

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 5, 2024

CASE: 2024-00279N

Citation: Carleton Condominium Corporation No. 383 v. Laflamme, 2024 ONCAT 136

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

Member: Laurie Sanford, Member

The Applicant,

Carleton Condominium Corporation No. 383

Represented by Dominique Mesina, Counsel

The Respondent,

Ginette Laflamme

Not Appearing

Hearing: Written Online Hearing – June 25, 2024 to August 13, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] On November 30, 2016, Carleton Condominium Corporation No. 383 (“CCC 383”) enacted a no smoking rule (the “No Smoking Rule”) that was designed to make CCC 383 a smoke-free building by June 30, 2019. People who were smokers at the time were permitted to register as legacy smokers and were permitted to continue smoking in their units for the legacy period, provided they took steps to ensure that their smoke did not penetrate the common element hallways or flow into other units. After June 2019, smoking was prohibited in the units. While there were a number of versions of the rules issued by CCC 383 from 2016 to present, the No Smoking Rule remained substantially unchanged.

[2] Ms. Laflamme is a unit owner in CCC 383. She registered as a legacy smoker, but CCC 383 alleges she never effectively stopped the smoke escaping from her unit. CCC 383 alleges that Ms. Laflamme continues to smoke tobacco today. One witness, the Assistant Property Manager of CCC 383 (the “APM”) testified about a conversation with Ms. Laflamme where she said that she tries to smoke only in one room and has installed a filter to reduce the smoke escaping. In a conversation that the Office Administrator reported, Ms. Laflamme acknowledged that she continues to smoke but said that she is too old to quit smoking.

Ms. Laflamme did not appear at this hearing.

- [3] For the reasons set out below, I find that Ms. Laflamme is violating the No Smoking Rule and, by so doing, is creating a nuisance, annoyance or disruption that is prohibited under subsection 117 (2) of the *Condominium Act, 1998* (the “Act”). I am directing Ms. Laflamme to bring herself into compliance with the No Smoking Rule and with the Act. I am ordering Ms. Laflamme to compensate CCC 383 for its legal expenses incurred in enforcing compliance and for some of the costs of this hearing. I am also directing specific actions to enforce these orders.

B. ISSUES & ANALYSIS

- [4] The issues in this case may be summarised as follows:

1. Is Ms. Laflamme in violation of the Act and of CCC 383’s No Smoking Rule?
2. What is the appropriate remedy?
3. Should CCC 383 be awarded any costs or compensation?

Issue 1 – Is Ms. Laflamme in violation of the Act and of CCC 383’s No Smoking Rule?

- [5] Ms. Laflamme registered as a legacy smoker shortly after the No Smoking Rule was passed on November 30, 2016. According to CCC 383, it began to receive complaints about tobacco smoke escaping from her unit in or about September 2018. On September 27, 2018, CCC 383 wrote to Ms. Laflamme noting that she was a legacy smoker but reminding her that, under the No Smoking Rule, legacy smokers were obliged to “properly ventilate their unit to avoid smoke transfer to common hallways and to other units. It will be the responsibility of the Smoker to mitigate smoke transfer to other units and the common hallways.” The complaints continued and a second letter was sent to Ms. Laflamme on October 5, 2018.
- [6] Effective June 30, 2019, CCC 383 became a smoke-free building. Smoking was no longer permitted in the units, the common elements inside the building and within 9 meters of the perimeter of the building. The No Smoking Rule permits designated smoking areas, which are outside the building.
- [7] Complaints about smoke from Ms. Laflamme’s unit continued and on August 20, 2019, CCC 383 sent Ms. Laflamme what it called a “Final Notice”. She was advised that if the complaints continued the next step would be a compliance letter

from CCC 383's Counsel, with the resulting costs being charged to her "unit's account". On April 23, 2020, CCC 383 sent Ms. Laflamme an email asking her, for the final time, "to respect the rules and stop smoking in your unit". On May 6, 2020, Ms. Laflamme was notified that, because she had not responded to the earlier email, the matter had been referred to CCC 383's counsel.

- [8] On May 29, 2020, the first letter from counsel for CCC 383 was sent to Ms. Laflamme. The letter refers to the four earlier letters and emails and reminds Ms. Laflamme of her responsibility to stop smoking in her unit. The letter sets out in summary the duty of CCC 383 to accommodate individuals with disabilities or medical conditions, up to the point of undue hardship. Ms. Laflamme was given advice as to what the Board of Directors required to demonstrate that an accommodation was required. The letter details requirements for a marijuana accommodation but does not mention tobacco. There is no evidence that Ms. Laflamme ever claimed that she required an accommodation to continue smoking tobacco.
- [9] CCC 383 produced an internal email dated June 10, 2020 which reported a telephone conversation between the Office Administrator and Ms. Laflamme. Ms. Laflamme was reported to have said that she has smoked for 60 years and is too old to quit. She said she couldn't walk due to her hips. This comment may have been in explanation for why she does not use the outdoor designated smoking area. She does not believe that her smoke travels and believes that any smell was from her grandson vaping in the washroom, which she stopped him from continuing. She also said she could not afford the legal fees. The conversation lasted approximately 15 minutes and Ms. Laflamme ended it by hanging up.
- [10] On March 9, 2023, Ms. Laflamme was notified by email that the complaints of second-hand smoke had "once again" begun and that CCC 383 was resorting to legal action, which would be billed back to her. On December 11, 2023, Ms. Laflamme was sent a second letter from CCC 383's counsel again advising her that her right to smoke in her unit ended on June 30, 2019. The letter outlined the further complaints that have been received since the May 29, 2020 letter from counsel. The letter also reported nine separate reports of smoke in the hallways recorded during CCC 383's security patrols. These security reports note that smoke lingers in the hallway in front of several adjoining units on Ms. Laflamme's floor and, occasionally, in the hallway on the floor above her unit. Ms. Laflamme was again advised that she would bear the costs of the two letters from counsel concerning her non-compliance and would be expected to pay the costs of any legal proceeding. She was told that these costs would be added to the common

expenses for her unit.

- [11] CCC 383 produced complaint emails and a witness statement from the author of the security reports. CCC 383 also produced witness statements, made under an affirmation of truth, from both CCC 383's management and from a complainant. In one of these, the APM testified to being called by Ms. Laflamme on August 30, 2023 and being asked to come to her unit to deal with some reported damage. As the APM approached Ms. Laflamme's unit, she smelled smoke in the hallway. Inside the unit, the APM detected the "strong" smell of cigarette smoke. Ms. Laflamme acknowledged that she smokes in her den but that she had a filter to "clean the air". It was her position that she was a legacy smoker and so was allowed to smoke in her unit. The APM advised her that she was mistaken and that no one was permitted to smoke in any unit after June 30, 2019. The APM testified that by the end of the visit, her eyes were burning and that, following her visit, there was a persistent smell of smoke on her clothes and in her nostrils. CCC 383 produced a follow-up email to Ms. Laflamme reporting on this visit.
- [12] In another witness statement, a complainant testified that the smoke odour was particularly pronounced in the evenings, on weekends and when it is windy outside. It was this complainant's testimony that she began complaining about the smoke in April 2018 and that the situation persisted to the date of her witness statement, in the spring of 2024. The complainant is concerned about the health effects of second-hand smoke as well as the fire hazard. The complainant testified to having taken several steps in an attempt to mitigate the smoke fumes, including putting a seal on her front door.
- [13] Subsection 117 (2) of the Act prohibits certain activities that create a nuisance, annoyance or disruption and refers to certain prescribed activities. Section 26 of Ontario Regulation 48/01 to the Act lists unreasonable smoke as one of the prescribed activities if it causes a nuisance, annoyance or disruption. Ms. Laflamme acknowledges that she continues to smoke, in violation of the No Smoking Rule. I am persuaded by the testimony of the APM, the Office Administrator, the security patrol staff member and the complainant, that the penetration of the odour of tobacco smoke into the hallway from Ms. Laflamme's unit is persistent, unreasonable and constitutes a nuisance.

Issue 2 – What is the appropriate remedy?

[14] CCC 383 is seeking an order requiring Ms. Laflamme to:

1. Immediately comply with the Act and with CCC 383's No Smoking Rule;

2. Provide access to Ms. Laflamme's unit on short notice (2 hours) should CCC 383 receive an additional report of smoke migration from the unit;
3. Pay to CCC 383 its pre-Tribunal costs incurred to seek compliance prior to the Tribunal application, as well as its costs to pursue this Tribunal application on a full indemnity basis;
4. Allow CCC 383 to add any amounts awarded in this Application to the common expenses for Ms. Laflamme's unit to be recovered via lien, in accordance with subsection 1.45 (2) of the Act; and

[15] CCC 383 also requests "Such further and other relief and the Tribunal may deem just".

[16] I understand that cigarette smoking is perniciously addictive. However, Ms. Laflamme had over 2 ½ years, the legacy period, to stop smoking in her unit or anywhere else on the grounds of CCC 383 except in the designated smoking areas. Ms. Laflamme failed to comply with the No Smoking Rule during the legacy period and continues to violate it today. It is customary in a case where one party has been found in violation of the rules of a condominium corporation or the Act to require that the party immediately bring themselves into compliance with both and I will direct Ms. Laflamme to do this.

[17] CCC 383 has an obligation to enforce its Rules, and, in this case, it is important to monitor Ms. Laflamme's compliance with the No Smoking Rule. Access to the unit on reasonable notice by a condominium corporation is permitted under section 19 of the Act for the purposes of performing its duties. Article III (2) of CCC 383's Declaration echoes this language. CCC 383 is requesting an order to permit it to have access to Ms. Laflamme's unit on short notice if it receives new reports of tobacco smoke emanating from the unit. CCC 383 submits that it is reasonable to permit this access on two hour's notice to detect the odour of tobacco smoke in Ms. Laflamme's unit. CCC 383 suggests that a longer time might permit the smoke to dissipate. While one might quibble about how many hours notice is reasonable, two hours should suffice to protect Ms. Laflamme's privacy while permitting CCC 383 to enforce compliance with the No Smoking Rule.

[18] The delivery of the two-hours notice may be an issue in this case. I note that Ms. Laflamme never responded to the various emails sent to her. It is possible that she does not check her emails regularly. Her communications with CCC 383 appear to take place by telephone. Therefore, I will direct that CCC 383 contact Ms. Laflamme by telephone two (2) hours before attending at her unit and provide her with a follow-up email. I am concerned, given Ms. Laflamme's resistance to the

no smoking mandate, that she might simply refuse to take CCC 383's telephone call. In that case, I will direct CCC 383 to attend at her unit, knock on the door and deliver the two-hour notice, either in person or in writing. I will order Ms. Laflamme to grant CCC 383's personnel access to her unit on two-hour notice if there is a further complaint about smoke coming from her unit.

Issue 3 – Should CCC 383 be awarded any costs or compensation?

- [19] CCC 383 requests reimbursement of the legal costs it incurred in enforcing compliance with the No Smoking Rule, specifically the costs of the two letters written by CCC 383's outside lawyers to Ms. Laflamme. CCC 383 incurred legal costs of \$1,356, including HST for the preparation of these letters. CCC 383 provided a bill of costs which I have reviewed and find reasonable. I will direct that Ms. Laflamme compensate CCC 383 for this cost.
- [20] CCC 383 also requests its filing costs with the Tribunal of \$150. Under Rule 48.1 of the Tribunal's Rules of Practice, a successful party in an application may generally recover its filing costs and I will make that order in this case.
- [21] Under Rule 48.2 of the Tribunal's Rules of Practice, the legal costs incurred during the hearing itself are generally not awarded. However, CCC 383 argues that, in this case, they have made reasonable efforts to resolve this dispute and they have conducted the application itself in a cost-effective manner. CCC 383 claims costs of \$4,817.78, including HST. I am aware that Ms. Laflamme has told the management of CCC 383 that she cannot afford the legal costs. However, that comment was not introduced as testimony and there is no way to assess its truthfulness. Ms. Laflamme appears to have done little to mitigate the smoke emission from her unit, even during the legacy period. It seems appropriate that she should pay some part of CCC 383's costs. I will direct her to pay \$1,000 on account of the legal costs of this application. Ms. Laflamme must understand that if she continues to smoke in her unit, the costs and the consequences to her will escalate.
- [22] I will give Ms. Laflamme 90 days from the date of this order to pay these amounts. CCC 383 requests that I stipulate that CCC 383 can collect unpaid amounts by way of lien on Ms. Laflamme's unit. The Tribunal has no jurisdiction to order that a lien be placed on Ms. Laflamme's unit. However, under subsection 1.45 (2) of the Act, any amount ordered by the Tribunal as compensation, costs or penalties may, if unpaid, be added to the unit owner's common expenses. It follows that these unpaid amounts may be enforced in the same way as the payment of common expenses are enforced, including by way of a lien on the unit.

C. ORDER

[23] Under section 1.44 of the Act, the Tribunal orders that:

1. Ms. Laflamme shall immediately bring herself into compliance with, and remain in compliance with, the No Smoking Rule of CCC 383 and with subsection 117 (2) of the Act.
2. If there is a further report of tobacco smoke coming from Ms. Laflamme's unit, then:
 - a. CCC 383 will notify Ms. Laflamme by telephone and email of the report of smoke and will advise Ms. Laflamme that CCC 383's staff will be entering her unit to investigate in two hours time;
 - b. If Ms. Laflamme does not answer the telephone, then CCC 383 may deliver the two-hour notice by attending at Ms. Laflamme's unit and delivering the notice either in person or in writing; and
 - c. Ms. Laflamme will grant access to her unit by the CCC 383's staff under the terms of this paragraph.
3. Within 90 days from the date of this Order, Ms. Laflamme will pay the following compensation and costs to CCC 383:
 - a. The amount of \$1,356 for the costs of enforcing compliance with the No Smoking Rule;
 - b. The amount of \$150 for the filing costs with the Tribunal; and
 - c. The amount of \$1,000 on account of the legal costs of this Application.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: September 5, 2024