



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

James Potok

Applicant

-and-

York Region Condominium Corporation No. 865

Respondent

DECISION

Adjudicator: Cyndee Todgham Cherniak

Date: June 9, 2022

File Number: 2019-37995-I

Citation: 2022 HRTO 740

Indexed as: **Potok v. York Region Condominium Corporation No. 865**

INTRODUCTION

[1] The applicant filed an Application alleging discrimination with respect to housing and services, goods, and facilities because of disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (“Code”).

[2] The Application was filed on July 25, 2019. The respondent takes the position that the Application should be dismissed due to delay and that the Application has no reasonable prospect of success.

[3] On August 10, 2020, the Tribunal issued a Case Assessment Direction (the “CAD”) directing that a combined summary and preliminary hearing take place. The CAD set out the following issues to be addressed at the combined summary and preliminary hearing:

- a. whether the Tribunal should dismiss all or part of this Application because there is no reasonable prospect that all or some part of the Application will succeed; and
- b. whether to dismiss all or part of this Application because of delay.

[4] The combined summary and preliminary hearing was held on April 6, 2022 by videoconference. As discussed under “preliminary issues” below, both the applicant and the respondent were represented at the combined summary and preliminary hearing.

[5] For the reasons that follow, I find that the allegations in the Application prior to July 26, 2018 must be dismissed for delay and any allegations in the Application after July 26, 2018 must be dismissed because they have no reasonable prospect of success.

EVIDENCE

[6] The evidence accepted during the preliminary hearing consists of the *viva voce* testimony of Mark Billet and four exhibits, as follows:

- a. Exhibit 1 – March 5, 2018 letter from Purcel Inc. to Mr. F. Potok;

- b. Exhibit 2 - March 22, 2018 letter from Purcel Inc. to Mr. F. Potok;
- c. Exhibit 3 - April 5, 2018 letter from Purcel Inc. to Mr. F. Potok; and
- d. Exhibit 4 - April 11 2018 letter from Gardiner Miller Arnold LLP to Joseph, Sonia, and Tamara Potok.

[7] The applicant did not file any documents, other than documents attached to the Reply. Prior to the preliminary hearing, the applicant did not notify the Tribunal that he intended to call any witnesses or provide *viva voce* evidence. The applicant did not ask to testify at the preliminary hearing and did not call any witnesses.

[8] No witnesses are called to testify at a summary hearing and the parties are not expected to submit documents for the summary hearing. Instead, the Tribunal will make its decision based on the materials already filed by the parties and their submissions in the summary hearing.

PRELIMINARY ISSUE – CAPACITY OF FARRELL POTOK IN THE COMBINED SUMMARY AND PRELIMINARY HEARING

[9] The applicant was present at the start of the combined summary and preliminary hearing. However, at the start of the combined summary and preliminary hearing, the applicant's father, Mr. Farrel Potok (herein referred to as "Representative"), informed the Tribunal that the applicant was not going to participate in the combined summary and preliminary hearing because he was under the influence and ill.

[10] Neither the applicant, nor the Representative, requested an adjournment. The Representative was eager to cross-examine the respondent's witness and asked about swearing in the witness as soon as I started the roll call. The Representative requested that the Tribunal proceed with the combined summary and preliminary hearing. I am satisfied that the applicant wanted to proceed with the hearing.

[11] I asked the applicant whether he wanted the Representative to represent his interests during the combined summary and preliminary hearing and the applicant responded in the affirmative. The applicant then excused himself from the virtual hearing and went to a separate room away from the room in which the computer was located. The applicant did return at one point during the preliminary hearing and excused himself again shortly thereafter and did not return. During the hearing, the Representative advised the Tribunal that the applicant was sleeping in the other room.

[12] I was satisfied that the applicant had the capacity to provide instructions to the Representative to proceed. The applicant spoke at the start of the hearing and his communications were coherent and intelligible when responding to me. He clearly understood that he was appointing his father to represent his interests and that the combined summary and preliminary hearing was taking place.

[13] The Representative asked to participate as a licensed paralegal and provided his Law Society of Ontario license number to the Tribunal. Near the end of the combined summary and preliminary hearing, the Representative asked to change his participation to that as a family member. Whether the Representative was participating in the hearing as a licensed paralegal or as a family member, the rules are the same. I asked the Representative if he understood that as a representative, he could not be both a witness and an advocate, and he responded that he understood. When a family member acts in a capacity as a representative, they can make oral submissions, but cannot give evidence that goes to the core issues before the Tribunal.

FACTS

[14] Except as otherwise noted, the facts were undisputed.

[15] The applicant bought a Dalmatian puppy and called that puppy “Gigi”. Gigi has been described in the Application as a “service dog” and in the Reply as an “emotional support” dog and at the hearing as a “companion dog”. During the hearing, the Representative informed the Tribunal that Gigi did not receive any training to be a service

dog or support dog. The Representative clarified that Gigi was important to the applicant as a “companion dog”.

[16] The applicant fell on tough times. For a while, the applicant and Gigi lived in the applicant’s car. When the applicant had nowhere else to go, in February 2018, he and his dog, Gigi, moved in with his father, the Representative.

[17] At this time, the applicant was lonely and confused. He loved his dog.

[18] The applicant’s father lived in a condominium unit in the respondent condominium building and that condominium unit was owned in whole or in part by Joseph Potok (the Representative’s father).

[19] The Condominium Declaration of the respondent condominium corporation included a strict “No Pets” policy.

[20] Not long after the applicant and Gigi moved into the respondent’s condominium building, the respondent learned that the applicant had a dog. On March 5, 2018, the property manager, Purcel Inc., sent the Representative a letter indicating that “[w]e have observed that you have a dog residing with you in your suite and that [t]he Board of Directors have not received a request for accommodation for your Son’s pet.” The Representative was provided with information about the Condominium Declaration and rules regarding “No Pets” and was given 14 days to inform the respondent whether a disability-related accommodation was required. The Representative confirmed at the hearing that neither he, nor the applicant, responded to this letter.

[21] On March 22, 2018, Purcel Inc., sent the Representative a second letter in which it noted that no accommodation request had been submitted with respect to the applicant’s dog. The Representative was again provided with information about the Condominium Declaration and rules regarding “No Pets” and was given 14 days to respond should disability-related accommodation be required. The Representative confirmed at the hearing that neither he, nor the applicant, responded to this letter.

[22] On April 5, 2018, Purcel Inc., sent the Representative a third letter in which it noted that no accommodation request had been submitted with respect to the applicant's dog. At this time, the Representative was informed, in part, that:

Because you have failed to respond, the Corporation has no choice but to conclude that your son's dog does not meet the definition of service animal and that your son does not require the pet for a disability-related need. Therefore, the Corporation will not exempt you from enforcement of the Corporation's strict no pets prohibition in its declaration.

In this third letter, the Representative was directed to "permanently remove the dog" from his unit.

[23] The April 5, 2018 letter goes on to outline complaints received from other residents concerning the dog's behaviour while on the common elements. There are disagreements between the applicant and the respondent concerning the dog's behaviour. However, during the hearing, the Representative admitted that the dog jumped up on other residents to lick their faces and that he thought that this showed that Gigi was a friendly dog.

[24] On or about April 7, 2018, the applicant provided Purcel Inc. with a one-line doctor's note dated April 7, 2018 from Dr. Mahshid Mohseni. The contents of the doctor's note are described in Exhibit 4 as follows:

The letter from Dr. Mohseni makes a general assertion of a "medical condition" without confirmation of a disability, setting out any clinically-significant symptoms or limitations associated with disability, or a disability-related need for a service dog.

[25] The applicant also provided the respondent with a document from the Assistance Dogs of America ("ADA") website indicating that "GG" has been registered as a support dog.

[26] After receiving the doctor's note and the ADA document, on April 11, 2018, the respondent's legal counsel sent a letter to the owners of the condominium unit detailing the respondent's issues with the dog and also discussing what would be required for the

Board to grant a disability-related accommodation. The respondent's legal counsel asked for the owners to provide the respondent "with sufficient information from a suitably qualified health professional confirming a disability and setting out the role and services the dog provides". The Representative confirmed at the hearing that neither he, the owners, nor the applicant, responded to this letter.

[27] The Representative confirmed during the preliminary hearing that on April 15, 2018, he informed the property manager that Gigi would no longer be residing in the condominium unit. It is unclear whether the dog was actually removed from the unit at that time. The Representative did not know the date that the dog was permanently removed from the unit. However, in the Application, the applicant indicates that Gigi left the condominium unit in January 2019.

[28] After April 15, 2018, the applicant was seen bringing Gigi to the condominium building from time to time and this led to conflict with the respondent's property manager. Mr. Billet testified that between May 2018 and December 2018, there were reports of incidents involving the applicant and Gigi on the property or attempting to enter the respondent condominium building.

[29] The only incident described in detail in the Application occurred in December 2018. On this occasion, the applicant was prevented by the respondent from entering the condominium building with Gigi. The applicant posted a video of a confrontation online. No evidence was presented at the preliminary hearing concerning the December 2018 incident.

[30] The applicant continued to live in the condominium unit in the respondent's condominium building. He vacated the unit in late July 2019. While in the Reply, the applicant states that "I was also forced out of the building as a result of this matter and left July 4, 2019", the applicant attached to his Reply correspondence from Gardiner Miller Arnold LLP and Goddard Gamage LLP in which a number of serious incidents involving the applicant are discussed, including the applicant posting videos online in which he

confronted Mr. Billet and another where the applicant was brandishing a handgun. These incidents were not disputed.

[31] At the preliminary hearing, the Representative informed the Tribunal that Gigi had been left with the applicant's mother and she gave away the dog. The applicant was unable to see Gigi after she was given away. The applicant was distraught when his dog was given away by his mother.

[32] The Application was prepared by the Representative after Gigi had been given away by the applicant's mother. The Application was filed on July 26, 2019.

ANALYSIS AND FINDINGS

Issue 1: Delay

[33] For the reasons set out below, the allegations of discrimination relating to the period prior to July 26, 2018 are untimely and, therefore, outside the Tribunal's jurisdiction.

[34] To proceed in the Tribunal's process, an application must fall within the Tribunal's jurisdiction. An adjudicative body either has jurisdiction or it does not. See *G.L. v. OHIP (General Manager)*, 2014 ONSC 5392 and *Groblicki v. Watts Water*, 2021 HRTO 461.

[35] Pursuant to section 34 of the *Code*, the Tribunal has no jurisdiction to deal with allegations in an application which relate to incidents that occurred more than one year prior to the filing of the application or, if there was a series of incidents, where the last incident in the series occurred more than one year prior to the filing of the application, unless the Tribunal is satisfied that:

- a. the delay was incurred in good faith; and,
- b. no substantial prejudice will result to any person affected by the delay.

[36] The Tribunal has set a high onus on applicants to provide a reasonable explanation for the delay. See, for example, *Klein v. Toronto Zionist Council*, 2009 HRTO 241. The mandatory one-year limitation period is consistent with the *Code*'s objective that human rights claims should be dealt with fairly, justly, and expeditiously. Thus, the *Code* requires an individual to act with all due diligence, and file their application within one year, when they seek to pursue a human rights claim.

[37] To establish that their delay was incurred in good faith, an applicant must provide the Tribunal with a reasonable explanation as to why they did not pursue their rights under the *Code* in a timely manner. See *Corrigan v. Peterborough Victoria Northumberland and Clarington Catholic District School Board*, 2008 HRTO 424; *Cartier v. Northeast Mental Health Centre*, 2009 HRTO 1670.

[38] Such an explanation must show something more than simply an absence of bad faith. See *Miller v. Prudential Lifestyles Real Estate*, 2009 HRTO 1241.

[39] During the preliminary hearing, the Representative admitted he had more important matters to attend to and he was not aware of the limitation period in the *Code*. The Representative admitted that he prepared, and the applicant filed, the Application with the Tribunal more than one year after the respondent enforced its "No Pets" policy and asked the applicant to remove Gigi from the respondent condominium building.

[40] I have considered whether any events after July 28, 2018 could be considered to be a timely incident would result in the earlier incidents being part of a series of incidents. In light of the finding below that the December 2018 has no reasonable prospect of success, the December 2018 incident cannot anchor otherwise untimely incidents.

[41] While the Tribunal may accept an untimely application if the delay in filing was incurred in good faith, the Representative admitted that a good faith explanation could not be provided for the delay. Given these circumstances, I find that the applicant does not satisfy the requirement of good faith under subsection 34(2) of the *Code*.

[42] In these circumstances, I find that the allegations in the Application that occurred prior to July 26, 2018 must be dismissed on the basis that the allegations are untimely and, therefore, outside the Tribunal's jurisdiction.

Issue 2: No Reasonable Prospect Of Success

[43] As set out below, I find that the December 2018 event has no reasonable prospect of success.

The Summary Hearing Process

[44] The summary hearing process is described in Rule 19A of the Tribunal's Rules of Procedure as well as the Tribunal's Practice Direction on Summary Hearing Requests. The purpose of a summary hearing is to consider, early in the proceeding, whether an application should be dismissed, in whole or in part, because there is no reasonable prospect that the application will succeed.

[45] At this stage, the Tribunal is not determining whether the applicant is telling the truth or assessing the impact of the treatment he allegedly experienced. The test of no reasonable prospect of success is determined by assuming the applicant's version of events is true unless there is some clear evidence to the contrary.

[46] The Tribunal cannot address allegations of unfairness that are unrelated to the *Code*. Put another way, the Tribunal's jurisdiction is limited to claims of discrimination that are linked to the protections set out in the *Code*. As the Tribunal indicated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389, for an application to continue in the Tribunal's process following a summary hearing, there must be a basis beyond mere speculation and accusations to believe that an applicant could show a breach of the *Code*. As such, the burden at the summary hearing is on the applicant to explain what evidence they expect to be able to present at a merits hearing in order to prove that the alleged differential treatment was due, at least in part, to one or more prohibited grounds of discrimination.

Analysis and Findings

[47] The issue regarding whether there is no reasonable prospect of success in this case turns on whether the applicant is able to point to any evidence beyond his own beliefs that the respondent discriminated against him in December 2018 based on *Code*-enumerated grounds. According to the applicant, the respondent would not permit him to re-enter the building with Gigi on one occasion in December 2018.

[48] This issue turns on whether Gigi was a service animal that provided the applicant with assistance for a disability-related need. Condominium corporations, unlike apartment buildings, may pass policies and rules that prohibit pets. However, condominium corporations must accommodate a person with a disability who requires the support of a service animal.

[49] During the summary hearing, the Representative conceded that Gigi did not receive any training to assist the applicant with any disability-related need. The Representative further conceded that Gigi was a companion or pet and not a service animal or a trained support animal.

[50] In the Application, the applicant claimed Gigi was a “companion dog for LONELY confused young man”. During the summary hearing, the Representative argued that “a lonely person can have a pet” and “the dog kept [the applicant] company for many years”.

[51] While I am sympathetic to the applicant and understand why he strongly believes that the respondent’s “No Dogs” policy is unfair, there is nothing that I can do when the *Code* is not engaged. The Tribunal also does not have jurisdiction over general allegations of unfairness unrelated to the *Code*. See *Hay v. Ontario (Human Rights Tribunal)*, 2014 ONSC 2858, *Bello v. Toronto Transit Commission*, 2014 ONSC 5535.

[52] Based on the forgoing, I find that there is no reasonable prospect of establishing a *Code* violation occurred when the applicant was not permitted to enter the respondent condominium building with Gigi in December 2018.

ORDER

[53] The Application is dismissed.

Dated at Toronto, this 9th day of June, 2022.

“Signed by”

Cyndee Todgham Cherniak
Member