

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 15, 2021

CASE: 2021-00186N

Citation: Toronto Standard Condominium Corporation No. 2370 v. Chong et al., 2021 ONCAT 108

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

Member: Mary Ann Spencer, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2370
Represented by Maria Dimakas, Counsel

The Respondents,

Ken Chong
Self-Represented

Yathavan Gopalakrishnan
Self-Represented

Hearing: Written Online Hearing – September 9, 2021 to October 27, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2370 (“TSCC 2370”) requests the Tribunal order Respondent Yathavan Gopalakrishnan to permanently remove his dogs from the condominium unit he rents from its owner, Respondent Ken Chong. TSCC 2370’s position is that Mr. Gopalakrishnan is in violation of the corporation’s pet nuisance rule; the corporation has received numerous complaints about loud and prolonged barking and there have been incidents of the dogs behaving aggressively on the common elements.
- [2] TSCC 2370 also requests an order that Mr. Chong indemnify TSCC 2370 for its legal costs and expenses in this matter pursuant to the indemnification provisions in its declaration and rules.
- [3] Mr. Gopalakrishnan’s position is that his dogs should not be removed; they are not aggressive, and their barking is natural behaviour. He maintains that the

complainants are overly sensitive, and the reported incidents are “being blown out of proportion.” He believes there is discrimination toward large dogs. Further, a representative of provincial Animal Welfare Services told him that the complaints against him may be the result of racial profiling.

- [4] Mr. Chong supports TSCC 2370’s request that the Tribunal order the permanent removal of Mr. Gopalakrishnan’s dogs. He submits that he has made every effort to obtain Mr. Gopalakrishnan’s compliance up to and including requesting an eviction order from the Landlord and Tenant Board. He requests the Tribunal order Mr. Gopalakrishnan to pay any legal costs or expenses it awards.
- [5] For the reasons set out below, I find that Yathavan Gopalakrishnan has failed to comply with TSCC 2370’s declaration and rules and order him to permanently remove his dogs from TSCC 2370’s premises within seven days of the date of this decision. I also order Ken Chong to pay costs of \$2,728.27 and Yathavan Gopalakrishnan to pay costs of \$8,686.02 within 30 days of the date of this decision.

B. BACKGROUND

- [6] Ken Chong is the non-resident owner of a unit of TSCC 2370. He rented his unit to Yathavan Gopalakrishnan who moved in on March 1, 2021. Mr. Gopalakrishnan owns two dogs.
- [7] On March 6, 2021, TSCC 2370 received its first complaint about the noise of barking dogs in the condominium unit. To the date of disclosure in this hearing, the corporation had received and documented 48 complaints.
- [8] On March 19, 2021, in a letter from Goldview Property Management addressed to “Residents” of Mr. Chong’s unit and copying Mr. Chong (Exhibit 10), TSCC 2370’s condominium manager Jorge Melendez advised that the corporation had received complaints about dogs barking in the unit and of aggressive behaviour on the common elements. The letter requested “immediate attention to this matter”.
- [9] On April 7, 2021, at the request of TSCC 2370’s board of directors, Mr. Melendez wrote again to the “Residents” of the unit, copying the Mr. Chong (Exhibit 9). The letter advised that the corporation had received several complaints about dogs barking continuously in violation of the corporation’s rules and requested they be removed from the premises by April 21, 2021.
- [10] Mr. Gopalakrishnan responded to the April 7, 2021 letter in a series of e-mails to TSCC 2370’s condominium management provider. He noted that the smaller of his

two dogs was a six-month-old puppy that did not bark and that his other dog was a service animal. He indicated he believed he was allowed to make noise in the unit until 10 p.m. and that he would be contacting a lawyer to ascertain his rights.

- [11] On April 23, 2021, on the instruction of TSCC 2370's board of directors, Deo Condominium Lawyers wrote to Mr. Gopalakrishnan, copying the registered owners. The letter, signed by counsel Maria Dimakas, (Exhibit 7) set out the details of three incidents of the dogs' aggressive behaviour and of 22 noise complaints the corporation had received from six residents on three floors between March 6 and April 20, 2021. The letter demanded the dogs be removed from the corporation's premises by April 28, 2021. It also noted that Mr. Gopalakrishnan had provided no information to verify that either of his dogs was a service animal.
- [12] On April 23, 2021, Ms. Dimakas also wrote directly to Mr. Chong to advise him of his responsibility as the unit's registered owner to ensure that his tenant complied with the demand that the dogs be removed. The letter (Exhibit 7) also advised Mr. Chong that he would be required to indemnify TSCC 2370 for its legal costs.
- [13] On April 23, 2021, Mr. Gopalakrishnan e-mailed Ms. Dimakas and attached photographs of a card indicating one of his dogs was registered with Assistance Dogs of America, a dog tag labelled "ADA", and a vest labelled "Service Dog."
- [14] Mr. Gopalakrishnan did not remove his dogs from the unit and on June 3, 2021, TSCC 2370 filed its application with the Tribunal.

C. ISSUES & ANALYSIS

[15] The issues to be addressed in this matter are:

1. Should Yathavan Gopalakrishnan's dogs be permanently relocated away from TSCC No. 2370?
2. Should an award of costs be assessed?

Issue 1: Should Yathavan Gopalakrishnan's dogs be permanently relocated away from TSCC No. 2370?

[16] Counsel for TSCC 2370 submits that Mr. Gopalakrishnan is in violation of TSCC 2370's pet rule O.11 which states:

No one shall permit any animal to bark, howl or cause a noise disturbance which disturbs the comfort or quiet enjoyment of the property by other Residents.

[17] She further submits that TSCC 2370's board of directors and management have discretion to require the removal of Mr. Gopalakrishnan's dogs from the corporation's premises under sections 3.08 and 4.02 of its declaration and in its Rule 0.2.

Evidence

- [18] Witness testimony in this matter was heard by teleconference on October 12, 2021. Five witnesses testified for TSCC 2370. Mr. Gopalakrishnan and Mr. Chong testified on their own behalves. I note that while Mr. Gopalakrishnan did take part in the teleconference, his participation in this case was otherwise very limited. He filed no documentary evidence and did not submit a closing statement.
- [19] Pavan Chinta is a concierge and the security head at TSCC 2370. Mr. Chinta testified that between March 6, 2021, and September 19, 2021, 48 complaints were received about dogs barking in Mr. Gopalakrishnan's unit. He explained that each complaint is investigated; the concierge goes to the floor and asks the occupant to address the problem. If no one answers the unit door, the occupant is called. A written report is then logged. Mr. Chinta testified that he personally investigated a number of the complaints; he described the noise as being "extremely loud" and stated it could be heard throughout the hallway. As head of security, Mr. Chinta reviews the reports that are prepared by other concierges before forwarding them to management. Copies of the 48 incident reports were entered into evidence as Exhibit 2.
- [20] Mr. Gopalakrishnan testified that his dogs bark when they hear strangers in the hall or when people knock on his door. He noted that the dogs would continue to bark if someone stood in the hall and suggested this is why security heard prolonged barking when they visited the floor and stayed to monitor the noise. He also stated that the walls in the building are "paper thin" and his dogs go on "alert mode" and bark when they hear sounds. He stated that people are overly sensitive. He testified that his dog does look intimidating; she is a large, black dog with cropped ears, and she feeds off the energy of people reacting when they see her. He stated that "every situation is being blown out of proportion."
- [21] Mr. Chinta also testified about three incidents involving the dogs which took place on the common elements. On March 17, 2021, he witnessed Mr. Gopalakrishnan enter the lobby and the larger of his two dogs tried to attack superintendent Jimmy Olivares. Mr. Chinta preserved the video (Exhibit 13) and reported the incident to property management. Mr. Olivares testified that as Mr. Gopalakrishnan was going towards the elevator, the dog was barking and trying to attack him. On cross-examination, he agreed that the dog was leashed and wearing a muzzle when the

incident occurred. Mr. Gopalakrishnan denied that the dog lunged at Mr. Olivares and disputed that lunging could be characterized as aggressive behaviour if a dog is leashed.

- [22] The second incident occurred in the underground parking on March 19, 2021. Mr. Chinta explained the video recording (Exhibit 12) which shows a resident walking with a small, leashed dog. Mr. Gopalakrishnan's two dogs, neither of which were leashed, rushed towards the resident's dog. Mr. Gopalakrishnan ran after the dogs and separated the larger dog from the other resident's small dog. The resident reported the incident to Mr. Chinta and advised he would be calling Toronto Animal Services.
- [23] Mr. Gopalakrishnan testified that his large dog only grabbed the harness of the other resident's dog which was not injured. He denied that he struggled to get his dog under control. He further testified that Animal Services did visit him the following day and he was advised that the behaviour likely occurred because his large dog was being protective of his puppy. They advised him to keep a muzzle on his large dog and told him "everything is fine". He testified that he no longer walks the two dogs together and the large dog always wears a muzzle. On cross-examination, he stated he has nothing in writing from Animal Services.
- [24] Jorge Melendez is TSCC 2370's condominium manager. He testified that he called Animal Services after the March 19, 2021, incident but was told the involved resident needed to make the call. He further testified that he later spoke to Animal Services who advised that a warning had been issued and that the dog would have to be removed if there was another incident.
- [25] Following the incident in the parking garage, Mr. Melendez prepared the March 19, 2021, letter sent to Mr. Gopalakrishnan which advised him to take action to address the situation. Mr. Melendez testified that Mr. Gopalakrishnan called him after he received the letter and told him the dogs were service dogs and were not aggressive.
- [26] Mr. Gopalakrishnan also testified that "a registered person from the province" who "looked like police" visited him. At my request, he confirmed the involved agency was Animal Welfare Services. He testified that they played with his dog, told him there was discrimination against big dogs and suggested that he himself, as a member of a visible minority, was being racially profiled.
- [27] The third incident (Exhibit 11) took place on April 27, 2021. Mr. Chinta heard barking coming from the elevator area in the lobby. He did not witness the incident but explained that a resident advised him that Mr. Gopalakrishnan's large dog had

tried to attack his young daughter. Mr. Melendez testified that this incident was not reported to Toronto Animal Services because the resident preferred not to make a report. Mr. Gopalakrishnan testified that the resident and his daughter exited from one elevator as he and his leashed dog exited from another. The child screamed when she saw the dog and her father “went on the floor in ninja movements” in front of her. He testified that his dog was six feet away from them. He stated his dog always wears a muzzle and that there is no evidence of his dogs ever having injured anyone.

[28] Peter Lawson is a member of TSCC 2370’s board of directors. Mr. Lawson testified that he monitors the logs prepared by security staff. He further testified that the board was advised by condominium management of the situation with Mr. Gopalakrishnan’s dogs. When it became evident that Mr. Gopalakrishnan could not control the situation, the board resolved to order the dogs be removed. Mr. Melendez then prepared and signed the April 7, 2021 letter to Mr. Gopalakrishnan demanding that the dogs be removed from the corporation’s premises by April 21, 2021.

[29] Ranjeet Chugh is a regional manager with Goldview Property Management and is Mr. Melendez’ supervisor. He explained that his role in the situation was to ensure that due process was followed and to liaise with the board of directors. Mr. Chugh testified that legal counsel was retained to address this matter after the two letters sent by TSCC 2370 failed to obtain Mr. Gopalakrishnan’s compliance. As noted above, on April 23, 2021, Deo Condominium Lawyers sent a letter to Mr. Gopalakrishnan demanding his dogs be removed from TSCC 2370’s premises by April 28, 2021. To date, the dogs have not been removed.

Analysis

[30] Mr. Gopalakrishnan is required to comply with the rules of TSCC 2370. Section 119(1) of the *Condominium Act*, 1998 sets out the requirement that owners and occupiers of units comply with the Act, the declaration, by-laws and the rules of a corporation:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

Section 17(3) of the Act sets out the duty of a corporation to ensure owners and occupiers of units comply with its governing documents:

The corporation has a duty to take all reasonable steps to ensure that the owners,

the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[31] Both the declaration and the rules of TSCC 2370 contain provisions which set out the authority of its board to require the removal of a pet deemed to be a nuisance or a danger. Section 3.08 of the declaration states that pets deemed to be a danger by the board, in its sole and absolute discretion, are not permitted on the common elements:

No animal, livestock, or fowl, other than those household domestic pets as permitted pursuant to Article 4 of this Declaration are permitted to be on or about the Common Elements, including the exclusive use Common Elements, except for ingress to and egress from a Dwelling Unit. All dogs and cats must be kept under personal supervision and control and held by leash at all times during egress from a Dwelling Unit and while on the Common Elements. Notwithstanding the foregoing, no pet deemed by the Board, in their sole and absolute discretion, to be a danger to the residents of the Corporation is permitted to be on or about the Common Elements.

Section 4.02(b) of the declaration addresses the occupation and use of dwelling units and also permits the board of directors or the property manager to deem a pet to be a nuisance or a danger to owners or other residents and to require its removal from the property. The section reads, in part:

No pet, which is deemed by the Board or the property manager, in their absolute discretion, to be a nuisance or a danger to Owners or other residents of the Corporation shall be kept in any Dwelling Unit. Such Owner, shall within two (2) weeks of receipt of written notice from the Board requesting the removal of such pet, permanently remove such pet from the Property.

Rule O. 2 of TSCC's Rules states:

No pet, which is deemed by the Board, in its sole, absolute and unfettered discretion, to be a nuisance or a danger to the Owners and Residents shall be kept in any unit or permitted on the common elements. Any pet which is deemed by the Board to be a nuisance or a danger shall, within two weeks of receipt of written notice from the Board or the Property Manager requesting removal of such pet, be permanently removed from the property.

[32] It is established law that deference should be shown to the decisions of a condominium corporation's board. Counsel for the Applicant referred me to the decision in *Metropolitan Toronto Condominium Corporation No. 1025 v. Hui*, 2021 ONSC 5839, a case in which the applicant corporation sought an order directing

the resident tenant of a condominium unit to comply with its rules. At p. 29, the court wrote:

As a general rule the court will enforce the rules established by the condominium and exceptions will be rare:

This is to foster the result that people only move into the Condominium if they are prepared to live by the rules of the community which they are joining. If they are not, they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences. The provisions of the Act and the declaration, bylaws and rules are “vital to the integrity of the title acquired by unit owners.” Unit owners are not only bound by the rules and regulations but are “entitled to insist that other unit owners are similarly bound.”: *York Condominium Corporation No. 137 v. Hayes*, 2022 ONSC 4599, at para. 23.

Counsel also referred me to the decision in *Durham Standard Condominium Corporation No. 187 v. Morton*, 2012 ONSC 161 which, at p. 23 states:

The issue of selective enforcement is a valid issue to consider; however, the standard of review of the decision of the board by the court is not whether or not the court would have made a different decision. Rather, the reviewing court considers the reasonableness of the decision of the board as well as whether it was a decision reached capriciously ...

[33] I find that the evidence in this case supports the reasonableness of TSCC 2370’s decision to deem Mr. Gopalakrishnan’s dogs a nuisance. The evidence indicates that 19 complaints about loud and, in some cases, prolonged barking from Mr. Gopalakrishnan’s unit had been logged between March 6, 2021, and April 7, 2021, the date on which Goldview Property Management sent its letter demanding the dogs be removed from TSCC 2370’s premises. Three more noise complaints had been logged by April 23, 2021, the date when Deo Condominium Lawyers’ letter demanding the removal of the dogs was sent. An additional 26 complaints were documented to September 19, 2021, when disclosure of documents in this hearing was requested.

[34] I find that the evidence that Mr. Gopalakrishnan’s dogs are a danger to owners as set out in TSCC 2370’s declaration and rules is less conclusive than the evidence which supports the decision by TSCC 2370’s board to deem them a nuisance. The video of the March 19, 2021, incident in the parking garage indicates that the unleashed dogs attempted to attack another resident’s dog. Mr. Gopalakrishnan took responsibility for this incident and testified that his large dog is now muzzled when on the premises, a fact confirmed by the testimony of Mr. Olivares. However, I find that the other two incidents for which video was submitted and Mr. Chugh’s

testimony that Mr. Gopalakrishnan's large dog growled at him when he encountered Mr. Gopalakrishnan with the dog on entering the building on October 5, 2021, while indicating that individuals may be fearful of the dog, do not clearly indicate that the dog was out of its owner's control or that it posed a danger.

[35] With respect to the importance of enforcement of rules, the Applicant's Counsel referred me to the court's decision in *York Condominium Corporation No. 26 v. Ramadani*, 2011 ONSC 6726, a case where the court found it was reasonable to order an owner to remove her dog, Justice Strathy wrote at p. 42:

That unless the corporation takes reasonable steps to enforce its rules, in a reasonable manner, 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.

The decision goes on to state at p. 65:

removing a dog from a family is a serious matter. People become understandably attached to their pets. However, people living in a condominium are required to conduct themselves in a manner that is considerate of the interests of their fellow owners and neighbours. That is part of the bargain one makes on becoming a unit owner.

[36] That a condominium corporation has a duty to enforce compliance was affirmed in the Tribunal's recent decision in *Middlesex Vacant Land Condominium Corporation No. 605 v. Cui*, 2021 ONCAT 91, where the removal of two dogs was ordered. At p. 30, the Tribunal wrote:

As the Court recognized in *Ramadani*, it is a serious matter to require that the Respondent's dogs be removed, but it is also a serious matter when condominium residents do not conduct themselves in a way that is considerate of their neighbours and other owners. In order to ensure protection of the interests of other condominium owners and residents, a condominium corporation must be able to enforce compliance with its governing documents.

[37] Although I have found that the evidence with respect to the dogs being a danger to owners is not entirely persuasive, I note that both s. 402(b) of TSCC 2370's declaration and its Rule O. 2 provide for the removal of pets if the board, in its discretion, deems them to be either a nuisance or a danger to owners. As set out above in p. 34, I find that the evidence that Mr. Gopalakrishnan's dogs are a nuisance supports the reasonableness of the decision of the board of TSCC 2370 to demand their removal in accordance with these provisions and will order that they be removed within seven days of the date of this decision.

[38] Mr. Melendez testified that in a telephone call Mr. Gopalakrishnan advised him that

his dog was a service animal. I note that the documentary evidence is that in his e-mail response to Goldview Management's April 7, 2021 letter, Mr. Gopalakrishnan advised that the larger of his two dogs was a service animal. He testified in this hearing that both dogs are service animals. However, he presented no medical evidence to support that he requires a service animal. And, even if the dogs are service animals, that status would not abrogate Mr. Gopalakrishnan's responsibility to ensure they do not create a nuisance.

[39] As stated previously, Mr. Gopalakrishnan also testified that a representative of the province's Animal Welfare Services told him that the noise complaints sent to the corporation resulted from racial profiling. However, on cross-examination, he was very specific in clarifying "it's the people making the phone calls", that is, the residents who complained about noise, rather than the staff or board of directors of TSCC 2370 who are allegedly racially profiling. Mr. Gopalakrishnan provided no evidence to support this allegation.

Issue 2: Should an award of costs be assessed?

[40] TSCC 2370 is requesting the Tribunal order owner Ken Chong to indemnify it for the \$19,799.29 in legal costs and expenses it incurred in this case pursuant to the indemnification provisions set out in its governing documents. Mr. Chong submits that he made all reasonable efforts to obtain Mr. Gopalakrishnan's compliance and that it is Mr. Gopalakrishnan who should be held responsible for the corporation's legal costs and expenses.

[41] Counsel for the Applicant submits that TSCC has a duty under s. 17(3) of the Act to take all reasonable steps to ensure that owners and occupants comply with the Act, the declaration, the by-laws and the rules and this duty also applies to the provisions in its governing documents which require owners to indemnify it for breaches of the declaration. She further submits that the corporation has a duty to enforce compliance with the indemnification provisions.

[42] Section 2.02 of TSCC 2370's declaration states that an owner shall pay for any costs incurred by the corporation as a result of a breach of its governing documents by that owner or their tenant:

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 members of his family and/or their respective tenants, 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.

Section 6.01 of the declaration states:

Each Owner shall indemnify and save harmless the Corporation from and against any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to the Common Elements, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation. All payments to be made by an Owner pursuant to this Article shall be deemed to be additional contributions towards the Common Expenses payable by such Owner and shall be recoverable as such.

Finally, TSCC 2370's Rule 3 B states:

Any losses, costs or damages incurred by the Corporation (including, without limitation, legal costs) by reason of a breach of the Act, or the Declaration, By-Laws and Rules or by reason of any litigation against the Corporation without obtaining a judgment against the Corporation, by any Owner and/or Resident, or by the respective family members, tenants, guests, invitees, employees or agents of the Owner and/or Resident or any of the foregoing shall be borne and paid for by such Owner of the unit and shall be deemed to be additional contributions towards the common expenses payable by such Owner and shall be recoverable as such.

[43] TSCC 2370 requests that Mr. Chong be ordered to pay its legal costs and expenses in this matter in accordance with the above provisions which I note clearly set out that costs are to be "borne and paid" by the unit owner. If costs are not ordered in this case, they would be paid by all of TSCC 2370's owners. Counsel for the Applicant submits that it would be neither fair nor equitable for all owners to bear the costs of enforcing compliance in this matter when those costs result from the conduct of one owner's tenant. In this regard, she referred me to the decision in *Hui*:

The condominium rules provide that an owner is responsible for the costs incurred by the corporation as a result of the breach of the rules or regulations by the owner, or occupants of the unit. The corporation was required to incur costs because of the breaches of the rules by Ms. Hui's tenant.

I have some sympathy for Ms. Hui. She fully cooperated with the Applicant and has taken steps to have Mr. Eshetu removed from the unit. However, I also have sympathy for the other owners of the units in the building. It is not fair that the owner unit holders are required to be responsible for the costs of the Application which was required to compel Ms. Hui's tenant to comply with the condominium rules.

[44] TSCC 2370 is claiming \$19,799.29, comprised of \$200 in filing fees paid to the Tribunal and \$19,599.29 in legal fees. Of the legal fees, \$2,627.25 was incurred by the applicant before it filed its application with the Tribunal on June 3, 2021.

[45] The authority of the Tribunal to make orders is set out in s. 1.44 of the Act. The relationship of a corporation's request for an order enforcing its indemnification provisions to an order for costs under the Tribunal's cost rules was set out at p. 41 in the Tribunal's recent decision in *Middlesex Vacant Land Condominium Corporation No. 605 v. Cui*, 2021 ONCAT 91:

The Applicant has come to the Tribunal seeking authorization to pursue its enforcement costs, consistent with the ruling of the court in *Amlani*. However, unlike the courts, the Tribunal's powers to award costs are set out in the Act and the CAT's Rules of Practice. Subparagraph 1.44(1)4 of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding, Rule 46 of the Rules of Practice states that the CAT will not order a User to pay another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so. In addressing the Applicant's request for its CAT legal costs, I find that the Tribunal's power to enforce the Applicant's indemnification provisions is subject to the CAT's costs rules.

In *Middlesex*, the Tribunal assessed the full costs incurred by the applicant corporation before its application to the Tribunal to the unit owner in accordance with the applicant's indemnification provisions. The applicant's request for legal fees associated with the proceeding before the Tribunal was assessed in accordance with the Tribunal's Rules of Practice.

[46] In this case, TSCC 2370 incurred \$2,627.25 in legal fees with respect to its efforts to enforce compliance before it filed its application with the Tribunal. TSCC 2370's indemnification provisions set out that the corporation's costs incurred to enforce a breach of its governing documents by a resident tenant are to be paid by the unit owner. I agree with Counsel for the Applicant's submission that it would be neither fair nor reasonable for all unit owners to pay these costs. Therefore, in accordance with TSCC 2370's indemnification provisions, I will order Mr. Chong to pay \$2,627.27 to the applicant. The \$17,172.04 balance of TSCC 2370's request will be considered in accordance with the Tribunal's Rules of Practice.

[47] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

45.1 The CAT may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT, including:

- a) any fees paid to the CAT by the other User;

- b) another User's expenses or other costs that were directly related to this other User's participation in the Case; and,

45.2 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.

46.1 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.

[48] The \$17,172.04 balance of TSCC 2370's request is comprised of \$200 in Tribunal fees and \$16,972.04 in legal fees. In accordance with Rule 45.2, I will order reimbursement of the \$200 Tribunal fees it paid. With respect to the legal fees, I must determine if there are exceptional reasons to order them.

[49] The evidence in this case is of frequent and recurring violations of TSCC 2370's pet rule with 48 noise complaints documented over a period of six months. Five of those complaints were recorded in the first two weeks of Mr. Gopalakrishnan's tenancy. Rather than take action to address the cause of the complaints, the evidence is that Mr. Gopalakrishnan does not consider his dogs' barking to be a problem. Mr. Gopalakrishnan's response to the March 19, 2021 letter from Goldview Property Management was to advise that his dog was a service animal, presumably in the mistaken belief that this exempted him from his obligation to comply with the corporation's rules. His response to the April 7, 2021 letter was to again claim that his large dog was a service animal, to dismiss the complainants as "anal" and "ridiculous", and to demonstrate his disregard for TSCC 2370's pet rule 0.11 by writing "there is no law against dogs being able to bark before 10 p.m." He accused the corporation of harassment and, with respect to the reported incidents of his dogs lunging at staff and other residents, he accused it of "making things up."

[50] In his testimony at this hearing, Mr. Gopalakrishnan did not deny that his dogs barked but stated it was their way of "talking" and he blamed "paper thin" walls and overly sensitive neighbours for the noise complaints. I note that with respect to the evidence submitted by the corporation, he only accepted responsibility for the March 19th incident in the parking garage where the video shows his dogs were off-leash and attempted to attack another resident's dog.

[51] I find that Mr. Gopalakrishnan's persistent breach of TSCC 2370's pet rule O. 11 for a period extending over six months, his denial that his dogs' barking was an issue and his blatant refusal to comply with TSCC 2370's escalating efforts to

obtain his compliance with the rule comprises an exceptional reason to award legal fees in this case.

- [52] I must determine both the appropriate amount of costs to be awarded and, because there are two respondents in this case, how the cost award should be allocated between them. As set out earlier, section 119 (1) of the Act requires both an owner and an occupier of a condominium unit to comply with the Act, the declaration, the by-laws and the rules.
- [53] With respect to the quantum of legal fees to be awarded, I have considered that the applicant corporation was required to apply to the Tribunal to enforce its order that the applicant remove his dogs from its premises and that all owners will be responsible for any legal fees not ordered. I have reviewed the Tribunal's decisions in *Middlesex*, and in *Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48*, which are both cases in which the Tribunal ordered the removal of an owner's dog. In *Middlesex*, the Tribunal, taking the respondent's personal circumstances into account, ordered the respondent to pay 25% of the applicant's legal fees. In *Psofimis*, the Tribunal awarded 100% of the applicant corporation's requested legal costs. In the latter case, the Tribunal noted that the corporation was required to request an order from the Tribunal "only because Mr. Psofimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters and blatantly disregarded the agreement entered into by him, evidently not in good faith, promising to comply...". I note that in the latter case Mr. Psofimis had acquired the subject dog notwithstanding that he had signed a written agreement with the corporation not to do so. In the circumstances of the case before me, where the evidence is that the tenant respondent also ignored numerous complaints and attempts to obtain his compliance but where the reasonableness of the board's decision to order the removal of his dogs was an extant issue, I find an award of 50% of the applicant's legal costs to be appropriate.
- [54] The final question to be addressed is which of the respondents should pay the cost award. As noted earlier in this decision, Section 119 (1) of the Act requires both a unit owner and a tenant to comply with a corporation's governing documents. Section 119 (2) of the Act requires an owner to take "all reasonable steps" to ensure an occupier of their unit complies with the Act and governing documents. Mr. Chong submits that he made all reasonable efforts to obtain Mr. Gopalakrishnan's compliance and that any costs awarded should be paid by Mr. Gopalakrishnan.

[55] The documentary evidence indicates that Mr. Chong contacted Mr. Gopalakrishnan on March 19, 2021, the date he was copied on Goldview Property Management's first letter to his tenant. On April 5, 2021, Mr. Chong asked Mr. Gopalakrishnan if someone could look after the dogs when he had to leave the unit. In this regard, I note that many of the initial noise complaints indicate the dogs were barking when left alone in the unit. On April 7, 2021, following receipt of Goldview's second letter, and in the days immediately following, he made a number of requests, which Mr. Gopalakrishnan declined, for a meeting to discuss the noise complaints. On April 26, 2021, after receiving the letter from Deo Condominium Lawyers, Mr. Chong told Mr. Gopalakrishnan he had to remove the dogs or face eviction. He also offered to end the tenancy agreement if Mr. Gopalakrishnan wished to move voluntarily. On June 1, 2021, Mr. Chong served Mr. Gopalakrishnan with an N7 notice of eviction ("Notice to End Your Tenancy for Causing Serious Problems in the Rental Unit") under the *Residential Tenancies Act, 2006*, with an effective date of June 15, 2021 which Mr. Gopalakrishnan ignored.

[56] Based on this evidence, I find that Mr. Chong did make all reasonable efforts to obtain Mr. Gopalakrishnan's compliance and therefore should not be held responsible for the costs incurred by the corporation after it filed its application with the Tribunal. It was Mr. Gopalakrishnan who persistently breached the rules. His failure to respond to what began as requests for voluntary compliance before escalating into a notice of eviction from his landlord and demands from the corporation that the dogs be removed from its premises resulted in this application before the Tribunal. Therefore, it is Mr. Gopalakrishnan who should be held responsible. Accordingly, I order him to pay a total of \$8,686.01 to TSCC, comprised of the \$200 in Tribunal fees paid by TSCC 2370 and \$8,486.02 or 50% of the \$16,972.04 in legal fees incurred by TSCC 2370 after it filed its application with the Tribunal.

[57] In summary, I am ordering Mr. Chong to pay TSCC 2370 \$2,627.27 in accordance with the indemnification provisions set out in its declaration and rules and, in accordance with Rule 46 of the Tribunal's Rules of Practice, I am ordering Mr. Gopalakrishnan to pay TSCC 2370 a total of \$8,486.02 in costs.

ORDER

[58] The Tribunal Orders that:

1. Within 7 days of the date of this Order, Respondent Yathavan Gopalakrishnan shall permanently remove his dogs from the unit of Toronto Standard Condominium Corporation No. 2370 which he occupies.

2. Within 30 days of the date of this Order,

- a. Respondent Ken Chong shall pay \$2,627.27 to Toronto Standard Condominium Corporation No. 2370; and,
- b. Respondent Yathavan Gopalakrishnan shall pay \$8,686.02 to Toronto Standard Condominium Corporation No. 2370.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: November 15, 2021