CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 3, 2022
CASE: 2022-00087N
Citation: Rennick v. Peel Condominium Corporation No. 487, 2022 ONCAT 61

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

Member: Benjamin Drory, Member

The Applicant,
Kathleen Rennick
Self-Represented

The Respondent,
Peel Standard Condominium Corporation No. 487
Represented by Doris Qoshja, Agent

Hearing: Written Online Hearing – April 18 to May 12, 2022

REASONS FOR DECISION

OVERVIEW

[1] The Applicant, Kathleen Rennick, is a unit owner of the Respondent. In 2014, the Applicant erected a removeable wooden barrier in her backyard, apparently without approval from the Respondent. The parties exchanged correspondence about the barrier between November 2016 and January 2022, at which point, following a letter from the Respondent's lawyer, the Applicant removed the barrier on February 2, 2022, but under protest.

[2] The Applicant seeks an order affirming her continued use of the barrier, and both parties to this matter seek costs.

[3] The parties described the barrier in various ways. Please see Appendices 1 and 2 for front and side views of the barrier.

[4] The Respondent first wrote to the Applicant on November 9, 2016, stating that the Applicant was in breach of its Rules and asking for the removal of the backyard enclosure. It stated that no changes could be made to exterior portions of units as they were common elements, to which nothing could be affixed.

[5] The Applicant replied on April 2, 2017, stating that she put the barrier in her backyard to keep her two small dogs safe – she had been taking them in her backyard on separate leashes, but when they circled around each other it created a loop that could harm them. She wrote that the barrier wasn't permanent (as it merely leaned against two fence posts), was made of the same wood as the fence, and was only 18 inches high, so that any adult could step over it. She said she had consistently moved the barrier so that lawn care people could access her backyard and mow the grass. She asked the board of directors to approve her use of the barrier – but the evidence suggested she received no reply. In fact, it is unclear that anything followed for the next three years.

[6] The Respondent's new Property Manager wrote to the Applicant on September 29, 2020, noting that a fence on her patio running parallel to the building hadn't been approved by the board, and had to be removed on the basis that alterations to her unit's common element areas had been made without approval or consideration by the Respondent, which it asserted was a violation of its Declaration and s. 98 of the *Condominium Act*.

[7] The Applicant replied on October 29, 2020, stating she had been using the barrier since 2014, and believed the issue had been resolved since she had not heard from the Respondent since 2017. She asked the Respondent what had changed in its By-Laws since March 2017.

[8] A third Property Manager (Ms. Qoshja) wrote to the Applicant on January 27, 2021 stating:

> *I would like to inform you that on Thursday, January 21st, 2021, it has been observed at the back of your home you have large pieces of wood. On behalf of the board of directors we kindly ask you to have the large items removed. Please do keep in mind this is an exclusive common element. Although it is for the homeowner's exclusive use, it is required by the homeowner to be kept clean and presentable on behalf of the neighbourhood. …*
>
> *Please see our Condominium Rules Documents Below:*
>
> *(b) Each owner enjoying exclusive use of any patio deck or balcony shall be solely responsible for maintenance and non-structural repair of such area, subject to the overall direction of the Corporation.*[1]
>
> *5. The owner shall not place, leave or permit to be placed or left in or upon the*

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[1] From within the Respondent's Declaration

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common elements including those of which he has the exclusive, use, any debris, refuse or garbage except on days designated by the City of Brampton as garbage pick-up days.[2]

[9] The Applicant disputed the Respondent's characterization of the "pile of wood" in her backyard as "debris, refuse, or garbage", and reiterated that it was a removeable barrier that allowed her dogs to remain safe, while allowing people and objects in and out. She disputed that any reasonable person would look at her barrier and think it was garbage. The Respondent replied that the Applicant was obliged to keep her backyard clean and presentable on the neighbourhood's behalf, and repeated the above-noted provisions of its governing documents in subsequent correspondence on March 20, 2021, April 22, 2021, and November 11, 2021.

[10] A landscaper attended at the Applicant's door on May 14, 2021, identifying that he was sent to remove what he was told was a wooden log in the Applicant's backyard – but he ultimately did not do so, following a discussion with the Applicant.

[11] The Respondent's counsel. Lou Natale wrote the following to the Applicant on January 24, 2022:

> *We are counsel for … PCC 487. This letter puts you on notice to immediately remove the large piece(s) of wood which resemble a gate (the "Wooden Gate") at the rear of your Unit, further to the prior correspondences to you from PCC 487's property manager dated March 30, 2021 and November 11, 2021.*
>
> *… For your convenience, the Rules governing this issue are:*
>
> > *5. The owner shall not place, leave or permit to be placed or left in or upon the common elements, including those of which he has the exclusive, use, any debris, refuse or garbage except on days designated by the City of Brampton as garbage pick-up days.*
> >
> > *10. No fencing or landscaping shall be installed on any part of the common elements over which any owner has exclusive use thereof without the prior written approval of the board and in accordance with the specific requirements of the City of Brampton which are to be provided by the board or manager to the unit owners from time to time.*
> >
> > *15. Any loss, cost or damages incurred by the condominium corporation by reason of a breach of any rules and regulations from time to time by any owner, his family, guests, servants, agents or occupants of his unit shall be borne by such owner and may be recovered by the condominium corporation against such owner in the same*

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[2] Rule 5

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manner as common expenses.

As well, PCC's Declaration provides at Part Three – Occupation and Use of Common Elements:

(b) No owner shall make any installation or any change or alteration to an installation upon the common elements, or maintain, decorate, alter or repair any part of the common elements without obtaining the written approval of the Corporation in accordance with the Act.

…

Please be advised that your failure to remove the Wooden Gate or to confirm the expected timeline of removal by February 4, 2022 may result in PCC 487 unilaterally investigating and effecting the removal of the Wooden Gate, the costs of which will be charged to you per Rule 15 as above. Please be advised that the cost of issuing this letter is also going to be charged to your unit in accordance with Rule 15.

[12] The Applicant removed the barrier from her property on February 2, 2022. The Respondent subsequently invoiced the Applicant $475.52 for the cost of the January 24, 2022 letter.

JURISDICTIONAL ISSUE

[13] This matter was originally deemed to be within the Tribunal's jurisdiction as a "storage" issue, on the basis that the Applicant described her issue as disputing the Respondent's use of Rule 5 because it was "not garbage/refuse/debris", and felt it was unreasonable to designate her barrier as garbage.

[14] The Tribunal assumed jurisdiction over certain matters in October 2020 by virtue of Ontario Regulation 179/17 – including "provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes."

[15] The basis for the dispute was originally understood to relate to "storage". However, the parties' arguments during this hearing were primarily directed towards other matters – predominantly whether the Applicant had the right to alter exclusive-use common elements without the Respondent's permission. Irrespective of the parties' good faith efforts to address this matter, these arguments related to s. 98 of the *Condominium Act, 1998*, which is *not* part of the Tribunal's jurisdiction. Similarly, the Applicant sought a determination of whether she was entitled to maintain the barrier, but this is also outside of the Tribunal's jurisdiction. Accordingly, this decision will only address the limited matters open to this Tribunal to opine on.

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RESULT

[16] The Applicant's barrier did not constitute the storage of debris, refuse, or garbage. All of the Respondent's arguments related to matters outside the Tribunal's jurisdiction. The Respondent is ordered to reimburse the Applicant $200 for her Tribunal filing fees, in the unusual circumstances of this case.

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SUBMISSIONS & ANALYSIS

Issue 1: Did the Applicant's barrier constitute the storage of "debris, refuse, or garbage"?

[17] The Applicant submitted that she initiated her claim because the Respondent's use of its Rule 5 was arbitrary, unlawful, and an abuse of power. She did not believe that the barrier was debris, refuse, or garbage, and referred to Merriam-Webster's Deluxe Dictionary,[3] which defines the terms as:

> ***debris:*** *the remains of something broken down or destroyed; something discarded; rubbish*
>
> ***refuse:*** *the worthless or useless part of something; leavings; trash; garbage; thrown aside or left as useless*
>
> ***garbage:*** *food waste; discarded or useless material; trash*

[18] The Applicant submitted that a quick check of any dictionary would yield comparable results.

[19] The Respondent made no submissions during the hearing respecting whether the barrier constituted debris, refuse, or garbage. In effect it withdrew its reliance on that Rule, and focused exclusively on assertions it had the right to order the Applicant to remove her barrier for other reasons.

[20] The Applicant reiterated in her Reply that the purpose of her application was to address the Respondent's use of Rule 5 against her, which the Respondent never defended.

[21] In short, I find that the barrier was not "debris, refuse, or garbage", in any ordinary understanding of those terms. "Debris, refuse, or garbage" essentially refers to discarded trash, and more commonly arises in property standards contexts. The

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[3] Merriam-Webster's Deluxe Dictionary, Tenth Collegiate Edition, Reader's Digest Association Inc., New York, 1998.

barrier was simply not household trash.

[22] I also do not find that the Applicant was "storing" the barrier. It was in near-constant use by the Applicant, except for very brief periods it was removed to let in maintenance workers. She was not "storing" it in any traditional sense of setting it aside to be retrieved to be used intermittently.

Issue 2: Was the Respondent entitled to order the Applicant to remove her barrier?

[23] The Respondent made a number of arguments to the effect that it had been entitled to order the Applicant to remove the barrier, predominantly relying on its Rules 9 and 10:

> *9. The sidewalks, entry, passageways, and driveways used in common by the owners shall not be obstructed by any of the owners or used by them for any purpose other than for ingress and egress to and from their respective units.*
>
> *10. No fencing or landscaping shall be installed on any part of the common elements over which any owner has exclusive use thereof without the prior written approval of the board in accordance with the specific requirements of the City of Brampton which are to be provided by the board or manager to the unit owners from time to time.*

[24] Ultimately, issues about alterations to common elements arise under s. 98 of the *Condominium Act, 1998*, and are *not* issues within the Tribunal's jurisdiction. Therefore, I make no determination on these points.

Issue 3: Is the award of costs appropriate in this case?

[25] The Respondent relied on its Rule 15, which permits it to recover any loss, cost, or damages it incurs on account of owners' breaches of its rules. There is no basis to award the Respondent costs in this matter, as its arguments entirely related to matters outside of the Tribunal's jurisdiction to address.

[26] The Applicant was successful with respect to the only issue the Tribunal could validly address – i.e., whether she was "storing" the barrier, and whether it constituted debris, refuse, or garbage.

[27] Rule 48.1 of the CAT's Rules of Practice, effective January 1, 2022, states that "if a Case is not resolved … and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise". The CAT has also issued a Practice

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Direction on point.[4] In short, there is no compelling basis to 'decide otherwise' in this case – neither party's conduct was unreasonable, the Applicant showed evidence of several attempts to resolve the matter before this hearing, and the case was not initiated in bad faith, notwithstanding that I have ultimately found the subject matter was predominantly outside of the CAT's jurisdiction. Accordingly, the Applicant is entitled to reimbursement of her Tribunal filing fees, even though nothing in this decision should be read as an affirmation that the Applicant was actually entitled to erect or maintain her barrier.

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ORDER

[28] The Tribunal orders that within 30 days of the date of this Order, the Respondent must:

1. Pay the Applicant $200.00 for the cost of her Tribunal filing fees.

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Benjamin Drory
Member, Condominium Authority Tribunal

Released on: June 3, 2022

APPENDICES

Appendix 1 – Barrier, Front View

[4] https://www.condoauthorityontario.ca/wp-content/uploads/2021/12/CAT-Practice-Direction-Approach-to-Ordering-Costs-January-1-2022.pdf

Appendix 2 – Barrier, Side View

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