

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 14, 2024

**CASE:** 2024-00203N

**Citation:** Carleton Condominium Corporation No. 125 v. English, 2024 ONCAT 166

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

**Member:** Patricia McQuaid, Vice-Chair

**The Applicant,**

Carleton Condominium Corporation No.125

Represented by Katya Ukrainetz, Counsel

**The Respondent,**

Juliet English

Self-Represented

**Hearing:** Written Online Hearing – September 12, 2024 to November 7, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] The Applicant, Carleton Condominium Corporation No. 125 (“CCC 125”), a townhouse condominium, alleges that Juliet English (the “Respondent”), a unit owner, is scattering garlic, bleach, eggs and other substances around her unit and the common elements, creating an unreasonable odour which is a nuisance, contrary to s. 117(2) of the *Condominium Act, 1998* (the “Act”) and its governing documents. CCC 125 requests an order that the Respondent cease this activity, that she comply with the Act and the governing documents and seeks its costs.

[2] The Respondent did not participate in the hearing in Stage 3 –Tribunal Decision. Staff did reach out to her during the Stage 2 – Mediation, by phone and by email. The Respondent participated minimally in Stage 2 – Mediation; she confirmed that she was aware of the case. She was advised of the consequences of not participating in the case. I am satisfied that the Respondent was properly advised that the case was proceeding and has chosen not to participate. Where a respondent does not participate, the Tribunal must make its decision based on the evidence provided by the applicant, weighed on the balance of probabilities.

- [3] For the reasons set out below, I find that the Respondent's activity of scattering substances around her unit has caused unreasonable odours that are a nuisance. I am ordering that the Respondent to reimburse CCC 125 the Tribunal fee of \$200 and legal costs of \$1500.

## **B. ISSUES & ANALYSIS**

### **Issue 1: Has the Respondent failed to comply with s. 117(2) of the Act and/or CCC 125's governing documents?**

- [4] CCC 125's complaint that the Respondent has been scattering odorous substances around her unit and in common element areas has been ongoing for years – since at least 2013. In a letter to the Respondent dated October 17, 2013, CCC 125 summarized a discussion at a meeting with the Respondent that took place on August 19, 2013. The Respondent confirmed that she was spreading salt, garlic and hot peppers around her unit in order to keep her "safe from the effects of witchcraft". CCC 125 asked her to stop spreading these substances as residents of nearby units found the odour created to be offensive and the substances were causing corrosive damage to surfaces, such as walkways.
- [5] CCC 125 submitted, as evidence, letters to the Respondent dated May 12, 2015, and March 28, 2018, in which it advised her of various complaints made, including the impact on neighbours of her practice of spreading salt, bleach and garlic at the front and rear of her unit which resulted in noxious odours.
- [6] In September 2023, one of the Respondent's neighbours emailed condominium management complaining of the persistent "stink" from the Respondent throwing a bleach mix which smells like a "poison" and a garlic and salt mix which is thrown into the neighbour's back patio causing them to clean the yard daily. This neighbour complained that it has been an issue for them for at least four years. Condominium management wrote to the Respondent on September 25, 2023, advising her of the complaint and the impact of her throwing a bleach type mixture and garlic and salt outside her unit and on the common elements. Management requested that she cease this behavior immediately.
- [7] On September 27, 2023, a neighbour emailed the condominium manager again, explaining that the odour from the bleach mix was "horrible", and giving their family headaches, and that the bleach mix thrown into their backyard was ruining their backyard furniture. They stated that they had tried to ignore the issue (which was persistent) because they did not want to get stressed by the Respondent.
- [8] CCC 125's condominium manager indicated in their statement that the

Respondent's activities have not ceased. Photographs taken around the Respondent's unit show garlic remnants and other substances scattered about, much of it on the front steps of the unit. Further complaints – about eggs being thrown around the property and at other units were received in March and July 2024.

- [9] In September 2024, the condominium manager together with the board president attended outside the Respondent's unit. Both indicated in their statements that they could smell a strong odour of bleach and garlic. They noted that the outside of the Respondent's unit and the common elements around the area were "soaked with the odorous concoction". The condominium manager stated that they attended outside the unit on October 14 and continued to smell strong odours akin to bleach, garlic and lemon, and spoke to the Respondent about the presence of the odour at that time.
- [10] Based on the extensive evidence of ongoing and persistent conduct by the Respondent, I find that she is engaged in activities resulting in unreasonable odour experienced by those who live in close proximity to the Respondent's unit. The negative impact on others within the condominium community is well documented. The fact that the Respondent may believe that it is necessary for her to spread garlic, bleach and salts around her unit to protect herself does not negate the effect of an unreasonable persistent odour on those living around her.
- [11] The unreasonable odours caused by her actions are a nuisance pursuant to s. 117(2) of the Act – the interference with the enjoyment of other residents' property is not trivial; it has been more or less continuous for at least a decade. The reasonable inference from the evidence is that neighbours and the CCC 125 board and management have tolerated the odours, described as a "stink", for many years. CCC 125 has requested that the Respondent cease scattering the noxious substances, explaining the impact on others, but the issue has not abated. CCC 125 exhibited tolerance and patience, before escalating this matter to the Tribunal. The activity must now cease.
- [12] CCC 125 cited several rules which it believes have been breached as a result of the Respondent's activity, primarily focussed on the proper placement of garbage for pick up and throwing things out of doors or windows that may cause damage to persons or property. Whether those rules have been breached is somewhat moot given my finding of a violation of s. 117(2).

[13] Any such rule breach is inconsequential to the most significant issue affecting the residents in this condominium community. The Respondent's actions have resulted in the creation of unreasonable odour (for years) which is a nuisance, contrary to s. 117(2) (b) of the Act. I do note that the evidence does support a finding that the rule also cited by CCC 125, (bullet point 8)<sup>1</sup>, which states, paraphrased, that an owner shall not create a nuisance which may disturb the comfort, or quiet enjoyment of the property by other owners, has been breached by the Respondent.

## **Issue 2: Is CCC 125 entitled to an award of costs?**

[14] CCC 125 is seeking an award of "approximately" \$4300 for legal costs incurred in relation to this proceeding, pursuant to Rule 48 of the Tribunal's Rules of Practice and provisions in CCC 125's governing documents, which provide that owners shall indemnify it for costs and expenses incurred for, among other things, enforcing compliance.

[15] Regarding the legal costs of the CAT proceeding, the Tribunal's authority to make orders is set out in s. 1.44 of the Act. Section 1.44 (2) of the Act states that an order for costs "shall be determined in accordance with the rules of the Tribunal." The cost related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 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.

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, 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.

[16] CCC 125 has been successful in this matter and therefore, in accordance with Rule 48.1 of the Tribunal's Rules of Practice, I will order that the Respondent reimburse the Tribunal fees of \$200 paid by CCC 125.

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<sup>1</sup> CCC 125's rules are contained in a handbook and are not numbered.

- [17] In assessing the legal costs incurred in this matter, in exercising my discretion, I note that the Respondent barely participated in the entire Tribunal process. This was, as a result, a more streamlined process which should translate to lower legal costs. And though the costs claimed here are not unreasonable, full indemnity of legal costs is very rare.
- [18] I note that CCC 125 submits that it attempted to resolve the issues directly with the Respondent for over a decade. Though there were several letters written to the Respondent by the CCC 125 board and/or management over that period, there was no evidence before me of other efforts made beyond that (perhaps because, as noted in paragraph 11, above, CCC 125 chose not to escalate matters in the hope that the Respondent would cease her activity). CCC 125 was aware of the Respondent's rationale for her actions. It was not until September 2023 that CCC 125 appeared inclined to escalate its compliance efforts given renewed complaints from the Respondent's neighbours. Given the length of time that the Respondent has engaged in the impugned activity, it probably seemed likely an application to the Tribunal would become necessary.
- [19] The evidence supports the conclusion that the Respondent was well aware of the impact of her activity of scattering the various substances would have on her immediate neighbours in particular, that the resulting odours were unreasonable and of consequences that might flow from her continued activity. It is fair and appropriate in this context to minimize the burden borne by other owners affected by her persistent activity and that the Respondent bear some of the burden of the legal costs. I therefore award, in accordance with Rule 48.2, partial indemnity of \$1500.

### **C. ORDER**

[19] The Tribunal Orders that:

1. The Respondent Juliet English shall comply with s. 117 (2) of the Act and CCC 125's rule requiring that an owner not create a nuisance which may disturb the comfort, or quiet enjoyment of the property by other owners and specifically, she shall immediately cease distributing and/or placing substances (such as bleach, garlic, salt, and peppers) on and around her unit, including her exclusive use common element area and on the common elements.
2. Pursuant to s. 1.44 (1) 4 of the Act and Rule 48 of the Tribunal's Rules of Practice, and within 30 days of this Order, Juliet English shall pay \$1700 to CCC125 for its costs in this matter.

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Patricia McQuaid  
Vice-Chair, Condominium Authority Tribunal

Released on: November 14, 2024