

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** October 30, 2023

**CASE:** 2023-00418N

**Citation:** Durham Condominium Corporation No. 136 v. Crowther, 2023 ONCAT 159

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Durham Condominium Corporation No. 136  
Represented by Anthony Spadafora, Counsel

**The Respondents,**

Kevin Crowther  
Self-Represented

Lisa Crowther  
Unrepresented/Did not Appear

**Hearing:** Written Online Hearing – September 12, 2023 to October 10, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] The Applicant, Durham Condominium Corporation No. 136 (“DCC 136”) brings this application to the Tribunal seeking an order to permanently remove the Respondents’ dog, Nico, from its premises because of the following allegations:

1. Nico exceeds 27 pounds which breaches DCC 136’s rule 23 (a),
2. The Respondents breached DCC 136’s rule 23 (c) because they did not register Nico with its manager, and
3. The Respondents breached DCC 136’s rule 23 (g) because they did not remove Nico from the premises after the board of directors requested them to do so when they deemed Nico a nuisance.

[2] In addition to an order removing Nico from its premises, DCC 136 has also requested orders requiring the Respondents to reimburse its costs and expenses stemming from the enforcement of its rules (\$1,030) and bringing this application to the Tribunal (\$10,223.68). DCC 136 also seeks an order requiring the

Respondents to reimburse it for the application filing fee of \$150.00.

- [3] The Respondents did not join the case prior to Stage 3 - Tribunal Decision ("Stage 3"). Therefore, on September 12, 2023, the matter proceeded to Stage 3 as a default proceeding.
- [4] On September 21, 2023, the Respondent, Kevin Crowther, joined the case. Mr. Crowther contacted a Tribunal staff member and advised that he may require assistance with the online hearing process as he is not tech savvy. The Tribunal staff member offered to assist Mr. Crowther as needed.
- [5] Because Mr. Crowther joined the case late, to ensure his ability to participate in the hearing, I amended the hearing schedule to include additional time for witness and documentary evidence, as well as closing submissions. Despite having amended the hearing schedule to accommodate Mr. Crowther, his participation was limited. He did not provide witness evidence and did not respond to most of my messages. He did provide brief responses to five out of my six questions. He also uploaded one document, being a medical letter dated June 16, 2023. Mr. Crowther did not provide any closing submission, nor did he provide me with his position on the issues in dispute.
- [6] I find the Respondents have breached DCC 136's rule 23 (a) pertaining to pet weight restrictions because their dog Nico weighs more than 27 pounds. I further find DCC 136's decision to remove Nico from its premises pursuant to its rule 23 (g) is reasonable and must be given deference, and therefore I will order Nico's removal. Regarding DCC 136's position that the Respondents are in breach of their obligations under its rule 23 (c) because they did not register Nico at the time they brought him to live in their unit, I find that the Respondents are no longer in breach of this rule because they have since registered Nico with the corporation.
- [7] As the Applicant was successful in this application, I am ordering the Respondents to reimburse them \$150 for the fee paid to file this application. I am also ordering the Respondents to pay \$3,000 to DCC 136 for legal costs incurred for the Tribunal hearing and \$1,030 for its pre-CAT costs.

## **B. BACKGROUND**

- [8] The parcel register provided by DCC 136, states that the Respondents have been owners of their unit since February 1996.
- [9] According to the limited information provided to me by Mr. Crowther, he got Nico as a puppy in 2021 after his cats passed away. Nico is a husky mix.
- [10] DCC 136 has rules regarding pets living in and/or visiting its property. Section 23 (a) (c) (g) and (i) of the rules state:
  - (a) No owner shall have more than three (3) pets in any unit and no single pet shall be greater than 12 kg (27lbs) in weight.

- (c) Each owner who keeps a pet in their unit must register the pet with the manager. The registration shall include a description of the pet, its species, breed, colour, weight and other distinguishing features. Registration forms can be obtained from the manager.
- (g) Owners shall not walk their pets on the common elements grounds to relieve themselves as this is causing damage to the grass. Pet owners must use the sidewalks to take their pets off the grounds for their walks. Under no circumstances are dogs to be taken to the parkette. Pets must be carried out of the buildings to ensure that they do not defecate or urinate upon any unit, or common element areas; if this should happen, owners shall be obliged to immediately clean up any mess that occurs. Should a pet owner fail to clean up after their pet, then the pet shall be deemed to be a nuisance. No owner shall permit a pet to cause noise or disturbance that interferes with the comfort or quiet enjoyment of the property by other owners. If a pet is deemed by the Board or the manager (in their absolute discretion) to be a nuisance, the owner of that pet shall, within fourteen (14) days after receiving a written request from the Board or the manager, remove such pet permanently from the property... Pet owners are responsible for all costs for damages incurred by the Corporation as a result of their pet(s).
- (i) All of the above-mentioned items under Rule 23 also apply to all visitors and their pets and owners temporarily caring for any pets.

### **C. ISSUES & ANALYSIS**

#### **Issue no: 1 - Should Nico be permanently removed from DCC 136's premises?**

[11] The Applicant's condominium manager, Loganayagam Ravikumar, provided testimony about the issues in dispute. Mr. Ravikumar testified that DCC 136 became aware of Nico living with the Respondents in or about October 2022. In April 2023, and in the months following, Nico and the Respondents became the subject of numerous complaints. Mr. Ravikumar submitted copies of the formal complaints received, and they are as follows:

1. April 5, 2023 – complaint of large dog living on premises that exceeds DCC 136's rules.
2. April 18, 2023 – complaint of very large dog living on premises who appears to be a "husky mix".
3. April 22, 2023 – complaint of an owner having a large "husky mix" dog.
4. April 23, 2023 – complaint of owner with large "husky-mix" dog discarding dog's excrement into DCC 136's paper recycling bins. Complaint further identified the dog as big.
5. May 20, 2023 – complaint of owner with large dog, and owner threw dog excrement in one of DC 136's recycling bins.
6. September 5, 2023 – complaint of male with beige and white husky dog

allowing the dog to relieve itself on a common elements' corridor in front of another unit. The complaint stated that this male frequently allows the dog to relieve itself wherever it pleases.

- [12] When DCC 136 started receiving complaints about Nico, Mr. Ravikumar sent an email to Mr. Crowther requesting that he complete the new resident information form and pet registration form. This email was sent to Mr. Crowther on April 27, 2023. Mr. Crowther never responded to this email.
- [13] On May 29, 2023, Mr. Ravikumar sent another email to Mr. Crowther reminding him of the need to complete the registration forms for Nico. The email also advised Mr. Crowther that Nico's size exceeded the weight limitation in DCC 136's rules. A formal letter from DCC 136 was attached to the email which set out its rule pertaining to weight limitations for dogs, and formally requested the Respondents to remove Nico from the premises by June 12, 2023. Mr. Ravikumar also advised Mr. Crowther that if he did not comply by removing Nico by the deadline, that DCC 136 would escalate the matter to its solicitor for further action and that associated costs would be charged backed to him.
- [14] In another email on May 29, 2023, Mr. Ravikumar further advised Mr. Crowther that he had a video which captured him walking with Nico and disposing Nico's excrement into the recycling bin. Mr. Ravikumar provided a copy of the video in support of his evidence. I have viewed the video, and it accurately reflects Mr. Ravikumar's description in the May 29, 2023, email to Mr. Crowther.
- [15] On May 29, 2023, Mr. Crowther responded to Mr. Ravikumar's emails. Mr. Crowther's first response was that "the dog just visits on occasion." I asked Mr. Crowther why he told DCC 136 that Nico was just visiting. Mr. Crowther replied that he told DCC 136 that Nico was not his dog because he wanted to see how Nico would behave in his unit. Mr. Crowther also indicated that Nico got much "bigger than he anticipated."
- [16] On May 30, 2023, Mr. Crowther sent an email to Mr. Ravikumar and advised that he would be "getting a doctor's note for the dog". Mr. Crowther further stated that he has a friend who helps him out with walking the dog and cooking because he had a stroke about six months prior. Mr. Crowther claimed that he got Nico as an emotional support dog for his "bad depression."
- [17] When Mr. Crowther did not remove Nico from the premises by June 12, 2023, DCC 136 engaged the services of their legal counsel. On June 14, 2023, Counsel for DCC 136 sent a letter to the Respondents reminding them that they had to remove Nico from the premises. The letter extended the deadline to remove Nico to July 10, 2023. Counsel further advised that if the Respondents failed to remove Nico by the deadline, DCC 136 would file an application with this Tribunal seeking an order of compliance, and an order to recover its legal costs for the proceedings. The letter explained to the Respondents that the board of directors deemed Nico to be a nuisance and has the discretion to decide that Nico must be permanently

removed from the premises.

- [18] On June 14, 2023, Mr. Crowther and Counsel for DCC 136 had numerous email exchanges. Copies of the emails have been submitted by Counsel. In the emails, Mr. Crowther stated that Nico was not as “big as they made him out to be.” Mr. Crowther indicated that Nico weighs just over 50 pounds. Mr. Crowther further advised that he was waiting on “documentation for the dog.”
- [19] On June 22, 2023, Mr. Crowther sent DCC 136’s Counsel a letter from his doctor, a certificate indicating Nico is an emotional support dog and a copy Nico’s emotional support dog registration. The letter is dated June 16, 2023, and states that Mr. Crowther requires an emotional support animal to help with underlying mental health problems, and that Nico provides this service and should be allowed to live with him. Mr. Crowther did confirm to me that the registration and certificate he has for Nico being an emotional support dog was one that he purchased online for \$50 plus taxes.
- [20] Mr. Crowther also completed DCC 136’s pet registration form. There is no indication when this form was completed, but based on the emails submitted it was after May 29, 2023. DCC 136 submitted a copy of the completed form. In review of the form, I note that Mr. Crowther indicated that Nico weighs 36 pounds and is approximately six years old. This information contradicts Mr. Crowther’s evidence during the hearing when he indicated that Nico weighs 50 pounds, and he got Nico as a puppy in 2021 and was unaware of how big he would grow. If Nico is about 6 years old in 2023, as Mr. Crowther says, it is not reasonable to suggest that his adult weight would not have been predictable, if not already attained, when Mr. Crowther first got Nico in 2021.
- [21] Mr. Ravikumar testified that DCC 136 considered Mr. Crowther’s documentation about Nico being an emotional support dog. DCC 136 decided that the documentation was not sufficient to support Mr. Crowther’s position that Nico is an emotional support animal. DCC 136 based their decision on its view that the medical letter does not mention any “actual disability”, and the website where Mr. Crowther purchased Nico’s registration does not verify a person’s disability and “simply provides certifications in exchange for payment”.
- [22] Counsel for DCC 136 submitted that in order to succeed on the basis that Nico is an emotional support dog, the Respondents must prove that at least one of them suffer from a disability within the meaning of the *Human Rights Code*, R.S.O 1990 (the “Code”). Counsel further submitted that what must be accommodated is the “person’s needs, not their preference.” Counsel stated that no evidence was provided by the Respondents to establish that if an emotional support animal is necessary, that this need cannot be accommodated with an animal weighing less than 27 pounds as per DCC 136’s rules.
- [23] The Respondents did not explain if they were claiming Nico to be Mr. Crowther’s emotional support dog. Nor did they provide evidence that they are seeking an

accommodation under the Code in order to keep Nico living in their unit. While Respondents provided medical letter from Mr. Crowther's doctor, they did not provide a context as to why they submitted this letter. The Respondents also did not challenge, refute or provide commentary about DCC 136's evidence that their decision to remove Nico from the premises is reasonable and should be given deference.

[24] In review of Mr. Crowther's evidence, and the information he provided to DCC 136 regarding Nico, I cannot ignore the inconsistencies which lead me to question the credibility and reliability of his evidence. First, Mr. Crowther claimed Nico was not his dog, and then claimed Nico was his emotional support animal. Next, Mr. Crowther stated he was unaware of how big Nico would get when he got him in 2021, but later registered Nico as a 6-year-old dog, which means Nico would have reached full size at the time he got him, and Mr. Crowther would have been aware of his full-grown size. Further, when DCC 136 brought their concerns to Mr. Crowther's attention, Mr. Crowther did not identify Nico being an emotional support animal. It was not until DCC 136 advised Mr. Crowther that the board of directors made the decision that Nico had to be removed from the premises that Mr. Crowther suddenly made the claim of Nico being an emotional support animal. Because of the credibility and reliability issues I have identified regarding Mr. Crowther's evidence and information, I have given it minimal weight when making my findings.

[25] Further, at no time, including during this hearing, has Mr. Crowther acknowledged the complaints about Nico, nor has he denied the allegations that Nico has been allowed to urinate on the common elements.

### Findings

[26] In considering the evidence before me, I find the Respondents are no longer in breach of DCC 136's rule 23 (c) because they registered Nico once demanded to do so. However, I do find that the Respondents have and continue to breach DCC 136's rule 23 (a) because Nico is a large dog who lives in their unit and exceeds the weight restriction set out in this rule. Further, the Respondents did not dispute that Nico's weight is more than the restricted limit set out in DCC 136's rules.

[27] Having determined the Respondents have breached DCC 136's rules 23 (a), I now turn my mind to the reasonableness of DCC 136's decisions to deem Nico a nuisance and have him permanently removed from its premises. In making my finding on this issue, I have considered the guidance provided by the court in *Muskoka Condominium Corporation No. 39 v. Kreuzweiser*, 2010 ONSC 2463 ("Muskoka"). Here Justice Wood held, that the court should show great deference when asked by a condominium corporation to enforce its governing documents, and that it is not for the court to substitute its view of what is reasonable for that of the board; if the board has acted reasonably and not capriciously it is important that the court support the board's decision. This means that if I find DCC 136's decisions reasonable, then I must give deference to its

decision and not substitute the board's decision with my own.

- [28] The only evidence before me to consider in making my finding about the reasonableness of DCC 136's decisions is that of DCC 136. I say this because the Respondents barely participated in the hearing and provided limited evidence. The Respondents did not challenge DCC 136's claim that Nico is a nuisance, and they offered no defence to the allegations made against them. In contrast, DCC 136 provided evidence in support of their position that demonstrates the Respondents have breached its rule 23 (g) by allowing Nico to urinate on the common elements. For these reasons, I find DCC 136's decision to deem Nico a nuisance is reasonable, and it will be given deference.
- [29] DCC 136's rule 23 (g) further states that if the board of directors deems a pet to be a nuisance, "the owner of that pet shall, within fourteen (14) days after receiving a written request from the Board or the manager, remove such pet permanently from the property". Because DCC 136 deemed Nico a nuisance, pursuant to this rule, DCC 136 made the decision that Nico had to be permanently removed from the property. There is no evidence before me that this decision was unreasonable or made in bad faith. Rather, the evidence demonstrates that DCC 136 took reasonable steps to ensure the Respondents complied with the pet rules set out in its governing documents. For these reasons, I find DCC 136's decision to have Nico permanently removed from its premises is consistent with its rules and entitled to the Tribunal's deference in this case.

### **Issue no: 2 – Costs**

- [30] DCC 136 seeks an order for the Respondents to reimburse the fee they paid to file this application. DCC 136 has tried many times to resolve the issues in dispute prior to filing this application. All previous attempts were unsuccessful. As such, DCC 136 sought to have this matter addressed through Tribunal proceedings.
- [31] The Tribunal's Rule 48.1 states:
- If a Case is not resolved by Settlement Agreement or Consent Order 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.
- [32] DCC 136 further seeks orders requiring the Respondents to reimburse it pre-CAT costs (\$1,030) incurred to enforce its rules and its CAT costs (\$10,223.68). Counsel for DCC 136 submitted that the pre-CAT costs should be awarded based on the provisions in section 9 of DCC 136's declaration which states:

...any losses, costs or damages incurred by the corporation by reasons of breach of this declaration, the by-laws or the Corporation or any rules and regulations of the Corporation in force from time to time, by any unit owner, or by members of his or her family and/or their respective tenants, invitees or licensees, shall be borne and paid for by such owner, and may be recovered by the Corporation against such owner in the same manner as common expenses.

[33] Because the Respondents have not complied with the DCC 136's governing documents, and have refused to remove Nico from the premises, DCC 136 seeks an order requiring the Respondents to reimburse it \$10,222.68 for the costs of its legal fees to bring this application to the Tribunal. DCC 136 relied on the Tribunal Rule 48.2 in support of their position on costs.

[34] The Tribunal's Rule 48.2 states:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[35] DCC 136 was successful in this application. Pursuant to the Tribunal's Rule 48.1, I am ordering the Respondents to reimburse the Applicant \$150 for the fee paid to file this application.

[36] Regarding DCC 136's claim for pre-CAT costs incurred while seeking the Respondents' compliance with its governing documents, pursuant to section 1.44 (1) 3 of the Act, the Tribunal can make an order directing a party to pay compensation for damages incurred by another party because of an act of non-compliance. Having regard for this section of the Act, as well as the provisions of section 9 of DCC 136's declaration, an order for the Respondents to pay DCC 136's pre-CAT costs is appropriate. In making this order I considered the fact that DCC 136 unnecessarily incurred these expenses because of the Respondents' complete disregard for DCC 136's numerous requests that they comply with its governing documents. I find it appropriate to order the Respondents to reimburse DCC 136 its pre-CAT costs in the amount of \$1,030.

[37] With respect to DCC 136's request for costs incurred for this hearing, it is appropriate that some costs be awarded. In coming to this conclusion, I considered the Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, which provides guidance regarding the awarding of costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include the conduct of a party or its representative in the hearing, whether the parties attempted to resolve the issues before the case was filed, the provisions of the governing documents, and whether the parties had a clear understanding of the potential consequences for contravening them. The principle of proportionality is also an important consideration in determining the appropriate quantum of costs.

[38] In determining the amount of legal costs that the Respondents will pay to DCC 136, I find the amount requested is disproportionate to the nature of the issues in dispute, particularly since this started as a default proceeding. This means there was no Stage 1 or Stage 2 leading up to this hearing. Once Mr. Crowther joined



the case late in Stage 3, he provided limited evidence. There was no cross examination or delays in the proceeding. The hearing was straightforward and uncomplicated. In fact, the hearing ended sooner than anticipated. Therefore, weighing the facts in this case, I award \$3,000 to DCC 136 for their legal costs. This amount is approximately 30% of the costs DCC 136 claims they incurred for the Tribunal hearing.

**D. ORDER**

[39] The Tribunal Orders that:

1. Under section 1.44 (1) 2 of the Act, within thirty (30) days of the date of this Order, the Respondents, Kevin and Lisa Crowther, shall permanently remove their dog, Nico, from the property of Durham Condominium Corporation No. 136.
2. Under section 1.44 (1) 3 of the Act, within thirty (30) days of this Order, the Respondents, Kevin and Lisa Crowther shall pay compensation for pre-CAT costs in the amount of \$1,030 to Durham Condominium Corporation No. 136.
3. Under section 1.44 (1) 4 of the Act, within thirty (30) days of this Order, the Respondents, Kevin and Lisa Crowther shall pay Tribunal fees of \$150 and legal costs of \$3,000 to Durham Condominium Corporation No. 136.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: October 30, 2023