

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 19, 2024

CASE: 2024-00243N

Citation: York Region Standard Condominium Corporation No. 1451 v. Chen, 2024 ONCAT 106

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

Member: Nicole Aylwin, Member

The Applicant,

York Region Standard Condominium Corporation No. 1451

Represented by Victor Yee, Counsel

The Respondent,

Ke Chen,

Self-represented

Hearing: Written Online Hearing – June 3, 2024 to July 12, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, York Region Standard Condominium Corporation No. 1451 (“YRSCC 1451”), alleges that the Respondent, Ke Chen, who is a unit owner, has breached the pet provisions in YRSCC 1451’s governing documents by letting his cat roam the common elements and trespass onto exclusive-use common elements (i.e. the balconies of other unit owners). In accordance with its governing documents, YRSCC 1451 has asked the Tribunal to order Mr. Chen to permanently remove his cat from the premises and pay costs to it.

[2] Mr. Chen did join the case but has not otherwise participated. Once a party joins a case, they receive copies of all communications, including notice of the hearing and all the instructions for making submissions and providing evidence. I find that Mr. Chen has had adequate notice of this proceeding and has elected to not participate.

[3] For the reasons set out below, I find that Mr. Chen has breached provisions in

YRSCC 1451's declaration and rules, both of which require pets to be confined to the unit of the owner. I order that Mr. Chen remove his cat from the premises within 14 days of this decision and I award damages in the amount of \$740 and costs in the amount of \$2,200 to YRSCC 1451.

B. ISSUES & ANALYSIS

Issue no. 1: Has the Respondent failed to comply with the pet provisions in YRSCC 1451's governing documents? If, so, what relief should the Tribunal order?

[4] While YRSCC 1451 does allow pets to reside in the building, it has several provisions in its declaration and rules (the "Pet Provisions") that govern where pets are permitted and how they are to be supervised when on the condominium property. These provisions include section 3.9 (a) and (b) of the declaration, which read:

(a) No animal, livestock or fowl, other than Permitted Pets (as such term is defined herein pursuant to ARTICLE 4 of this Declaration) are permitted to be on or about the Amenity Space, Common Elements, except for ingress to and egress and all such Permitted Pets shall be supervised at all times.

b) Unless within the confines of a Residential Unit, all pets must be kept under personal supervision and control by the owner and on a leash while on the Amenity Space and Common Elements outside of the Building.

[5] And Rule 7, section (b) and (c), which reflect the provisions in the declaration, reads:

(b) No pets are permitted to be on or about the Common Elements, including the Exclusive Use Common Elements, except for ingress to and egress from a Residential Unit.

(c) Unless within the confines of a Residential Unit, all pets must be kept under personal supervision and control and held by leash or in a cage at all times during ingress and egress from a Residential Unit and while on the Common Elements including an Exclusive Use Common Element."

[6] YRSCC 1451 alleges that Mr. Chen is in breach of these Pet Provisions, as he has allowed his cat to roam onto the balconies of other unit owners and roam the hallways, disturbing the quiet enjoyment and use of the property by other unit owners. Both the hallways and the balconies are common elements of the corporation (balconies are considered exclusive-use common elements).

- [7] Based on the uncontested evidence provided by YRSCC 1451, I find that on at least eight occasions between June 2023 and April 2024 Mr. Chen's cat has roamed freely onto other unit owners' balconies and/or in the hallway of the condominium, both of which violate YRSCC 1451's Pet Provisions.
- [8] YRSCC 1451 has asked that the Tribunal order that the cat be permanently removed from the premises, arguing that its declaration (section 3.9 (c) and section 4.2 (b) and its rules (section 7 (d)) lend support to such an order. These provisions specify that if a pet is deemed by the board in its "sole and absolute discretion" to be a nuisance, it may not be permitted to be kept as a pet in an owner's residential unit. These provisions also stipulate that if an owner receives written notice from the board or the manager requesting the removal of such pet, the owner of the unit in which the pet is kept shall permanently remove the animal from the Corporation.
- [9] According to the evidence of YRSCC 1451, between July 2023 and October 2023, YRSCC 1451 issued several warnings to Mr. Chen about his breach of the Pet Provisions including three formal letters of compliance. Each of these letters reminded Mr. Chen of the Pet Provisions, and the potential consequence of a continued breach of the provisions, i.e. that the board may deem the pet a nuisance and request the removal of the pet. The letters also notified Mr. Chen that, as per the governing documents, costs associated with enforcing compliance may be charged back to his unit. Nonetheless, the evidence shows that Mr. Chen continued to violate the Pet Provisions.
- [10] In late October 2023, YRSCC 1451 made the decision to deem the cat a nuisance and request the removal of the cat. Following this decision, YRSCC 1451 sent two letters to Mr. Chen explaining the board's decision and requesting that he remove his pet from the premises within two weeks of receiving the letter. To date, the cat remains in Mr. Chen's unit.
- [11] Under section 119 (1) of the *Condominium Act, 1998* (the "Act"), unit owners must comply with the provisions of the Act and the corporation's governing documents. I accept in this case that Mr. Chen was clearly aware of the Pet Provisions and has chosen not to abide by them despite being aware of the consequences (i.e. potential removal of his pet).
- [12] Under section 17 (3) of the Act, a corporation is obligated to take all reasonable steps to enforce compliance with the Act and the rules, although they must act reasonably in doing so. In this case, I find YRSCC 1451 did act reasonably. They sought to enforce the Pet Provisions in response to verified complaints of non-compliance from another unit owner and investigated and documented their

own evidence of the cat roaming freely in the hallways of the condominium in breach of the Pet Provisions. Additionally, before making any decision to deem the cat a nuisance and remove the cat, YRSCC 1451 provided Mr. Chen with several opportunities to comply with the Pet Provisions. Finally, YRSCC 1451 was transparent in their actions. They provided several verbal and written reminders to Mr. Chen about the Pet Provisions, provided him with evidence of the violations, and made him aware of the potential consequences of non-compliance.

- [13] YRSCC 1451's Pet Provisions do not require that a violation of the Pet Provisions automatically result in the removal of a pet; they merely "reserve" the board's right to take that action. It is established law that deference will be given to the decisions of a condominium corporation's board and the Tribunal will not substitute its view of what is reasonable for that of the board, provided the board has acted reasonably and not capriciously. Given my conclusions above, I see no reason to interfere with YRSCC 1451's decision to enforce their Pet Provisions by asking for Mr. Chen to remove his cat. Thus, pursuant to sections 1.44 (1) and 1.44 (1) 7 of the Act, I will order that Mr. Chen comply with the decision of the board and remove his cat permanently from the premises within two weeks of this decision.

Issue no. 2: Should an award of costs or damages be assessed?

- [14] YRSCC 1451 has asked that the Tribunal order, on a full indemnity basis, Mr. Chen to pay \$740 in damages related to seeking compliance with the Pet Provisions, \$4,428.33 in legal costs and the \$200 Tribunal fees.
- [15] The authority of the Tribunal to make orders for costs is set out in section 1.44 of the Act.
- [16] Under section 1.44 (1) 3 of the Act, the Tribunal may make "[a]n order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed."
- [17] YRSCC 1451's evidence is that it incurred damages in the amount of \$740 in attempting to enforce compliance prior to the onset of this Tribunal proceeding by sending multiple enforcement letters to Mr. Chen. As noted in this decision, YRSCC 1451 sent a total of five letters to Mr. Chen prior to the filing of this case. The letters advised Mr. Chen that the costs associated with seeking compliance would be his responsibility in accordance with the indemnification provisions of the governing documents.

- [18] Based on my review of the indemnification provisions¹, I find that Mr. Chen is responsible for the legal costs incurred by YRSCC 1451 to produce the enforcement letters they sent to him prior to filing the application with the Tribunal. These costs were necessary and reasonably incurred by YRSCC 1451 to enforce its Pet Provisions. I order Mr. Chen to pay the costs incurred by YRSCC 1451 in the amount of \$740.
- [19] Section 1.44 (1) 4 states that the Tribunal may make “[a]n order directing a party to the proceeding to pay the costs of another party to the proceeding”. Section 1.44 (2) states that an order for costs “... shall be determined in accordance with the rules of the Tribunal”.
- [20] Pursuant to Rule 48.1 of the Tribunal’s Rules of Practice (the “Rules of Practice”), an unsuccessful party will be required to pay the successful party’s Tribunal fees unless the member decides otherwise. In this case, YRSCC 1451 was successful, and it is appropriate that Mr. Chen reimburse the condominium for its Tribunal fees.
- [21] Rule 48.2 of the Rules of Practice states that the Tribunal generally will not order one party to reimburse another party for legal fees or disbursements unless their behavior was unreasonable, undertaken for an improper purpose or caused delay or additional expense. As Mr. Chen did not participate in the hearing, thus the behavior of the parties during the proceeding is not relevant.
- [22] However, the Tribunal has published a Practice Direction on costs² and among

¹ Section 2.2 (a) of the Declaration reads:

In addition to the foregoing, any losses, costs (including without limitation legal fees) or damages incurred by the Corporation by reason of a breach of any provision of this Declaration, or in any By-Laws or Rules in force from time to time by any Owner or his Responsible Parties 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.

And section 6.1, paragraph 4, of the Declaration reads:

Without limiting the generality of the foregoing and notwithstanding anything contained in this Declaration to the contrary, all costs and expenses, including without limitation, legal fees as well as all applicable disbursements incurred by the Corporation by reason of a breach of the Act, this Declaration, By-Laws, and/or Rules of the Corporation in force from time to time ... committed by any Owner or its Owner’s Responsible Parties shall be fully borne and paid for by (and shall ultimately be the sole responsibility of) such Owner, and such Owner shall accordingly be obliged to forthwith reimburse the Corporation for the aggregate of all such costs and expenses so incurred, failing which same shall be deemed for all purposes to constitute an additional contribution towards the Common Expenses payable by such Owner, and shall be recoverable as such (with corresponding lien rights in favour of the Corporation against such Owner’s Unit, similar to the case of Common Expense arrears) and such amounts owed or owing by an Owner to the Corporation shall bear interest at the Prime Rate plus five percent (5%) per annum, calculated and compounded monthly not in advance, or such other interest rate as may be established, from time to time, by the Board from the due date until paid.

² CAT Practice Direction: Approach to Ordering Costs

other relevant factors that the Tribunal may consider when determining whether to order costs and the amount of any costs order are: whether the parties attempted to resolve the dispute before the Tribunal case was filed, the potential impact an order of costs would have on a party, and the provisions of a condominium corporation's governing documents.

- [23] In this case, YRSCC 1451 submits that it went to great lengths to resolve this dispute prior to this proceeding, i.e. they offered Mr. Chen multiple opportunities to comply with the Pet Provisions before filing this application. They further submit it would be unfair for other unit owners to have to subsidize the cost of enforcing compliance, particularly given the number of opportunities Mr. Chen was given to comply. They also point to the indemnification provisions in their declaration to argue that Mr. Chen should be responsible for paying the full legal costs associated with the proceeding
- [24] YRSCC 1451 likens this case to that of *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 ("Psofimis"), where the Tribunal did award the full amount of costs (an amount of \$3,926.75). In doing so, the Tribunal considered the fact that for a period of three years the respondent had deliberately and consciously defied the corporation's rules. He had blatantly breached an agreement with the corporation and showed a lack of good faith throughout.
- [25] While I have concluded that Mr. Chen did not comply with the Pet Provisions and did not heed numerous warnings to comply, he did not, as Mr. Psofimis did, willfully disregard an agreement he made with the corporation. However, I also accept that it would not be fair for the full cost of this legal proceeding to be borne by other unit owners, particularly given the fact that Mr. Chen was provided with plenty of opportunity to abide by the Pet Provisions and avoid this proceeding. Finally, I have also considered that the condominium's declaration does contain clear indemnification provisions as noted in paragraph 18 of this decision.
- [26] The award of costs is discretionary and given the unique facts of this case and the fact that the evidence was uncontested resulting in a very streamlined hearing process, I find that a cost award of \$2,000 is appropriate.

C. ORDER

[27] The Tribunal Orders that:

1. Within 14 days of the date of this Order, Mr. Chen shall permanently remove his cat from his unit and condominium property.

2. Within 30 days of this Order, Mr. Chen shall pay \$740 to YRSCC 1451 in damages.
3. Within 30 days of this Order, Mr. Chen shall pay \$2,200 in costs to YRSCC 1451, consisting of \$2,000 in legal fees and \$200 in Tribunal filing fees.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: July 19, 2024