

**CITATION:** Frontenac Condominium Corporation No. 6 v. McCauley, 2021 ONSC 8181  
**COURT FILE NO.:** CV-20-312 (Kingston)  
**DATE:** 20211209

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Frontenac Condominium Corporation No. 6, Applicant

**AND:**

Marilyn McCauley, Gordon McCauley, and Sarah Warwick, Respondents

**BEFORE:** Mr. Justice Graeme Mew

**COUNSEL:** *Victoria Craine*, for the applicant

*Nicholas Valsamis*, for the respondent Marilyn McCauley

Sara Warwick, respondent (self-represented)

**HEARD:** 9 December 2021, at Kingston (by video conference)

**ENDORSEMENT**

[1] On today's motion the applicant condominium corporation seeks orders relating to the conduct of the respondent Sara Warwick, and her continued occupancy as a tenant of the unit owned by the respondent Marilyn McCauley.

[2] The substantial record filed by the applicants contains an extensive list of incidents and complaints about Ms. Warwick. Over 200 complaints have been logged and her alleged conduct has resulted in over 60 police visits.

[3] Since 2018, Frontenac Condominium Corporation No. 6's lawyers and its condominium manager have contacted Ms. McCauley at least twenty-seven (27) times by way of telephone or written communication to either advise of Ms. Warwick's non-compliant behaviour and/or to discuss how to resolve matters.

[4] The applicant claims to have unsuccessfully sought effective action by Ms. McCauley to address concerns about her tenant's behaviour. Although perhaps as many as ten eviction applications under the *Residential Tenancies Act* have been brought, none of them have concluded with a decision. As recently as 11 May 2021, Ms. McCauley withdrew applications for orders to terminate the tenancy and evict Ms. Warwick for wilfully or negligently causing undue damage to the premises, substantially interfering with the reasonable enjoyment or lawful right, privilege or interest of Ms. McCauley or another tenant, and seriously impairing the safety of any person.

[5] The nature of the complaints made against Ms. Warwick include her screaming and yelling obscenities, banging on doors, punching walls, threatening physical harm, and exposing herself. While the applicant's factum "recognizes that Sara suffers from schizo-affective disorder", there is no medical evidence to confirm that.

[6] An application by the condominium corporation, within which the present motion is brought, seeks relief against both Ms. McCauley and Ms. Warwick requiring the complained of behaviour to cease and, should the behaviour continue, the eviction of Ms. Warwick.

[7] Counsel for Ms. McCauley confirmed that there are two pending proceedings before the Landlord and Tenant Board arising from unpaid rent and Ms. Warwick's alleged behaviour. A hearing in respect of the "rent" application is scheduled for 15 February 2022. There is not yet a hearing date for the "behaviour" application.

[8] While the applicant is encouraged by the reports that Ms. McCauley is once again attempting to obtain an eviction order from the Landlord and Tenant Board, it believes that pursuant to its obligations under the *Condominium Act, 1998*, S.O. 1998, c. 19, and in particular its duty to comply with the Act, the condominium declaration, its bylaws and rules, it has the right, and, indeed, is obliged to, pursue its own remedies to require compliance by the respondents.

[9] Section 134 of the *Condominium Act* authorises certain parties to seek a compliance order and for the court to grant such relief as is fair and equitable in all of the circumstances.

[10] The court has the express power to grant an order terminating a lease of a unit for residential purposes if it is satisfied that the lessee is in contravention of an order that has been made under section 134.

[11] This motion is the first step towards obtaining an order terminating the lease between Ms. McCauley and Ms. Warwick in the event that Ms. Warwick continues to engage in the sort of conduct that has led to the many complaints that have been made concerning her. Specifically, the applicant seeks:

An order requiring the respondent, Sara Warwick, to cease and desist from engaging in dangerous, threatening, harassing and/or other non-compliant behaviour while on the applicant's property that contravenes section 117 of the *Condominium Act 1998*, SO 1998, c 19 [*"Condominium Act"*] and/or the applicant's governing documents, which behaviour includes but is not limited to the following:

- i. Engaging in conduct that necessitates police intervention;
- ii. Engaging in conduct that interferes with the safety and security of the applicant's residents and guests;
- iii. Engaging in conduct that results in excessive noise and/or disturbance to other residents and guests; and

- iv. Engaging in conduct that is likely cause damage to the condominium property.

[12] In the event that Ms. Warwick does not comply with this order, the applicant asks to be at liberty to bring a further motion for an order pursuant to section 134(4) of the *Condominium Act, 1998* evicting Sara Warwick from residing in Marilyn McCauley's unit and terminating her lease.

[13] Ms. Warwick opposes the motion. She seeks a stay of this proceeding until the Landlord and Tenant Board has heard Ms. McCauley's eviction applications. She also argues that many of the issues raised by the applicant have already been determined as a result of the order made by the Landlord and Tenant Board on 11 May 2021, and reported at 2020 CanLII 119104 (ON LTB), consenting to the withdrawal of the previous applications made by Ms. McCauley.

[14] Ms. McCauley does not oppose the relief sought in this motion.

[15] I am satisfied that the applicant's concerns and complaints are valid. On multiple occasions Ms. Warwick has acted in an antisocial and disruptive manner that has substantially interfered with the reasonable enjoyment of other unit holders and the occupants of those units. At times her conduct has given rise to valid concerns about the safety and well-being of other occupants, their visitors, the applicant's staff and agents. Such conduct violates the requirements of the *Condominium Act* as well as the applicant's rules and bylaws.

[16] The circumstances of this case are not dissimilar to those considered by this court in *Toronto Standard Condominium Corporation No. 2395 v. Wong*, 2016 ONSC 8000. In that case the court granted injunctive and declaratory relief as part of a compliance order under s. 134(1) of the *Condominium Act, 1998*. As Akbarali J. noted, at para. 36, "people who move into a condominium must be prepared to live by the rules of the community that they are joining. The Act, the declaration, by-laws and rules are vital to the integrity of the title acquired by the unit owners..."

[17] As to the issue of concurrent proceedings before this court and the Landlord and Tenant Board seeking similar relief, as has been pointed out by counsel for the applicant, the applicant is not a party to those proceedings and, as the history of this matter has shown, has little if any ability to influence, let alone direct those proceedings or the outcome of those proceedings. It seems to me that the applicant has been more than patient with both Ms. Warwick and Ms. McCauley. While it is always a matter of concern to have what are effectively parallel proceedings before different tribunals, seeking essentially the same relief, the two sets of proceedings are brought by different parties with different interests and different responsibilities. In the case of the applicant it has, as has been pointed out, clear and unequivocal obligations under the *Condominium Act, 1998* to ensure compliance with not only the Act, but the condominium declaration, the rules of the condominium and its bylaws. Under those circumstances I see no justification in further delaying the ability of the applicant to obtain relief because of the ongoing proceedings in front of the Landlord and Tenant Board.

[18] The easy answer to the concerns raised by Ms. Warwick is that she now complies with the behaviour that the relief sought by the applicant invites. If she does, then the next step concerning

compliance will not have to be taken, and any other consequences that may arise from her behaviour to date will be left to be dealt with by the Landlord and Tenant Board. But if on the other hand she is non-compliant, the applicant should be at liberty to seek further relief from this court.

[19] The balance of the application is adjourned to a date to be fixed by the trial co-ordinator.

[20] An order will therefore go in accordance with these reasons. Ms. Warwick's approval as to the form and content of my order arising out of this motion is not required.

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Mew J

**Date:** 9 December 2021