

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 28, 2024

**CASE:** 2024-00009N

**Citation:** Chown v. Frontenac Condominium Corporation No. 19, 2024 ONCAT 133

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

**Member:** Anne Gottlieb, Member

**The Applicant,**

Adaire Chown

Self-Represented

**The Respondent,**

Frontenac Condominium Corporation No. 19

Represented by Melinda Andrews, Counsel

**Hearing:** Written Online Hearing – February 27, 2024 to August 14, 2024  
Video Conference – May 20, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] Adaire Chown (“Ms. Chown”) is a unit owner and was previously a member of the board of directors (the “board”) at Frontenac Condominium Corporation No. 19 (“FCC 19”). FCC 19 is a no-animal and no-pet building and has been that way since its inception. FCC 19’s By-law No. 4 and Rule 6.1 (the “No-pets By-law and Rule”) state that animals are prohibited. Ms. Chown argues that the No-pets By-law and Rule are not reasonable, as required by the *Condominium Act, 1998* (the “Act”).

[2] For the reasons set out below, I find that FCC 19’s No-pets By-law and Rule are not inconsistent with FCC 19’s Declaration. Based on the evidence provided to me, I find that the No-pets By-law and Rule are reasonable. This is a small building, and the no-pet status has been in place since 1988. The board sought the opinion of owners. Deference should be given to the board to conduct the business of the corporation. I make no award regarding costs.

#### **B. PRELIMINARY MATTERS AND JURISDICTION**

- [3] In her opening remarks, and at several junctures, Ms. Chown asked for remedies that are beyond the jurisdiction of this Tribunal and relate to governance. I made a ruling limiting the scope of this application to matters that are properly before this Tribunal. There are processes already set forth in the Act to change a rule. These are within the purview of the board of a condominium corporation or may properly be the subject of an owners' meeting, and do not require an order from this Tribunal.<sup>1</sup>
- [4] In a motion brought by the Respondent, FCC 19 argued that this Tribunal does not have jurisdiction to hear this case and that Ms. Chown does not have standing to bring this application. I found that the Tribunal does have jurisdiction pursuant to Section 1 (1) (d) (i) of Ontario Regulation 179/17 ("O. Reg. 179/17") which gives this Tribunal jurisdiction over disputes with respect to provisions that prohibit, restrict or otherwise govern pets or other animals.<sup>2</sup> Further, Ms. Chown has standing under Section 1.36 (2) of the Act.
- [5] Numerous procedural requests were made by both parties in the preliminary phase, which required me to issue a direction or written interim ruling. These rulings were provided to the parties and form part of the record of the hearing. They will not be repeated in this decision. They include, among other things: governance issues outside the jurisdiction of the Tribunal; a request for a confidentiality order; requests for adjournments, a request to add late witnesses; matters dealing with the availability of counsel; and the format for providing witness testimony.

### **C. BACKGROUND**

- [6] This condominium consists of 13 units. Since 1987, the Declaration of FCC 19, has been silent about pets and animals. This condominium has had an animal prohibition in By-law No. 4, registered on title since May 1988, stating: "No animal, livestock, fowl, reptile, or rodent shall be kept or is allowed in any unit. No breeding of animals is allowed." FCC 19 also has Rule 6.1 in place which states that "no animals shall be kept or allowed in any unit."
- [7] In April 2023, a survey was distributed to owners (the "survey") to collect information on their general positions regarding animals in the building. Following

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<sup>1</sup> Section 58 (6) of the Act, sets out the process a corporation must follow in making or amending rules and Section 46 of the Act sets out the process to be followed when owners wish to requisition a meeting.

<sup>2</sup> Section 1 (1) (d) (i) of O. Reg. 179/17 of the Act states:

1. (1) The prescribed disputes for the purposes of subsections 1.36 (1) and (2) of the Act are,
  - (d) subject to subsection (3), a dispute with respect to any of the following provisions of the declaration, by-laws or rules of a corporation:
    - (i) Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.

the survey, the board decided that no further action was needed. Several months later, Ms. Chown commenced her application, challenging the reasonableness of the No-pets By-law and Rule.

[8] On April 10, 2024, the board approved an amendment to the Declaration. The proposed amendment was to add the following provision to FCC 19's Declaration: "No animal, livestock, fowl, reptile, or rodent shall be kept or is allowed in any unit. No breeding of animals is allowed." To date, this amendment has not been approved by the owners.

#### **D. ISSUES & ANALYSIS**

[9] I have considered the evidence and submissions of both parties. I will only refer to matters that are relevant to the issues to be decided. The issues to be decided in this case are:

1. What, if anything, does FCC 19's Declaration say regarding pets and animals?
2. Are the No-pets By-law and Rule reasonable?
3. Should an order of costs be awarded?

#### **Issue No. 1: What, if anything, does FCC 19's Declaration say regarding pets and animals?**

[10] There is a hierarchy to the documents that govern a condominium corporation. A condominium corporation is foremost governed by the Act, then its declaration, by-laws, and rules. Pursuant to Sections 56 and 58 of the Act, by-laws and rules must be reasonable and must be consistent with the declaration and the Act.<sup>3</sup>

[11] Ms. Chown argued in her opening statement that the Declaration does not prohibit animals or pets and that the No-pets By-law and Rule are therefore inconsistent with it. While it is correct to state that the Declaration does not prohibit pets, it also does not allow them. The Declaration is silent.

[12] Ms. Chown submitted into evidence a sworn statement dated May 17, 2024, from Joel H. Watt, a duly authorized officer of the declarant of FCC 19 and the signatory to the FCC 19's Declaration on May 3, 1987. The sworn statement states that "the lack of an animal prohibition in the declaration was not an oversight." This

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<sup>3</sup> Section 56 (6) of the Act states that the by-laws shall be reasonable and consistent with the Act and the declaration.

Section 58 (2) of the Act states that the rules shall be reasonable and consistent with the Act, the declaration and the by-laws.

statement, at face value, means that the Declaration was intentionally silent about animals and pets in the building. It was, therefore, left for this issue to be governed by the Rules and By-laws of the condominium corporation.

- [13] An adjournment was granted during Stage 3 for a meeting of owners called for June 5, 2024, pursuant to Section 107 (3) of the Act. The owners' meeting was held to allow owners to consider the amendment to the Declaration proposed and approved by the board. For reasons known to the parties, no vote of owners has taken place since that owners' meeting. It is not disputed by the parties that, at the time of the conclusion of this hearing, FCC 19's Declaration remains silent about pets and animals.

### **Issue No. 2: Are the No-pets By-law and Rule, reasonable?**

- [14] The evidence before me is that the building has been a no animals or pets building since 1987 and that the By-law has been registered since 1988. Current owners have bought their units with this understanding.
- [15] Ms. Chown cites the case of *215 Glenridge Ave. Ltd. Partnership v. Waddington* ("Waddington")<sup>4</sup> to argue the considerations a board should take if they ban all pets. Counsel for FCC 19 argues that the Court in Waddington confirmed that it is, in fact, possible for a Rule to prohibit pets where allowing pets would compromise the safety and welfare of owners and the property or cause an unreasonable interference with the use and enjoyment of the units and common elements, which is specifically the case at FCC 19 according to the board's evidence. Counsel has pointed out that jurisprudence has recognized that decisions made by boards of condominium corporations should be shown deference. As this Tribunal has recognized on numerous occasions, case-law has evolved to recognize the authority of decisions made by boards. This may otherwise be known as the business judgment principle. In this circumstance, I find that it is the board who is in the best position to understand the needs of the corporation.
- [16] Ms. Chown made submissions based on her desire to have the status of the condominium changed to a condominium allowing pets. She repeatedly advocated to have pets and animals allowed in the building. Her arguments focused on anticipated concerns regarding pets in the building. These arguments might be persuasive for the board or owners to hear, but the issues of possible animal sound transmission, size of lobby and common spaces are not factors that I need to consider in this case.
- [17] It is apparent to me, based on the evidence, that the board takes their duties in this matter seriously. The board canvassed the views of the owners about pets and

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<sup>4</sup> *215 Glenridge Ave. Ltd. Partnership v. Waddington*, 2005 CanLII 4197 (ONSC)

animals in the building with the 2023 survey. The evidence regarding that survey is as follows: three unit owners were in favour of having pets in the building; two wished to have conditions placed on pets in the building; the remaining owners either favoured no pets or chose not to respond to the survey.

[18] There is evidence that following the survey, at the June 27, 2023, board meeting, the board declared the By-law and Rule to be reasonable. Ms. Chown posits that the question to ask is a further one – namely “is the prohibition the only reasonable option ...?” That is not the correct approach. If the By-laws and Rules are reasonable, then that ends the matter.

[19] Since the time of the survey, the board took steps to pass an amendment to the Declaration to declare that FCC 19 should have no animals or pets. Such an amendment requires the written consent of owners and must be approved by the owners of a certain percentage of the units. That is the process outlined in the Act, so that owners can make their views known. To date, no amendment to the Declaration has been approved by the owners.

[20] I find that the board of FCC 19 is entitled to deference so long as their decision falls within a range of reasonableness. I defer to the board based on the business judgment principle. The decision as to whether the building should change to allow pets is one to be decided using the processes already set out in the Act.

### **Issue No. 3: Should an order of costs be awarded?**

[21] Ms. Chown has not been successful in her application, and, in any event, she has not asked for costs. FCC 19 has asked for its costs in the amount of \$20,000 (inclusive of HST and disbursements). Both parties contributed to the factors that caused this case to span several months. The Applicant raised multiple preliminary matters and issues, and Counsel for the Respondent had time constraints due to prior commitments in other cases. There is no doubt that the Applicant was persistent in trying to persuade the Tribunal that the building should allow pets. However, the questions to be answered focussed on what the governing documents said about animals and pets and whether the No-pets By-law and Rule were reasonable in the circumstances. The issues in this case were not complex but were complicated by the dynamics of the parties.

[22] The Tribunal’s Practice Direction: Approach to Ordering Costs, which came into effect January 1, 2022, sets out criteria which the Tribunal might consider in determining if an award of costs should be ordered. The Respondent contributed to the prolonged hearing process. Counsel submitted in the request for costs, legal fees for two owners’ meetings which should not form part of Counsel’s submissions on costs in this case. For these reasons, I do not award any costs to FCC 19.

**E. CONCLUSION**

[23] Having found that FCC 19's No-pets By-law and Rule are reasonable, I dismiss the application without costs to either party.

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Anne Gottlieb  
Member, Condominium Authority Tribunal

Released on: August 28, 2024