CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 14, 2022
CASE: 2022-00025N
Citation: Nikolov v. Halton Standard Condominium Corporation No. 476, 2022 ONCAT 65

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

Member: Laurie Sanford, Member

The Applicant,
Cheryl Nikolov
Self-Represented, February 28, 2022 to May 9, 2022
Represented by Jackie Bartlett, Counsel, May 10,2022 to May 30, 2022

The Respondent,
Halton Standard Condominium Corporation No. 476
Represented by Kelly Gencel, Agent

Hearing: Written Online Hearing – February 28, 2022 to May 30, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] Ms. Nikolov is a unit owner in Halton Standard Condominium Corporation No. 476 ("HSCC476"). She asserts that a spotlight style of security light recently installed by HSCC476 is causing a bright light to shine into one of her bedroom windows, creating a nuisance, annoyance or disruption that is unreasonable. She wants HSCC476 to replace the spot light with a light that has baffles on the sides to direct the light downwards. Her submission is that other security lights that HSCC476 has installed have these baffles and she does not anticipate an issue if a similar style of light replaces the spotlight currently in place.

[2] HSCC476 takes the position that their light cannot be the cause of the problem since it is installed on a wall that is at a 90-degree angle from the front of Ms. Nikolov's unit. HSCC476 proposes several other possible sources of the light. Ms. Nikolov submits that the other light sources pre-date the new security light and that she did not have a light issue for the 12 years she has lived in the unit prior to the new spotlight being installed.

[3] The parties considered a simple test which was expected to determine if the new

spotlight is the source of the light in her bedroom. The spotlight was to be turned off by HSCC476 to see the effect in Ms. Nikolov's bedroom. The parties were unable to agree on the test procedure.

[4] For the reasons set out below, I have made the following findings. I find that the light in Ms. Nikolov's bedroom is a nuisance, annoyance or disruption that is unreasonable. I further find that Ms. Nikolov has presented credible, circumstantial evidence that the new spotlight is, more probably than not, the cause of the problem. While neither party was reasonable in negotiating the proposed test of the light, I find that HSCC4576's position ultimately led to the breakdown in negotiations. I conclude that HSCC476 had a straightforward way to demonstrate that its light was not the source of the light in Ms. Nikolov's bedroom and declined to conduct the test on reasonable conditions.

[5] I am directing HSCC476 to replace its current spotlight style security light with a baffled security light like the ones it has installed on the sides of three other corner units. I am also directing HSCC476 to pay Ms. Nikolov $200 in reimbursement of her filing fees. While both parties claimed some form of recompense for their time and costs of the hearing, I find that the Tribunal Rules of Practice do not support a cost award in this case.

B. ISSUES & ANALYSIS

[6] The issues in this case may be summarised as follows:

1. Is the light coming into Ms. Nikolov's bedroom a nuisance, annoyance or disruption that is unreasonable?
2. Is the spotlight shaped security light recently installed by HSCC476 the source of the light in Ms. Nikolov's bedroom?
3. If the spotlight is the source the light, what remedy should be directed in this case?

[7] Ms. Nikolov submits that the Tribunal has the jurisdiction to deal with these issues. She points to subparagraph 1(1)(c.1) of Ontario Regulation 179/17 to the *Condominium Act, 1998* (the "Act") which provides that the Tribunal has jurisdiction over "a dispute with respect to subsection 117(2) of the Act". Subsection 117(2) of the Act in turn provides that:

> No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,…..
>
> (b) any other prescribed nuisance, annoyance or disruption to an individual in

a unit, the common elements or the assets, if any, of the corporation.

Finally, section 26 of Ontario Regulation 48/01 to the Act states:

> For the purposes of clause 117(2) of the Act, each of the following is prescribed as a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation if it is unreasonable:…..
>
> 4. Light

[8] The Act does not define a "person", the term used in subsection 117(2) of the Act. However, given that a business corporation is a legal person, I conclude that there is no reason why a condominium corporation should not have the same status. The combined effect of these sections of the Act and regulations is to give the Tribunal jurisdiction over this dispute.

Issue 1: Is the light coming into Ms. Nikolov's bedroom a nuisance, annoyance or disruption that is unreasonable?

[9] Ms. Nikolov says that there is a bright light which is on all night and shines into her bedroom. Even when she draws her black-out blinds, the light shows as a bar or line of light at the top of the blinds. Ms. Nikolov produced photographs of her bedroom, both with the black-out blinds drawn and with them open. The light is clearly visible and bright, even with the black-out blinds drawn. Having a bright light shining into one's bedroom all night might reasonably be expected to disrupt sleep. I conclude that the light is an unreasonable disruption to Ms. Nikolov in the bedroom of her unit and is, therefore, a prescribed nuisance, annoyance or disruption.

[10] HSCC476 disputes that the light entering Ms. Nikolov's bedroom is a nuisance but its position seems to be based primarily on its view that it would be easy for Ms. Nikolov to adjust her black-out blinds to deal with the matter. The fact that there may be a solution to the problem does not affect the identification of the problem itself. Moreover, Ms. Nikolov says that the black-out blinds are currently correctly installed and it would be a difficult matter to re-install them further up the wall as HSCC476 suggests.

Issue 2: Is the spotlight shaped security light recently installed by HSCC476 the source of the light in Ms. Nikolov's bedroom?

[11] Ms. Nikolov lives in a corner unit. There is an alleyway between her unit and the adjacent one to the west. In the fall of 2021, HSCC476 installed a spotlight shaped

light on the exterior west wall of her unit, fairly high up. That wall overlooks the alley and the light is above a pedestrian entry door. There are other corner units that also overlook pedestrian entry doors. Ms. Nikolov submits that most of the other corner unit lights have baffles on the exterior of the lights. She produced photographs of these lights and identified three of them by the number of the corner units. The baffles serve to block the light from shining over a wide angle around the light. These lights face down and illuminate the pedestrian entry door and some of the surrounding area. The light on the outside of Ms. Nikolov's unit is not the same. It is a spotlight shaped light that has no baffles. It is not pointed down but is pointed north. The light shines along part of Ms. Nikolov's exterior wall. It lights up the front part of the alleyway and also shines across the street that runs in front of Ms. Nikolov's unit, to the north.

[12] HSCC476 did not offer any testimony to explain why they chose to install that type of light on Ms. Nikolov's unit. Its initial position was that this was a decision for the board of directors to make and it was made in the interests of security. In closing submissions, HSCC476 submitted that putting baffles on the light would provide only a "very directional light onto the stairwell. This would make the light ineffective and is counter to its intended purpose, to flood the area with light. Such a light was used in other areas as that is what was required there."

[13] By introducing this statement in its closing submissions, HSCC476 denied Ms. Nikolov the opportunity to give evidence in response. HSCC476 did not explain why in the case of three corner units identified by Ms. Nikolov it had chosen to install a baffled light that was directed downwards. HSCC476 did not offer a rationale for why the spotlight style of light was necessary in this location or what specific area it was attempting to "flood" with light. As noted above, the light is located toward the front of the adjacent alley and shines into and across the road in front of Ms. Nikolov's unit. HSCC476 did not explain whether it might be able to accomplish its security objective by installing a second baffled light directed downwards some distance behind the first one. Based on what HSCC476 has said and has not said about its choice of light, it is impossible to determine if its position is a reasonable one. As it is, I am not persuaded that the light would be rendered "ineffective" if it were replaced with a baffled light directed downwards.

[14] Ms. Nikolov testified that she has lived in her unit at HSCC476 for 12 years with no issue about light coming into the bedroom. In her testimony, it was only after HSCC476 installed a spotlight style of security light on the outside of her west wall that she experienced light coming into her bedroom at night. She submits that no other source of light has recently been introduced and she concludes that the security light is the source of the light into her bedroom.

[15] HSCC476 disagrees. It has suggested a number of other possible sources of light. For example, it suggests that a neighbour of Ms. Nikolov has a porch light which might be the source of the light into Ms. Nikolov's bedroom. Ms. Nikolov notes that the porch light pre-dates the installation of the spotlight and has never caused a problem before. It is a soft white light, in Ms. Nikolov's submission, and, unlike the spotlight, is not on all night. I conclude that the neighbour's porch light is not the source of the problematic light. Concerning the other possible light sources, Ms. Nikolov notes again that no other new light source has been introduced into the area other than the spotlight installed by HSCC476 and that her problem only began after HSCC476 installed that light. HSCC476 has not provided persuasive evidence that there is any other source of the light coming into Ms. Nikolov's bedroom.

[16] An electrician testified for HSCC476. The electrician testified that the spotlight could not be the primary source of light into Ms. Nikolov's bedroom because the light would have to go around a 90-degree angle to the front of Ms. Nikolov's window and it would have to go around another 90 degrees to shine directly into her window. I accept this evidence and find that the spotlight is not a primary source of light into Ms. Nikolov's window.

[17] The question remains whether the spotlight is the secondary source of light. That is, is the light being reflected off some surface and shining into Ms. Nikolov's window indirectly. The electrician offered no testimony about whether or not the spotlight could be a secondary source of light. HSCC476 submitted that several board members had inspected the light and found no reflective surfaces. None of these board members gave testimony and none were qualified as lighting experts. While it is not clear, it appears that the inspection occurred during the day, which makes these observations less credible.

[18] Ms. Nikolov produced a number of photographs. One of these photographs, Exhibit PA-4, shows what appears to be a bright light reflecting from one of the windows across the street from Ms. Nikolov's unit. The light shines directly into the camera, which is positioned in Ms. Nikolov's bedroom. Ms. Nikolov does not suggest that this light is a reflection of the spotlight but the photograph does provide evidence of reflective surfaces, that is the windows, directly across the street and facing Ms. Nikolov's unit. There are also a number of photographs showing that the spotlight is very bright and several witnesses testified as to its brightness. One witness lives across the street and testified about how bright the light was as it shone into her unit. Another witness, who lives across the alley from Ms. Nikolov testified that the light shone into her unit. As HSCC476 noted, none of the witnesses called by Ms. Nikolov testified that the spotlight was causing the light

in her bedroom.

[19] I conclude from the above that Ms. Nikolov has presented credible circumstantial evidence that it is more likely than not that HSCC476's spotlight security light is the source of light into her bedroom. She has testified that she did not have the problem before the spotlight was installed. She has eliminated the other suggested sources of light and has testified that no new light sources have been introduced into the environment. Her testimony about when the problem started is supported by the third witness who testified that there had not been "as much" light in the bedroom before the installation of the spotlight.

[20] It was open to HSCC476 to refute this evidence. There was a simple test that could reasonably have been expected to determine the issue of the source of the light. That is, the light could have been turned off briefly after sunset to see the effect it had on the light coming into the window. Only HSCC476 could conduct the test since it was the only one with access to the security light and the means to shut it off.

[21] The parties attempted to negotiate the terms for performing this test. Initially they could not agree on who should be present in the bedroom during the test. Ms. Nikolov did not want a member of the board of directors or anyone else associated with HSCC476 in her bedroom during the test. HSCC476 insisted on having a board member present. During the negotiations, it was proposed that a neutral party, alone in the bedroom, would conduct the test and report the results. It was agreed that the neutral party should not have a management role in any condominium. A lawyer or paralegal was suggested as appropriate. HSCC476 proposed the name of the law firm from which the lawyer or paralegal was to be selected. Ms. Nikolov's counsel was to select the lawyer or paralegal and offered to prepare a statement to be signed by the neutral party saying that there was no conflict of interest.

[22] The parties were unable to agree on the conditions of the test. HSCC476 took the position that it wanted a member of its board in the bedroom during the test with the neutral party. It characterised this as part of its "due diligence". It explained that it would prefer not to rely on the neutrality of the neutral party. It also stated that it wanted one or more board members to be able to testify to the results of the test in court if a subsequent court proceeding were to occur. It maintained this position despite being advised that it was open to HSCC476 to summon the neutral party as a witness in a court proceeding. These positions were unreasonable. The point of selecting a neutral party was to avoid disagreements as to who should be present during the test.

[23] Ms. Nikolov was also unreasonable in forbidding a member of the board of directors from being present during the very brief period of time that would have been required for the test. However, Ms. Nikolov ultimately proposed that the neutral party be alone in the bedroom during the test and that she and a board member be on the front step where they could be expected see, at least in part, the effect of turning the spotlight off. This would have permitted the test to occur and I find that the conditions ultimately proposed by Ms. Nikolov were reasonable.

[24] It was unreasonable of HSCC476 to insist on having a board member present in the bedroom with the neutral party during the test. It was HSCC476's insistence on being present during the test that was the proximate cause for the test not being conducted. I conclude that HSCC476 had the opportunity to refute Ms. Nikolov's claim that the spotlight it had installed was the source of light into her bedroom and did not. I find that Ms. Nikolov's case stands and that she has established that it is more probable than not that the security light is the source of the light coming into her bedroom.

Issue 3: What remedy should be directed in this case?

[25] Ms. Nikolov is entitled to relief from the light shining into her bedroom. Among the suggestions she has made is to remove the current light and replace it with a light in the same or similar style to the ones on three other corner units, which she identified specifically. These lights have baffles shielding the light on the sides and they are directed downwards. This solution has the advantage of being permanent and I conclude that this is the best option. When asked how much replacing the light would cost, HSCC476 acknowledged that the cost would be approximately $600. However, it went on to say:

> The cost, minimal or otherwise, is not the relevant factor. Cheryl is free to provide options all she wants, but as only the Board is responsible, we must ensure it's the right one. Should it create a new issue with a new unit, the Board surly [*sic*] does not have the opportunity to engage Cheryl to defend its decision such that we are defending one now, nor avoided further added cost to address that matter as well.

[26] The "Cheryl" referred to by the board is Ms. Nikolov. No evidence was presented that there are any issues or complaints about corner lights with baffles. By contrast, as noted above, Ms. Nikolov presented a statement from a unit owner living across the alley from her complaining of the spotlight shining into her unit. I conclude that HSCC476's objections to replacing the light are unreasonable. The light should be replaced with the same or similar style of light that is used on the corner units identified by Ms. Nikolov. The light should have baffles and should be

directed downward to illuminate the pedestrian entry door. Ms. Nikolov has requested that, if in replacing the light, there is damage to the external wall of her unit, this damage should be repaired. That is a reasonable request.

[27] Rule 48.1 of the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022 (the "Rules of Practice"), sets out the general rule that the unsuccessful party will be required to reimburse the successful party for his or her Tribunal fees. Those fees amount to $200 and I will direct HSCC476 to pay that amount to Ms. Nikolov. Both parties made vague requests for compensation for the time they had spent on this hearing. Rule 49.1 of the Rules of Practice provides, "The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding." I see no reason to vary that general rule in this case and no order as to costs will issue.

C. ORDER

[28] Under section 1.44(1)2 of the Act, the Tribunal orders that:

1. HSCC476 will replace the spotlight it installed on the west wall of Ms. Nikolov's unit with a light with baffles in a style that is the same or similar to those used in the corner units identified by Ms. Nikolov.
2. HSCC476 will ensure that the replacement light is directed down towards the pedestrian entry door.
3. If the replacement of the spotlight results in any damage to the brick exterior of Ms. Nikolov's unit, HSCC476 will repair the damage.

[29] Under Rule 48.1 of the Rules of Practice, the Tribunal orders that HSCC476 will pay Ms. Nikolov the amount of $200 on account of her filing fees with the Tribunal.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: June 14, 2022