a pet against their will is a serious matter. Most people have a strong emotional attachment to their pets and an order breaking that attachment can result in emotional trauma. This is especially true if there are underlying mental health issues. It is nevertheless necessary in some cases because of flagrant violation of the condominium's rules (see Peel Condominium Corporation No. 96 v. Psoufimis, 2021 ONCAT 48).
- [24] Based on the limited evidence before me in this case, I must conclude that the board's determination that the dog is a nuisance is reasonable. The available evidence is that the Respondent has allowed her dog to defecate and urinate on her balcony and that she has not cleaned up the resulting mess. This is unacceptable and has continued even after the Respondent was told to change her behaviour. On the basis of the evidence before me, I find that the board is entitled to insist on the removal of the dog from the condominium.
- [25] However, I also find that the Applicant should first consider whether there may be ways to communicate with the Respondent to clarify some of the related issues in this case and to see if anything can be done to avoid escalation of conflict in the event that the dog must be removed. Since the board is in the best position to assess and understand the situation, I limit my order to an order that they consider whether there are measures that can reasonably be taken short of removal of the dog.
- [26] I make the following orders under section 1.44(1) of the Act:
1. The Applicant's board is directed to consider communicating with the Respondent to try to better understand her situation, clarify some of the related issues, and avoid escalation of conflict.
 2. If the Board determines that further communication with the Respondent is not appropriate, or if after such communication it is still satisfied that the dog is a nuisance and must be removed, it may give notice in writing to the Respondent giving her at least 30 days to make arrangements to remove the dog from the condominium.
 3. If the Applicant orders the Respondent to remove her dog from the condominium, she must comply.
 4. The Respondent is ordered to immediately clean her balcony and to remove any feces or urine.

5. The Respondent is ordered to not allow her dog to defecate or urinate on her balcony.

F. COSTS AND DAMAGES

[27] The Applicant seeks an order requiring the Respondent to pay:

1. The Tribunal fees of \$200
2. Costs in the amount of \$951.96 plus HST for the two letters sent to the Respondent by the Applicant's legal counsel
3. Costs in the amount of \$13,157.50 plus HST for the legal fees in preparing the Application and bringing it forward to this point.

[28] Section 9 of the condominium declaration provides that costs incurred by the corporation by reason of any breach of the declaration, by-laws or rules by an owner shall be paid for by the owner and may be recovered in the same manner as common expenses.

[29] As noted earlier, section 1.44(1) sets out the things that the Tribunal may order in a proceeding. These include an order:

... directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed"; and,

... directing a party to the proceeding to pay the costs of another party to the proceeding

[30] Rule 45.2 of the Tribunal's Rules provides:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User's CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise. This does not include legal fees.

[31] Rule 46.1 provides:

The CAT will not order a User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so.

[32] This decision is a final decision. To get to this point, the Applicant was required to pay CAT fees in the amount of \$200. Under the Tribunal's Rule 45.2 the Respondent is required to pay the Applicant this amount. If the Respondent does

not make this payment, the amount may be added to her common expenses.

[33] Before bringing this Application to the CAT, the Applicant's legal counsel sent two letters, dated October 21, 2020, and February 23, 2021, to the Respondent about her violation of the rules. The Applicant's invoice for these letters was \$900 plus HST and a charge of \$51.97 for a courier delivery of the second letter.

[34] According to the Applicant's final submissions, the charge of \$900 was based on three hours work by an associate counsel at the firm, with an hourly rate of \$300. The submission does not provide a breakdown as between the time spent on the two letters.

[35] Earlier in this Decision, I expressed concern about the apparent lack of communication with the Respondent about the matter before the Applicant resorted to letters from counsel. As a general rule, a condominium should make good faith attempts to resolve a dispute with an owner before involving counsel with associated legal costs.

[36] However, since there was no change after the October 2020 letter, the letter from counsel of February 23, 2021, was justified. I find that the Applicant is entitled to the costs associated with the February 23, 2021, letter which I fix at half of the amount for the two letters, or \$450 plus HST for a total of \$508.50. I am not clear as to why it was necessary to courier the February 23, 2021, letter to the Applicant as it could have been delivered by the condominium manager or by mail. I find that the charge of \$51.97 for the courier is not warranted. Under Rule 45.2 the Respondent is directed to pay the Applicant \$508.50, representing the costs associated with the February 23, 2021, letter. If the Respondent does not make this payment, the amount may be added to her common expenses.

[37] As stated in the Rules, the Tribunal will order a party to pay the legal costs of the successful party only if there are exceptional circumstances. The Applicant submits that there are exceptional circumstances in this case. These include the seriousness of the situation, especially for the complainant, and the apparent willful disregard of the Respondent for the effect on her neighbour of her failure to follow the rules. The Applicant further submits that the Respondent did not participate in the CAT process and that the corporation did everything this Tribunal might have expected it to do, to avoid this hearing and its associated costs.

[38] I find that these are not sufficiently exceptional circumstances to warrant an order for legal costs. The fact that the Respondent did not participate in the hearing did

not result in additional costs for the Applicant and in fact may have resulted in the expenditure of less time than if she had participated. The situation in this case is serious, especially for the complainant as is the Respondent's failure to follow the condominium's rules. These need to be remedied but do not, in my view, create exceptional circumstances requiring an order for legal costs.

G. ORDERS

[39] I make the following orders:

1. The Applicant's board is directed to consider communicating with the Respondent to try to better understand her situation, clarify some of the related issues, and avoid escalation of conflict.
2. If the Board determines that further communication with the Respondent is not appropriate, or if after such communication it is still satisfied that the dog is a nuisance and must be removed, it may give notice in writing to the Respondent giving her at least 30 days to make arrangements to remove the dog from the condominium.
3. If the Applicant orders the Respondent to remove her dog from the condominium, she must comply.
4. The Respondent is ordered to immediately clean her balcony and to remove any feces or urine.
5. The Respondent is ordered to not allow her dog to defecate or urinate on her balcony.
6. Within 30 days of this decision, the Respondent shall pay to the Applicant the CAT fees paid by the Applicant, in the amount of \$200.
7. Within 30 days of this decision, the Respondent shall pay the Applicant \$508.50 representing the costs associated with the February 23, 2001 letter from the Applicant's legal counsel.
8. If the Respondent does not make the payments as directed, the costs may be added to her common element expenses in accordance with the condominium's governing documents.

Brian Cook
Member, Condominium Authority Tribunal

Released on: October 15, 2021