

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 24, 2024

**CASE:** 2024-00264N

**Citation:** York Region Standard Condominium Corporation No. 1323 & Ciyayi, et al.,  
2024 ONCAT 89

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

**Member:** Dawn Wickett, Member

**The Applicant,**

York Region Standard Condominium Corporation No. 1323

Represented by Victor Yee, Counsel

**The Respondents,**

Rojda Ciyayi

Not Represented

Metin Ciyayi

Not Represented

Jindar Ciyayi

Not Represented

**Hearing:** Written Online Hearing – May 28, 2024 to June 10, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] The Applicant, York Region Standard Condominium Corporation No. 1323 (“YRSCC 1323”), filed an application with the Tribunal seeking an order requiring the Respondents to comply with the provisions of its governing documents relating to smoking and noise. Rojda Ciyayi is the unit owner. Metin Ciyayi and Jindar Ciyayi are occupants of the unit. The occupants are family members of the unit owner.

[2] The Applicant is also requesting an order for the Respondents to reimburse it for the cost incurred for enforcement attempts (\$2,478.52), the fee (\$150) paid to file this application, and legal fees (\$3,319.63) associated with participating in the Tribunal proceeding.

- [3] Neither the unit owner nor the occupants joined the case. Counsel for the Applicant submitted that he served notice to the Respondents on May 1, 13 and 27, 2024. The notices were sent by mail to the unit owner at the address on file with the corporation. Notices for each occupant were sent by mail to the unit. In total, 9 copies of the notices were mailed to the Respondents. Based on Counsel's submission, I am satisfied that the Respondents received notice of the Tribunal proceeding. This matter proceeded as a default hearing.
- [4] For the reasons that follow, I order the Respondents to comply with the provisions of the Applicant's governing documents pertaining to noise and smoking. I also order the Respondents to reimburse the Applicant for the fee paid for filing this application, and partial compensation for expenses incurred for enforcement efforts and legal fees for participating in the Tribunal proceeding.

## **B. ISSUES & ANALYSIS**

### **Issue #1: Smoking**

- [5] The Applicant submits that the occupants and one of their guests have been smoking inside the unit and on the common elements, contrary to its Rule 14.1 which states:
- In addition to the provincial and/or municipal smoking ban in any interior common areas of a condominium corporation, there shall be no smoking of tobacco or smoking of marijuana, as those terms are hereinafter defined, anywhere on, within or upon the common elements of the Corporation (which shall include all exterior common elements of the Corporation such as patios, terraces and/or balconies) or the units of the Corporation, except in areas as may specifically be designated by the board from time to time.
- [6] The Applicant submits that since December 13, 2023, it has received numerous complaints related to the odour of cigarette smoke emanating from the unit. In response to these complaints, on December 18, 2023, the Applicant sent an email letter to the unit owner and the occupants reminding them of the no smoking rule. The letter also advised that failure to comply with the no smoking rule would result in "legal action" and that the costs incurred for this action would be the responsibility of the unit owner.
- [7] After receiving the letter, the unit owner called and spoke to the Applicant's site administrator and advised that she would speak with the occupants about the smoking violations.
- [8] On December 19 and 21, 2023, the Applicant received further complaints about

the odour of cigarette smoke emanating from the unit. In response to the ongoing complaints, on January 16, 2024, the Applicant's counsel sent an enforcement letter to the unit owner and the occupants. The enforcement letter reinforced the no smoking rules and advised the Respondents that if they did not comply with the governing documents, legal action would be commenced. The letter also put the Respondents on notice that if the Applicant were required to take further legal action for enforcement, it would seek reimbursement for legal fees and other costs incurred in dealing with this matter.

- [9] Despite the Applicant's counsel having sent the enforcement letter, the occupants did not comply with the no smoking rule. Subsequently, the Applicant continued to receive complaints about the odour of smoke emanating from the unit. Complaints were received on January 22, 23, 27, 29 and 30, and on February 15, 16, 17 and 20, 2024. The February 20 complaint was investigated and verified by the Applicant's security. As a result of these complaints, another enforcement letter was sent to the Respondents on March 7, 2024. This letter advised the Respondents that if they did not comply with the Applicant's no smoking rules, it would commence proceedings with this Tribunal.
- [10] On March 10, 15, and 17, 2024, the Applicant received complaints of smoke emanating from the unit. The March 10 complaint also reported concerns about the occupants' visitor (brother) smoking in the common elements' sauna. These complaints were investigated and verified by the Applicant's security (security report submitted).
- [11] Since filing this application, the Applicant received another complaint of smoke emanating from the unit on May 29, 2024.
- [12] In considering the uncontested evidence before me, I find the occupants have not complied with YRSCC 1323's governing documents, specifically Rule 14.1 which prohibits smoking in the unit or on the common elements (aside from designated smoking areas). In making this finding, I considered the fact that the Applicant provided compelling evidence in support of its position that the occupants and one of their guests regularly smoke inside the unit, and on one occasion on a portion of the common elements designated as non-smoking.
- [13] There is no evidence before me that the unit owner took steps in complying with her obligations under Section 119 (2) of the *Condominium Act, 1998* (the "Act"), which requires her to ensure the occupants of her unit comply with all provisions of YRSCC 1323's governing documents. The only evidence before me is that of the Applicant which I find compelling.

[14] Having considered the uncontested evidence of the Applicant, I find the unit owner's lack of response to the corporation's concerns has permitted the occupants to carry on activities contrary to Section 117 (2) of the Act which prohibits a person from carrying on an activity in a unit or on the common elements that results in the creation of a nuisance, annoyance or disruption. In making this finding, I considered that aside from one telephone call with the Applicant, the unit owner has not taken any measures to address the reported concerns which has resulted in ongoing complaints of smoking inside the unit, and on one occasion in the common elements' sauna.

## **Issue #2: Noise**

[15] The Applicant's Rules 2 (a) and (b) prohibit the creation of noise that may be disruptive to others in the condominium community. Rules 2 (a) and (b) read as follows:

Owners and their families, guests, visitors, servants and agents shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the manager, may or does disturb the comfort or quiet enjoyment of the Units or common elements by other Owners or their respective families, guests, visitors, servants and persons having business with them.

No noise shall be permitted to be transmitted from one Unit to another. If the Board determines that any noise is being transmitted to another Unit and that such noise is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall at his expense take such steps as shall be necessary to abate such noise to the satisfaction of the Board. If the Owner of such Unit fails to abate the noise, the Board shall take such steps as it deems necessary to abate the noise and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating the noise (including reasonable solicitor's fees).

[16] On February 20, 2024, the Applicant received a complaint indicating the occupants were creating unreasonable noise. The complaint detailed loud arguing that could be heard from the Respondents' unit. Security investigated and verified the noise complaint. After security attended the unit, the noise diminished. This noise complaint was brought to the unit owner's attention in the March 7, 2024, enforcement letter cited in paragraph 9 above.

[17] On April 20, 2024, the Applicant received another noise complaint. This time, the complaint indicated that the occupant's brother was in the swimming pool area, knocking over pool chairs and yelling. Security investigated and verified the

complaint (security report submitted). The incident was captured on camera, and still images were submitted supporting the Applicant's account.

[18] In considering the evidence before me, I find that the occupants have failed to comply with the Applicant's Rules 2 (a) and (b) by engaging in loud arguing inside the unit and by allowing their guest to cause a disturbance on the common element's swimming pool area. In making my finding, I considered the Applicant's compelling, uncontested evidence which provided detailed accounts of the incidents that were supported by security reports and still images captured by video cameras.

[19] Further, there is no evidence before me that the unit owner took steps in complying with her obligations under Section 119 (2) of the Act. The only evidence before me is that of the Applicant which I find compelling.

[20] Having considered the Applicant's uncontested evidence, I find that the unit owner's lack of response to the corporation's concerns has permitted the occupants to carry on activities contrary to Section 117 (2) of the Act. In making this finding, I considered that there is no evidence of the unit owner having made attempts to address the concerns with the occupants, nor that she requested their compliance with YRSCC 1323's governing documents.

### **Issue #3: Costs**

#### Application Filing Fee

[21] The Applicant has requested that the Respondents reimburse it the cost of filing this application.

[22] 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.

[23] As the Applicant was successful in this matter, I am ordering the Respondents to reimburse YRSCC 1323 \$150 for the fee paid to file this application. The Respondents shall be equally responsible for the reimbursement of this fee as their failure to respond to the Applicant's concerns resulted in this application being filed.

#### Pre-CAT Expenses

- [24] The Applicant has requested an order for compensation requiring the Respondents to reimburse it \$2,193.38, for the cost of having Counsel send two enforcement letters. The Applicant submits that Section 12 of its declaration provides that an owner or their tenants are responsible to reimburse it for “any losses, costs or damages incurred by the Corporation by reason of a breach of the Act, Governing Documents...” Further, the Applicant’s Rule 2 (b) states that unit owners “shall be liable to the Corporation for all expenses hereby incurred in abating the noise (including reasonable solicitor’s fees)”.
- [25] Section 1.44 (1) 3 of the Act provides that the Tribunal can make an order directing a party to pay compensation for damages incurred by another party because of non-compliance.
- [26] In this matter, I find it appropriate to make an order for compensation under Section 1.44 (1) 3 of the Act because the Respondents engaged in conduct that caused the Applicant to incur unreasonable expenses in attempt to get the occupants and the unit owner to comply with their obligations under the Act and YRSCC 1323’s governing documents. The Applicant had to engage counsel for enforcement letters because the Respondents failed to acknowledge or respond to the complaints when they were brought to their attention. Had the Respondents engaged with the Applicant in trying to resolve the issues, these costs likely would not have been incurred.
- [27] When determining the amount the Applicant should be reimbursed, I find the requested amount to be disproportionate to the cost of having Counsel send two enforcement letters. I am ordering the Respondents to reimburse the Applicant \$1,096 which represents 50% of the pre-CAT expenses. The unit owner shall be solely responsible for reimbursing the Applicant this compensation. Ultimately, the unit owner had the utmost responsibility to ensure that the occupants of her unit complied with the Act, and YRSCC 1323’s governing documents.

### Legal Fees

[28] The Applicant seeks an order requiring the Respondents to reimburse it \$3,319.63 for the legal fees incurred for participating in the Tribunal hearing.

[29] 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.

[30] I find it is appropriate that some costs be awarded to the Applicant. 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.

[31] In determining the amount of legal costs that the Respondents will pay to the Applicant, I find the amount requested is disproportionate to the nature of the issues in dispute, particularly since this is a default proceeding. This means there was no Stage 1 - Negotiation or Stage 2 - Mediation leading up to this hearing, and the Respondents did not join the case. As such, the Applicant's counsel did not have to read the opposing parties' evidence, cross-examination did not occur, and there were no delays in the proceeding. The hearing was straightforward and uncomplicated. Weighing the facts in this case, I find it reasonable to award \$2,500 to the Applicant for their legal costs. The Respondents shall be equally responsible to reimburse the Applicant for the legal costs.

### **C. ORDER**

[32] The Tribunal Orders that:

1. Rojda Ciyayi shall comply with her obligations under Section 117 (2) of the Act by taking all reasonable measures to ensure the occupants and guests/visitors of her unit comply with the Applicant's Rules 2 (a) and (b).
2. Metin Ciyayi and Jindar Ciyayi, shall comply with the Applicant's Rules 2 (a) and (b) by not creating unreasonable noise/disturbances, and by not smoking inside the unit or on the common elements, aside from designated smoking areas.
3. Metin Ciyayi and Jindar Ciyayi, shall comply with the Applicant's Rules 2 (a) and (b) by ensuring their guests/visitors do not create unreasonable noise/disturbances, and do not smoke inside the unit or on the common elements, aside from designated smoking areas.

4. Rojda Ciyayi shall within thirty (30) days of this Order, pay \$75 to the Applicant for the cost of filing this application.
5. Metin Ciyayi and Jindar Ciyayi shall jointly, within thirty (30) days of this Order, pay \$75 to the Applicant for the cost of filing this application.
6. Rojda Ciyayi shall within thirty (30) days of this Order, pay compensation in the amount of \$1,096 to the Applicant for the cost incurred for its enforcement efforts.
7. Rojda Ciyayi shall within thirty (30) days of this Order, pay \$1,250 to the Applicant for reimbursement of legal fees incurred for this proceeding.
8. Metin Ciyayi and Jindar Ciyayi shall jointly, within thirty (30) days of this Order, pay \$1,250 to the Applicant for reimbursement of legal fees incurred for this proceeding.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: June 24, 2024