

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 5, 2023

**CASE:** 2023-00021N

**Citation:** York Region Standard Condominium Corporation No. 1054 v. Valente, 2023 ONCAT 189

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

**Member:** Eleanor White, Member

**The Applicant,**

York Region Standard Condominium Corporation No. 1054  
Represented by Maria Dimakas, Counsel

**The Respondent,**

Raquel Valente  
Self-Represented

**Hearing:** Written Online Hearing – August 2, 2023 to October 26, 2020

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, York Region Standard Condominium Corporation No. 1054 (“YRSCC No. 1054” or the “Corporation”) filed an application with the Condominium Authority Tribunal (“Tribunal”) against the Respondent, the unit owner and occupant, Raquel Valente for alleged breaches of the it’s declaration, by-laws and rules relating to smoking and nuisance created by odour.
- [2] Ms. Valente did not join the case and the case moved to Stage 3 – Tribunal Decision, as a default proceeding on August 2, 2023. I asked the Tribunal staff to contact the Respondent and was advised on August 4, 2023, that the Respondent intended to join the proceeding, but had stated that she had been unaware of the application to the Tribunal and the resulting process until contacted by the Tribunal staff.
- [3] Ms. Valente has owned and occupied the unit since May 2020.
- [4] The Applicant’s representative, Ms. Dimakas provided documentation to confirm that prior to the filing of an application to the Tribunal, compliance letters were sent to Ms. Valente related to breaches of the condominium’s declaration, by-laws and rules regarding smoking/vaping, both in the unit and/or on the exclusive use

common area of the terrace.

- [5] The first letter was sent April 14, 2021 and was followed by the second letter dated December 19, 2021. Both letters dealt with the smoking/odour issue and a second nuisance issue that was resolved prior to the application to the Tribunal. The second letter warned Ms. Valente that further complaints would result in compliance proceedings before the Tribunal, pursuant to the Condominium Act, 1998 (the "Act"), the costs of which would be Ms. Valente's responsibility.
- [6] Based on the documents submitted in evidence, I am satisfied that both the compliance letters sent to Ms. Valente prior to the commencement of this proceeding and then subsequently the notices of this proceeding were properly served on Ms. Valente.
- [7] As noted above, Ms. Valente did join this proceeding in Stage 3. She was given the opportunity to fully participate in the proceeding but chose to limit her participation to her closing statement. In addition, she did respond to one question I posed following closing submissions.
- [8] For the reasons I set out below, I find that Ms. Valente and/or a guest in her unit have contravened the non-smoking rule and nuisance provisions of the Corporation. I am ordering Ms. Valente and any guest(s) to not smoke or vape either tobacco or marijuana products in her unit or on the exclusive use or the mutual use common elements of the property of YRSCC No. 1054. I am also ordering Ms. Valente to reimburse the Applicant the Tribunal fees of \$150, and to indemnify the Applicant \$1096.10 for costs incurred to seek compliance as well as its legal costs of 2051.24, pursuant to Rule 48 of the Tribunal's Rules of Practice.

## **B. BACKGROUND**

- [9] YRSCC 1054 is a three-storey building consisting of 31 units. The Applicant's evidence was provided by Michael Guida, its condominium manager.
- [10] YRSCC 1054 has a 'no-smoking rule'; Rule 34 states as follows:
- "34. No smoking will be permitted in any unit or on the exclusive-use common elements, and in accordance with the *Smoke-Free Ontario Act*, no smoking will be permitted in any general common element areas, except as permitted by that legislation."
- [11] Mr. Guida confirmed that "the status certificate was delivered to the Respondent's lawyer by email on April 28, 2020". Mr. Guida also confirmed that he delivered an email to the Respondent on May 11, 2020 containing a "Welcome Package", including the Applicant's Rules.
- [12] Shortly after Ms. Valente moved into her unit, complaints were made to Mr. Guida referring to 'smoke odour' migrating into the common areas and into certain units. Initially, the complaints indicated that the odour was coming from outdoors. The

complaints varied in their identification of the odour as one coming primarily from marijuana and from tobacco. Mr. Guida stated that he regularly received five to seven complaints weekly regarding this issue. Mr. Guida investigated the complaints, by interviewing the complainants, gathering observations of cigarette butts and cannabis 'rolls' on the exclusive use terrace of Ms. Valente's unit, and direct observations of the Respondent and a frequent male visitor smoking on the terrace. Mr. Guida called the Respondent on June 6, 2020, to discuss the smoking activity and to review the Corporation's rules, specifically the 'no-smoking' rule. This call was followed by an email, on June 23, 2020, reviewing their conversation of June 6, 2020.

- [13] Following the phone call and email, the nature of the complaints changed; the smoke odour was migrating into other units and the common element corridor outside of the Respondent's unit. This seemed to be due to smoking occurring inside the Respondent's unit rather than outside on the terrace. Mr. Guida visited the Respondent in her unit on October 29, 2020, and smelled the 'musty odour' of cannabis. The Respondent denied smoking but said she was baking with marijuana.
- [14] The situation remained unchanged with continuing complaints of smoke/odour migration, causing the board to direct Mr. Guida to instruct the corporation's lawyers to send a compliance letter. The letter was sent on April 14, 2021, by regular and registered mail, was received by the Respondent, who made no response. The complaints abated for a period of one week, but then resumed at a similar frequency from the same complainants. The resumption and continuation of complaints prompted the board to request Mr. Guida to instruct the corporation's lawyer to send a second compliance letter, dated December 17, 2021. The second letter was sent and again garnered no response from the Respondent. The second letter resulted in another one - week cessation of complaints, followed by a resumption of complaints with a regular frequency of five to seven complaints per week.
- [15] Despite continuing attempts by Mr. Guida to gain the compliance of the Respondent, there were no changes and finally the board directed Mr. Guida to instruct the corporation's lawyers to file an application with the Tribunal. In response to a question from me, Mr. Guida replied that the complaints made, primarily by units close to the Respondent's, continued during the hearing and complainants had noted migration of smoke from both internal and external sources, likely originating from the Respondent's unit.
- [16] Ms. Valente stated she first learned of the 'no smoking' rule weeks after she moved into her unit. She was 'vaping' on the exclusive common use area of her terrace when she was advised of the rule. Although she argued that she observed others smoking, Ms. Valente stated that "she complied without hesitation". In response to a question from me, she stated that since that time "she has not smoked on the grounds".

- [17] In her submissions, Ms. Valente referred to the two compliance letters of April 13, 2021 and December 17, 2021, though she dismissed their relevance to this hearing, stating they were “notifications that did not pertain to this case and did not require a response”. She also maintained that she was unaware of this application to the Tribunal, despite the warning of an impending application and possible financial consequences, in the compliance letters.
- [18] Ms. Valente did not directly address the smoking, whether by her or any visitors to the unit, inside her unit or outside on the exclusive use common elements area of her terrace. Ms. Valente explained that the odour of marijuana could have been detected from baking which sometimes included marijuana as an ingredient. This baking activity was part of a small temporary home-based business during the pandemic to subsidize lost income. She asserted that she discontinued the business in February 2022 and since then, there had been no complaints made regarding smoke/odour migration from her unit. This is refuted by Mr. Guida’s evidence in which he states that complaints continued from that time through to this hearing.
- [19] The Respondent pointed to the absence of any photographs showing her smoking in a prohibited area and any direct quotes from complainants. She did not address the frequent dialogue with Mr. Guida regarding compliance with the Rules.
- [20] Finally, the Respondent notes that her unit door is directly across from a door leading to the outdoors and to stairs to other floors. She has noted and reported to Mr. Guida cigarette butts outside of that exterior door and suggests the smoke/odour migration source may lie in that access route.
- [21] The Applicant is seeking orders that will require the Respondent and her guests to permanently comply with the Rules by ceasing to smoke in the Respondent’s unit and the exclusive use common elements and an order requiring the Respondent to reimburse Tribunal filing fees, and to indemnify the Applicant for its legal costs in pre-hearing efforts to enforce compliance with the Rules as well as those arising from the Tribunal processes.
- [22] The Applicant highlighted that Mr. Guido has not received reports from any other owner indicating a different location in the building where smoke odour has been detected, and that the only complaints that he receives are all in relation to the Respondent’s unit.

### **C. EVIDENCE & ANALYSIS**

[23] The issues to be addressed in this matter are:

1. Is Ms. Valente or any of her guests in violation of the Non-Smoking Rule and if so, what order(s) should be made in this case:

2. What costs, if any, should be awarded to YRSCC No. 1054 for legal fees associated with the compliance letters sent of April 14, 2021, and December 17, 2021, and for the costs of this proceeding?

[24] The Applicant submitted evidence in the form of documents and written testimony. The Respondent has provided only a closing statement. While I have considered all of the evidence and submissions before me, I will only refer to those relevant to the issues to be decided by me.

**Issue 1: Is Ms. Valente or any of her guests in violation of the Non-Smoking Rule and if so, what order(s) should be made in this case?**

[25] As set out above, Rule 34 prohibits smoking in units and on the exclusive use common elements. Rule 10 of YRSCC No. 1054's Rules is also relevant; it states the following:

10. Owners, their families, guests, visitors and servants shall not make or permit the creation or continuance of any noise or nuisance which, in the opinion of the board, may or does disturb the comfort or quiet enjoyment of the units or common elements by other owners their families, guests, visitors, servants and persons having business with them.

[26] The Rules reflect the provisions of the Act in Section 117(2)

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.

Section 26 of the Ontario Regulation 48/01 lists unreasonable odour and smoke among the prescribed nuisances.

[27] As noted above, Ms. Valente has admitted to vaping/smoking when she was confronted about the activity shortly after she moved in but claimed this occurred because she was unaware of the rule prohibiting smoking. However, I accept the evidence that she was or ought to have been aware of the rules on May 11, 2020, when Mr. Guido sent her the 'Welcome Package' by email containing the Rules. When specifically asked if she had discontinued vaping on the evening mentioned above or had discontinued any smoking activity of either her own or a guest on a continuing basis, and secondly, if she had only discontinued such activity on the terrace or inside the unit as well, her answer stating she had discontinued smoking activity "on the grounds", is unclear and frankly, equivocating.

[28] Although there is no photographic evidence, the smoking activity has been noted by other residents, odour migration has been reported and investigated over an extended period of time. Further, I note that all complaints are registered by units

adjacent to the Respondent's unit and to no other area of the building.

- [29] Any abatement of the activity, although brief, occurred only in two one-week time periods following the Respondent's receipt of the compliance letters of April and December 2021. The odour is noted in the hallway outside of the Respondent's door, in units surrounding hers and from the terrace area, wafting into residents' exclusive use common elements and into their units.
- [30] The Respondent has an obligation pursuant to section 119(1) of the Act to comply with the rules, by-laws and declaration of YRSCC No. 1054 and that includes rule 34, the non-smoking rule. By her failure to comply, she has compromised the quiet enjoyment of other residents.
- [31] I find that the Respondent, and or her guests have, on the balance of probabilities, breached both the 'Non-Smoking Rule' of YRSCC No. 1054, and section 117(2) of the Act,
- [32] The Respondent is ordered to cease smoking and or vaping tobacco or marijuana products in her unit or the common elements (exclusive or mutual) of YRSCC No. 1054. She is also ordered to ensure that any person occupying or visiting her unit does not smoke either tobacco or marijuana products in her unit or the common elements.

**Issue 2: What costs, if any, should be awarded to YRSCC No. 1054 for legal fees associated with the enforcement letters sent on April 14, 2021 and December 17, 2021 and for those attached to this application to the Tribunal?**

- [33] YRSCC No. 1054 seeks an order for Ms. Valente to reimburse the fee (\$150) it paid to file this application to the Tribunal. After many unsuccessful attempts to resolve the issue in dispute, the applicant sought a decision and order through the Tribunal's processes.
- [34] The Tribunal's Rule 48 .1 states:
- If a Case is not resolved by Settlement Agreement or Consent Order and a Tribunal Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's Tribunal fees unless the Tribunal member decides otherwise.
- [35] The Applicant also seeks an order requiring the Respondent to reimburse both its pre-CAT costs (\$1096.10) related to the enforcement of its rules and its legal costs (\$4102.47) in bringing the application to the Tribunal. The Applicant submitted in its closing statement that the reimbursement of pre-CAT costs can be supported by the provisions in section 9 of YRSCC No. 1054's declaration which states:
- ...any losses, costs or damages incurred by the Corporation by reason of a breach of this declaration, the by-laws of the Corporation or any rules and regulations of the Corporation in force from time to time, by any unit owner, or 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.

[36] As the Respondent is found to have contravened the rules of YRSCC No. 1054's and the nuisance of smoking/odour persists up to the date of the hearing; the Applicant seeks an order for reimbursement of its costs (\$4102.47) incurred to bring the application to the Tribunal. The Applicant cited Rule 48.2 of the Tribunal's Rules of Practice in support of their position on costs.

48.2 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 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.

[37] As the Applicant was successful in its application and pursuant to the Tribunal's Rule 48.1, I am ordering the Respondent to reimburse the Applicant its filing fees (\$150).

[38] With respect to the reimbursement of pre-CAT expenses, incurred due to the Respondent's continued non-compliance with the condominium's governing documents, and pursuant to section 1.44 (1) 3 of the Act, the Tribunal can order a party to pay compensation for damages incurred by another party because of an act of non-compliance. In considering both section 1.44 (1) 3 of the Act and section 9 of YRSCC 1054's declaration and due to the numerous and varied efforts of the Applicant to inform and communicate with Ms. Valente regarding her non-compliance with the rules of the condominium, I find it entirely appropriate to make an order directing the Respondent to reimburse YRSCC No.1054 its pre-CAT costs (\$1096.10).

[39] In considering the Applicant's request for reimbursement of costs incurred for this hearing, I find that the partial awarding of costs is appropriate in this case. Tribunal Members are guided in their consideration of costs by its 'Tribunal Practice Direction: Approach to Ordering Costs', issued January 1, 2022. The Practice Direction allows consideration of various factors, when determining whether to order costs under Rule 48. These factors include the following: the conduct of a party or its representative in a hearing, the participation in an effort to resolve the issues in dispute, a clear understanding of the provisions of the governing documents, and possible consequences of contravention of them, and finally the principle of proportionality when deciding any quantum of costs.

[40] The Respondent did not initially participate in the Tribunal process and the case came to hearing as a 'default' proceeding. The Respondent did receive letters advising her of the progression of the dispute and of possible consequences of YRSCC No.1054 having to make an application to the Tribunal. The Respondent did join the proceeding in Stage 3 but chose not to file any submissions until her

closing submission. The hearing was very straightforward and uncomplicated. The amount of the costs was appropriate given the absence of either Stage 1 or Stage 2 segments of the CAT process. In weighing the facts of this case, I award \$2,051.24 to the Respondent, YRSCC 1054 for their legal costs, an amount representing 50% of their costs.

**D. ORDER**

[41] The Tribunal Orders that:

1. Under section 1.44(1) of the Act, Ms. Valente shall immediately comply with Rule 34 and for specificity, she shall not smoke either tobacco or marijuana products in her unit, and on the exclusive-use common elements (the terrace) or any other common elements of YRSCC No.1054.
2. Under section 1.44(1) of the Act, Ms. Valente will take all reasonable steps to ensure that any person occupying the unit comply with YRSCC No. 1054's non-smoking rule.
3. Under section 1.44(1)3 of the Act, within thirty (30) days, the Respondent, Ms. Valente, shall pay compensation for pre-CAT costs in the amount of \$1096.10 to YRSCC No.1054.
4. Under section 1.44(1)4 of the Act, within thirty (30) days, the Respondent, Ms. Valente shall pay Tribunal fees of \$150 and legal costs of \$2,051.24 to YRSCC No.1054.

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Eleanor White  
Member, Condominium Authority Tribunal

Released on: December 5, 2023