

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 19, 2024

CASE: 2022-00701N

Citation: Choi v. Lacerona, Tolentino, 2024 ONCAT 170

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Peter Choi

Self-represented

The Respondents,

Lewis Lacerona

Self-Represented

Milagros Tolentino

Represented by Lewis Lacerona, Agent

The Intervenor,

York Condominium Corporation No. 345

Not participating

Hearing: Written Online Hearing – September 9, 2024 to November 15, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Peter Choi, (the “Applicant”) is the owner of a unit in York Condominium Corporation No. 345 (“YCC 345”). The Applicant alleges that Lewis Lacerona and Milagros Tolentino (the “Respondents”), owners of the unit below his, are permitting activities to be carried on in their unit that result in the creation of unreasonable odours (specifically, cooking odours) which are a nuisance, annoyance or disruption to him and his family, contrary to s. 117(2) of the *Condominium Act, 1998* (the “Act”). The Respondents, who rent their unit to tenants, deny the existence of unreasonable odours and assert that the Applicant has harassed their tenants, and that previous tenants have moved out as a result.

[2] The Applicant also alleged when he filed his case that YCC 345 failed to address his concerns about odour emanating from the Respondents' unit. Unfortunately, YCC 345 did not participate in this case, though I am satisfied that it was aware of this proceeding. As noted in the Stage 2 Summary and Order, YCC 345 did not participate in mediation either, despite contact by Tribunal staff. YCC 345's reasons for not participating are unknown.

B. BACKGROUND

[3] The Applicant filed this case with the Tribunal in November 2022. It remained in Stage 1 – Negotiation until May 2024 when the Applicant moved it to Stage 2 – Mediation.

[4] In the Stage 2 Summary and Order, the Tribunal Member noted that the Applicant confirmed that the issues were ongoing and that he continued to experience unreasonable odours in his unit and that these odours were emanating from cooking in the Respondents' unit. The Member also indicated that she explained to the Applicant that he had the burden to prove that there was unreasonable odour caused by the activity of the tenants in the Respondents' unit. She also directed the Applicant to several Tribunal decisions about unreasonable odour.

[5] I repeated that explanation to the Applicant at the beginning of this hearing. He did state on September 16, 2024, that the "issue has still been existing"; however, during the course of this hearing he provided little evidence of this to me, though given ample opportunity to do so. This contrasts with the Respondents who provided several witness statements, documents, and extensive submissions.

[6] For the reasons set out below, I dismiss this application without costs. The Applicant has not provided evidence to establish on the balance of probabilities that unreasonable odour has been migrating to his unit from the Respondents' unit.

C. ISSUES & ANALYSIS

Issue: Is the Applicant experiencing unreasonable odours from activities in the Respondents' unit that are a nuisance, annoyance or disruption in contravention of s. 117(2) of the Act?

[7] As noted above, aside from his continued assertion that an odour issue exists, the Applicant provided little evidence to support a finding that the odour allegedly emanating from the Respondents' unit is unreasonable.

[8] The Applicant did submit a Notice of Violation from Toronto Fire Services dated

February 25, 2021, related to the fire separations within his unit, in which the Fire Inspector noted that there were two holes in the common wall under his kitchen sink. He also submitted a statement from YCC 345's building superintendent, Michael Zhang, who stated that he had closed the holes. Mr. Zhang noted that he had on numerous occasions investigated the Applicant's complaints about cooking odour. Mr. Zhang also provided a statement to the Respondents in which he stated that he had tested the kitchen exhaust fan in the Respondents' unit and found it to be working efficiently. In that statement, he indicated that the Applicant had also complained of odours emanating from the unit across the hall from his (which is not the Respondents').

- [9] The evidence submitted by the Respondents indicates that the Applicant has complained of odours from their unit since as early as October 2020, and at times using impolite language to describe the odour. There is evidence that he acted fairly aggressively with the Respondents' tenants by posting notes on the door, again using strong language, in December 2021 and January 2022. In October 2020, YCC 345's board discussed the Applicant's 'smell issue' and in an email to him stated that management was prepared to arrange for a contractor to enter the Respondents' unit and investigate its ventilation system to determine if any changes or alterations had been made to it which might have led to an odour migration. However, this offer to investigate was conditional upon the Applicant making a written request and an agreement that if no alterations or changes were made then he, the Applicant, would pay for the investigation. It appears that the Applicant did not agree to those terms set out by YCC 345. In that same email, YCC 345 stated that if he did not agree to the conditions, management and the board would not respond to his claim anymore.
- [10] It appears that other than the inspection by Toronto Fire Services, which assessed the integrity of fire separations between units and not the migration of odours, no other investigation has been carried out by or for the Applicant. There is no evidence that the Applicant responded to YCC 345's offer to investigate.
- [11] The Respondents did retain an HVAC technician to attend their unit in September 2024 to check vent ducts and fans. The technician found that vent ducts were properly sealed, and the fan was working which was consistent with Mr. Zhang's assessment. The technician stated that he did not get a strong smell inside the Respondents' unit or in the corridor of their floor. He noted a strong food smell in the corridor of the floor on which the Applicant's unit is located.
- [12] In assessing the evidence that has been provided, there is no basis to conclude that the Applicant is experiencing unreasonable odour from the Respondents' unit.

As noted by YCC 345 in their email to the Applicant in October 2020, “in a condo living environment, a certain level of sound and smell travelling is unavoidable ...”. The fact that the Applicant has pursued this case suggests that this is not something that he was prepared to accept. While I conclude that the Applicant may smell cooking odours and may find those odours to be annoying, that does not mean that they are unreasonable or constitute a nuisance, annoyance, or disruption for the purposes of the Act and this Tribunal’s jurisdiction. He cannot insist that others not cook foods in their unit that cause odours that are unpleasant to him. That there is an odour does not mean that it is, as a result, objectively unreasonable and a nuisance. There is simply insufficient evidence to substantiate the existence of unreasonable odours.

- [13] In what was to be his final submission to the Tribunal, on November 13, 2024, the Applicant stated that: “I have noticed that the smell and odour from cooking has been unnoticed recently. Feel as my place is back to my old days as fresh air and only small [*sic*] of heating or cool air”. Though there is no suggestion in the Respondents’ evidence that any changes have been made by them since September 2024 when the Applicant stated that the issue was still existing, this development is a positive one. However, after this hearing concluded on November 15, 2024, the Applicant posted a message, on November 17, 2024, on the CAT-ODR system. He stated as follows:

I have noticed recently that the tenants have discharged their cooking odour into my unit. In my opinion that they might have stopped for a short time and returned back to the routine again. The weather is getting colder everyday and not sure on cooperation during this time.

- [14] Reading the Applicant’s two statements together, it appears that in the four days between November 13 and 17, 2024, he detected odours which he finds unpleasant. I note there has been no evidence that anyone is “discharging” their cooking odours into his unit. This suggests a deliberate action. That some odours may travel is neither unusual nor unreasonable. I remind the Applicant that living in a condominium setting calls for tolerance – the absence of cooking odours (even if not to one’s liking) is not realistic. That a smell is not pleasant to one person does not mean it is an unreasonable odour which is a nuisance, annoyance or disruption under the Act.

Issue: Has YCC 345 fulfilled its obligations under the Act in relation to the Applicant’s concerns about odour?

- [15] The Applicant provided no evidence on this issue. A condominium corporation has an obligation to ensure that no activity is carried on that results in the creation or

continuation of a prescribed nuisance, annoyance or disruption on the condominium property. Although I have found here that there is no evidence on which I could conclude that the smells experienced by the Applicant are unreasonable odours, I also find, based on the evidence provided by the Respondents, that YCC 345 did, in the early days of the Applicant's complaints, offer to investigate, as was its responsibility. The building superintendent did attend at both the Applicant's and Respondents' units. I have no evidence before me to conclude that YCC 345 ought to have done more on these facts.

Issue: Costs

[16] Neither party requested costs. I do note that both parties were self-represented in any event. In accordance with Rule 48.1 of the Tribunal's Rules of Practice, given that the Applicant has been unsuccessful, he is not entitled to reimbursement of the Tribunal fees he paid.

[17] The Respondents have indicated that they have suffered damages as a result of tenants leaving their unit due to the Applicant's conduct as well as emotional stress. These are matters over which the Tribunal has no jurisdiction under the Act, though I note that they have stated they may pursue their claims in a different forum. However, I urge the parties to move forward from the issues of the past few years. And I caution the Applicant: the Tribunal extended leniency to him as a self-represented party; however, he conducted this case in such a manner that it dragged on for two years which was not an appropriate use of Tribunal resources.

D. ORDER

[18] The Tribunal orders that the application be dismissed without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: November 19, 2024