

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 3, 2023

CASE: 2022-00602N

Citation: Frontenac Condominium Corporation No. 56 v. Patterson et al., 2023 ONCAT 35

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

Member: Michael Clifton, Vice-Chair

The Applicant,

Frontenac Condominium Corporation No. 56

David Lu, Counsel

The Respondents,

Courtney Ellen Patterson

Unrepresented/Not Appearing

Margot Elizabeth Coulter

Self-Represented

Hearing: Written Online Hearing – October 21, 2022 to February 26, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] This is a case in which a tenant (Courtney Ellen Patterson) of a condominium unit in the Applicant condominium corporation is alleged to have breached the condominium's rules causing a nuisance, annoyance, or disruption unreasonably affecting other residents of the condominium. The tenant elected not to participate in these proceedings. The other Respondent, Margot Coulter, who is the owner of the unit, has participated.
- [2] The allegations against the tenant relate to excessive noise, storing unauthorized materials including garbage and construction-related items on the exclusive use common element driveway of the unit, and parking a vehicle on a part of the property not designated for parking, all of which is contrary to the rules of the condominium. The creation of unreasonable noise is also prohibited under section 117(2) of the *Condominium Act, 1998* (the "Act").
- [3] The Applicant and the unit owner agree that the tenant has breached the rules and

caused the nuisances, annoyances, or disruptions described in the Applicant's submissions. As the tenant did not participate, she provided no submissions to contradict these claims. The evidence provided by the Applicant and the Respondent owner, which include witness testimony, photographs, and correspondence, are credible and consistent, and I find that on a balance of probabilities the allegations against the tenant are true.

- [4] As a result, I order the tenant to cease all such activities, and award the condominium costs in the amount of its Tribunal filing fees and a portion of its legal expenses relating to these proceedings.

B. BACKGROUND, ISSUES, AND ANALYSIS

- [5] Based on the evidence of the parties, Ms. Patterson is the young mother of two infant children who reside with her in Ms. Coulter's unit. They commenced renting and residing there in September 2020. Her partner, Matthew Phillips, was also a tenant of the unit with them at that time, but the current lease, entered into in March 2022, stipulates that Mr. Phillips may no longer reside at the unit. It appears that he has nevertheless continued to reside or be present in the unit for periods of time.

- [6] Gary Bennett is a condominium manager for the Applicant and provided a witness statement in this case. In it he indicates that since April 2020, there have been numerous complaints about unreasonable noise from Ms. Coulter's unit. However, none of the issues preceding the commencement of Ms. Patterson's lease are relevant to this case.

- [7] Approximately one year after the commencement of Ms. Patterson's lease, there began to be incidents of unreasonable noise and other issues. Mr. Bennett cites several occasions on which there were loud domestic disturbances, including "fighting and yelling... screaming, and 'banging around'". Several of these incidents occurred after March 2022, when Mr. Phillips was not supposed to be residing at the unit. Police have frequently been contacted to investigate these situations.

- [8] Such conduct is contrary to the condominium's rules, which provide:

No form of noise including... construction noises... deemed to interfere with the comfort or quiet enjoyment of the units will be permitted on the streets or in the areas of Canterbury Gardens between the hours of 9:00 p.m. and 7:00 a.m. on any day of the week.

- [9] Section 117(2)(a) of the Act also prohibits any activity in the units or common

elements of a condominium that results in the creation or continuation of “any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.”

[10] In addition, there have been complaints related to the storage of construction materials, including plywood with protruding nails, and gas cannisters which could be flammable, in the exclusive use common elements driveway of the unit, and the improper disposal or placement of garbage on the grounds outside of the unit.

[11] The Applicant’s rules include the following provisions:

4. No owner shall do, or permit any thing to be done in... exclusive use areas or bring anything therein or thereon which will in any way increase the risk of fire or the rate of fire insurance on any building...

5. Residents 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 litter, debris, refuse or garbage.

7. No stores or firewood or any combustible or offensive goods, provisions or materials shall be kept on the common elements (including the patios and parking spaces) or in any unit.

and its “Parking Rules” enacted in 2016 also provide,

1.2. The designated user of a parking space shall keep the space clean and free of any materials or any conditions likely to cause of nuisance, a hazard or any damage to the property, or any risk of fire.

[12] Associated with the presence of materials on the unit driveway are activities that the Applicant suspects are of a commercial nature including “loud grinding and welding activities” and frequent pick-ups and drop-offs of goods. While prohibitions against commercial activities in and of themselves are not within the range of the Tribunal’s current jurisdiction, some of the nuisances, annoyances, or disruptions caused by them can be. For example, the loud grinding and welding noises complained of certainly fall within the ambit of s. 117(2) of the Act within the context of a residential community.

[13] Lastly, at times the tenant’s vehicle was noted to be parked in the rear yard of the unit and was also noted to be leaking oils or fluids onto the common elements. The rules of the condominium state,

10(b) No vehicle of any nature shall be driven on any part of the common elements other than designated driveways and parking areas, except authorized maintenance equipment and vehicles.

and its "Parking Rules / Regulations (as amended)" provide,

(a) Vehicles are prohibited from parking on grassy areas or green spaces, lawns or anywhere there are "No Parking" Signs erected.

- [14] Both Mr. Bennett and Ms. Coulter have made efforts to communicate with Ms. Patterson and obtain compliance with the condominium's rules and to prevent further noisy disturbances. Ms. Coulter has also relied on her property manager, Shawn LeClaire, to help try to solve these issues. Mr. LeClaire also provided written testimony in these proceedings and answered questions posed by the Applicant's counsel. It appears from these materials that Mr. LeClaire made a sincere effort to understand the tenants' situation and to obtain their compliance with the condominium's rules. He assisted Ms. Coulter in initiating proceedings at the Landlord and Tenant Board (LTB) relating to the issues in this case.
- [15] Despite all this, up to the date of completion of submissions in this hearing, no efforts to correct the situation at the unit have been successful, and Ms. Coulter advised me that the activities complained about have continued. Involvement of the tenant's mother and guarantor under the lease, Sherrie Patterson, has also not helped to resolve matters.
- [16] On reviewing the evidence presented in this case, I am satisfied that Ms. Patterson has regularly and continuously been in breach of the condominium's rules, declaration, and section 117(2) of the Act, with respect to the creation of unreasonable noise and other nuisances or annoyances relating to the garbage, debris, construction materials and related activities and noise on the common elements outside of her unit, and parking a vehicle on a part of the property where parking is not permitted. I order that she cease all such conduct.
- [17] My order includes that Ms. Patterson shall not permit any further unreasonable noise of the kind described as "arguing/fighting, constant door slamming and banging sounds, yelling, screaming," in or around her unit, shall park vehicles only where permitted, and shall ensure that the common elements driveway and other areas surrounding her unit are devoid of garbage, debris, and any kinds of construction materials and equipment. Further, there shall be no construction related or similar activities carried out on the condominium property by her or any other guest or resident of the unit causing unreasonable noise or other nuisances, annoyances, or disruptions contrary to the rules of the condominium or the Act, including (but not limited to) welding or grinding.

C. INDEMNITY AND COSTS

- [18] The Applicant has been successful in this case and is entitled to its \$150 filing

fees. The Applicant also seeks an order that Ms. Coulter pay all its costs relating to these proceedings, in the amount of \$7,440.76.

- [19] Article VIII of the Applicant's declaration provides that owners shall save the corporation harmless from and against "any loss, costs..., damage, injury or liability" resulting from or caused by the act or omission of a resident or tenant of the owner's unit. Article XI in its By-law No. 3 includes a similarly worded provision; and the condominium's Rule 14 sets out the same requirement for indemnification by a unit owner with respect to "any loss, costs or damage incurred by the Corporation" arising from a breach of the rules.
- [20] The Applicant appears entitled to seek indemnification from unit owners under its governing documents, and it further appears that the Applicant is prepared to pursue this remedy regardless of what this Tribunal might decide, as it previously demanded that Ms. Coulter pay \$4,902.23 (which I understand she has paid), being its legal expenses relating to compliance arising prior to the commencement of these proceedings. However, for an order for costs to issue from this Tribunal, the existence of indemnity provisions alone is insufficient: Issues of causality, proportionality, and fairness must also be considered.
- [21] The Applicant provided copies of its detailed invoices, minimally redacted on account of some cases of solicitor-client privilege, relating to both the \$4,902.23 already billed to and paid by Ms. Coulter and the additional \$7,440.76 costs award now being sought. Having reviewed these materials, the issue of causality is not in question. The condominium's costs clearly arise as a result of the tenant's misconduct. The time spent on such issues and the fees charged by the Applicant's counsel also do not appear disproportionate to the circumstances or to the qualifications of the individuals providing the legal services. I note, in fact, several instances of reduced and waived fees, which appear to have been granted on a courtesy basis by the Applicant's counsel.
- [22] A condominium corporation should not, however, expect to obtain an order for all of its costs in every case. Although counsel for the Applicant described the unit owner's duty to seek to remedy problem situations with their tenants as "an inescapable legal duty," this does not mean that it is also a duty that is to be borne by them alone. As noted in other cases before this Tribunal, one of the services for which unit owners – including unit owners who rent out their units – contribute to the common expenses, is the carrying out by the corporation of its duty to enforce compliance with the Act and its governing documents. While it is unfair for unit owners to bear some of those costs when they are caused by the serious misconduct or negligence of another owner, it is fundamental to the idea of

condominiums that owners are to share a portion of one another's regular burdens of property ownership when acting in good faith. While a unit owner who rents their unit cannot avoid the responsibility to deal with the misconduct of their tenants, this does not eliminate the condominium's corresponding duty, or the landlord unit owner's right to rely in good faith on the performance of that duty in addition to their own diligent efforts.

- [23] As I have already noted, the submissions and evidence of both the Applicant and Ms. Coulter in this case indicate that Ms. Coulter has made efforts to deal with the misconduct of her tenant, and that she has cooperated with the condominium, including in relation to these proceedings. She has incurred her own substantial costs for doing so and has also already paid more than a third of the corporation's total claimed legal expenses relating to the issues in this case.
- [24] The Applicant makes no argument that Ms. Coulter could or should have done more. It is also my understanding that, at the time of this hearing, Ms. Coulter was awaiting a date for the hearing of her latest LTB application relating to the tenant. If that proceeding, in combination with this one, is not successful in helping to resolve the issues with Ms. Patterson's tenancy, Ms. Coulter will need to determine what further options are available to her. Potentially, my findings in this case – that the conduct of the tenant is unlawful, being contrary to the Act and governing documents of the condominium, and does interfere substantially with the reasonable enjoyment of the condominium by its other owners and residents as well as with Ms. Coulter's lawful rights and interests as a condominium unit owner – will be of some support.
- [25] Considering all this, I do not find justification in this case for imposing a significant costs award upon Ms. Coulter.
- [26] On the other hand, the evidence and submissions in this case indicate that Ms. Patterson has been uncooperative. Despite being given several opportunities to do so, she refused to participate in these proceedings. Early on, Ms. Patterson alleged in communication to the Applicant's counsel that she lacked "information and instructions to effectively participate," despite having been given usual notice of the case along with all instructions and access to Tribunal staff for any assistance she might have needed. I instructed the parties to encourage her to participate in the case and discussed with counsel for the Applicant the multiple notices they provided to her. I also scheduled events in the CAT-ODR system to allow her to make submissions and provide evidence. It appears to me that she had ample chances but made no effort to take part in this case.
- [27] In the meantime, she and Mr. Phillips (whose residence at the unit, if continuing,

would be contrary to the current lease for the unit) seem persistently unwilling to comply with the condominium's rules or to be considerate of their neighbours as well as their landlord. I note that in one response from her to the Applicant's counsel, she stated that she "had no clue [she] lived in a 'condo'," as if this should somehow have absolved her from the obligations to respect her neighbours' rights to quiet enjoyment of the property and to comply with the requests for good conduct that were communicated to her. It appears that both prior to and during these proceedings, Ms. Patterson made no effort to resolve the condominium's concerns or the conduct giving rise to them.

[28] Considering the foregoing facts and analysis, as well as other information in the party's submissions and the factors set out in the Tribunal's Practice Direction, "Approach to Ordering Costs," including the requirement to consider the impact upon the parties, I find it appropriate that Ms. Patterson be required to pay the Applicant costs in the amount of \$3,870.38, being comprised of the Applicant's \$150 Tribunal fees and just 50% of the additional costs award sought by the condominium. As a result, the condominium will have been reimbursed, overall, more than 70% of its costs arising due to the tenant's conduct. I conclude it is appropriate that the balance of the legal expenses associated with this case be paid by the condominium without indemnification by either the unit owner or the tenant. I make no finding, of course, as to whether or not there should be indemnification by them of any future reasonable expenses incurred by the Applicant in relation to these matters.

D. ORDER

[29] The Tribunal Orders that:

1. The Respondent, Courtney Ellen Patterson, comply, and cause every other occupant and resident of the unit in which she is now a tenant to comply, with the declaration and rules of the Applicant relating to parking, noise, and other nuisances, annoyances, and disruptions, including:
 - a. that she shall neither cause nor allow any unreasonable noise of the kind described as "arguing/fighting, constant door slamming and banging sounds, yelling, screaming," in or around her unit;
 - b. that she shall ensure no vehicle of hers or any other guest or resident of her unit is parked on any part of the property where parking is not permitted;

- c. that she shall ensure that the common elements driveway and other areas surrounding her unit are devoid of garbage, debris, and any kinds of construction materials and equipment; and
 - d. that she shall neither cause nor allow construction related or similar activities to be carried out on the condominium property that cause unreasonable noise or other nuisances, annoyances, or disruptions contrary to the rules of the condominium or the Act, including (but not limited to) welding or grinding; and
2. The Respondent, Courtney Ellen Patterson, shall, within 30 days of the issuance of this Order, pay the Applicant the amount of \$3,870.38 pursuant to section 1.44 (1) 4 of the Act.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: March 3, 2023