

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 21, 2024

CASE: 2024-00398N

Citation: Grimes, Courier v. Metropolitan Toronto Condominium Corporation No. 864, 2024 ONCAT 172

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

Member: Laurie Sanford, Member

The Applicants,

Susan Grimes

Self-Represented

Denny Courier

Represented by Susan Grimes, Agent

The Respondent,

Metropolitan Toronto Condominium Corporation No. 864

Represented by Linda Liang, Agent

Hearing: Written Online Hearing – August 9, 2024 to November 8, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Ms. Grimes and Mr. Courier are unit owners in Metropolitan Toronto Condominium Corporation No. 864 (“MTCC 864”) and will be referred to collectively as the “Applicants”. In December 2023, MTCC 864 installed new energy-efficient LED lighting in the corridors. Part of the new lighting design was the installation of motion-controlled lighting in the corridor outside each garbage room and stairwell above the ground floor. The motion-controlled lighting was designed to illuminate the garbage room and stairwell doors when activated. The Applicants own one of 28 units which are adjacent to a garbage room and stairwell. Their front doors open onto the corridor and are therefore directly affected by the new lighting.

[2] Initially the Applicants complained that the light was too bright, did not fit with the

other lighting in the corridor and was motion-activated, causing the light to light up and shine onto their unit door whenever they entered or left their unit or whenever someone used the garbage room or stairwell. In response to this and complaints by a few other unit owners, MTCC 864 replaced the light with one that was lower in intensity and warmer in colour to fit in better with the other lighting in the corridor. The Applicants advised that the output of this light was acceptable but that they still had issues with the motion-activated operation. MTCC 864 adjusted the light so that it pointed more directly at the garbage and stairwell doors, but it still shines on the Applicants' door as well. The Applicants say that the light does not penetrate their unit when their door is closed. However, several times a day, when they leave or enter their unit, the light turns on and shines into their home. The motion activation of the light, in the Applicants' submission, creates a nuisance, annoyance or disruption which interferes with their enjoyment of their home.

- [3] For the reasons set out below, this application is dismissed. Under the *Condominium Act, 1998* (the "Act") and Ontario Regulation 48/01 (the "Regulation") to the Act, a light may be a nuisance, annoyance or disruption to an individual in a unit or in the common elements if it is unreasonable. The Applicants have not established that the light in this case meets the threshold of unreasonableness.

B. ISSUES & ANALYSIS

- [4] At the outset of the hearing, the parties agreed that these were the issues they wished to have decided:
1. Does the motion-activated light in the corridor outside the Applicants' unit, near the garbage room and stairwell door, cause a nuisance, annoyance or disruption that negatively impacts the Applicants' use and enjoyment of their property?
 2. If so, what is the appropriate remedy?
 3. Is MTCC 864 entitled to an order directing the Applicants not to disable or otherwise tamper with the light in question?
 4. Can a penalty be ordered in this case?
 5. Should the Tribunal order any costs?

Issue 1. Does the motion-activated light in the corridor outside the Applicants' unit, near the garbage room and stairwell door, cause a nuisance, annoyance or

disruption that negatively impacts the Applicants' use and enjoyment of their property?

- [5] Subsection 117(2) of the Act prohibits the carrying on of an activity that results in the creation or continuation of noise or “any other prescribed nuisance, annoyance or disruption to an individual in a unit” or the common elements. Section 26 of the Regulation lists light as a prescribed source of a nuisance, annoyance or disruption to an individual in a unit or on the common elements, “if it is unreasonable”.
- [6] The Applicants maintain that the motion-activated light outside their door creates a nuisance, annoyance or disruption by being activated every time they enter or leave their unit, which they say occurs several times a day. The Applicants say that every time someone goes to the stairwell or the garbage chute adjacent to their unit the light goes on. The Applicants acknowledge that they cannot see the light inside their unit unless their hall door is open.
- [7] MTCC 864 submits that the Applicants have not demonstrated that the light is unreasonable. In any event, in MTCC 864's submission, the effect of the light does not rise to the level of an actionable nuisance, annoyance or disruption. MTCC 864 notes that this is not a case of a light suddenly turning on in darkness. Rather, they argue that the light merely lightens an already lit corridor and ensures safe access to the garbage chute and the stairs. The Applicants produced photographs that show that there is a discernable difference in the light intensity when the motion-controlled light is on, but it is not comparable to a floodlight or other intense light.
- [8] MTCC 864 submits that it has taken reasonable steps to address the Applicants' concerns. As noted above, it switched to lights of a softer intensity and warmer tone. A witness of MTCC 864 testified that he also has a unit adjacent to the garbage and stairwell doors. It was his testimony that, when he saw the new light, he requested a similar one and is pleased with the result. MTCC 864 says they have received no further complaints from any of the unit owners other than the Applicants. The Applicants acknowledged in correspondence with MTCC 864 that the output from the new light was “very acceptable”. However, they still have an issue with the motion-control feature. MTCC 864 provided statements that it has adjusted the light in front of the Applicants' unit in an attempt to point it more directly at the garbage and stairwell doors.
- [9] The Applicants submit that Ms. Grimes has a special sensitivity to design that has been taken into consideration by MTCC 864 in the past and should be a consideration here. In fact, MTCC 864 did take Ms. Grimes' aesthetic sensibilities

into consideration while considering possible solutions to the problem. MTCC 864 rejected one of the options for replacement lights on the grounds that Ms. Grimes would not be happy with the result. MTCC 864 management subsequently explained that Ms. Grimes would find the light fixture “cheap”. The Applicants also maintain that motion-activated lighting is inappropriate for residential corridors in high-level condominium and they refer to a consultation with an interior designer for this opinion. However, the interior designer was not qualified as a lighting expert and did not give evidence. Therefore, I give this opinion no weight.

- [10] The Applicants propose that the motion-activated bulb be replaced with a bulb of similar intensity, warmth and colour without the motion-activation feature. The light, in the Applicants’ proposal, would stay on continuously, in the same way as other lights in the corridor do. MTCC 864 objects to this proposed solution on several grounds. First, MTCC 864 says that if they replace this one light bulb, they may be met with other requests to do the same for other unit owners. This argument somewhat contradicts MTCC 864’s submission that no one besides the Applicants is complaining about the light. Second, MTCC 864 says that it received a substantial rebate for its energy-efficient design, and it produced correspondence from its lighting installer saying that replacing a motion-activated light with a less energy efficient light that stays on would raise ethical issues and might jeopardise the subsidy. Finally, MTCC 864 submits that if the CAT orders the replacement of a single light with custom lighting, this would leave both it and other condominium corporations at risk of frivolous applications.
- [11] The Regulation refers to a light being a prescribed source of “nuisance, annoyance or disruption.” These terms have different meanings but, in each case, the Regulation specifies that the light must be determined to be “unreasonable.” What is meant by “unreasonable”? It is not a question of the intention of MTCC 864 in installing the light. A reasonable action may nevertheless produce an unreasonable result. What is at issue in this case is whether the effect of the light on the Applicants is unreasonable.
- [12] MTCC 864 points to the fact that no other unit owners are complaining as proof of the reasonableness of the light. The Applicants protest that they should not be subject to community standards, especially given that only 28 of the 279 units in MTCC 864 are configured to be adjacent to the garbage and stairwell doors. The Applicants experience the light as unreasonable and they submit that the test should be their experience of the light, not the effect of these motion-controlled lights on the community as a whole. The Applicants are correct in saying that the appropriate test for reasonableness is not to attempt to guess the views of the community as a whole. However, theirs is a subjective point of view. It is

necessary to find an objective measure of the reasonableness of the light.

- [13] In the case of *Kovalenko v. Romanino et al.*, 2024 ONCAT 151, the Tribunal considered what constituted an “unreasonable interference” with the use and enjoyment of a unit. The Tribunal concluded, at paragraph 27, “It is also well recognized that the test for what constitutes an unreasonable interference is objective. This means it is measured with reference to a reasonable person occupying the premises, not the subjective expectations of a single person.”
- [14] The same principle applies in this case in determining if the light is unreasonable. The reference point here is a reasonable owner-occupier of MTCC 864. The reason for specifying that the hypothetical person must live in MTCC 864 rather than in a condominium unit generally is to acknowledge the fact that individual condominium corporations have a fair leeway to develop rules particular to that condominium community. These rules may reflect expectations of what is reasonable within that community.
- [15] The question becomes: would a reasonable owner-occupier of MTCC 864 consider that the motion-controlled light in the corridor adjacent the Applicants’ unit is unreasonable? Relevant considerations would include the intensity of the light, how it fits into the other lighting in the corridor, whether the motion-activation is disruptive or abrupt, and the frequency with which it shines into the Applicants’ hallway. The circumstances in which the light was installed are also relevant. The fact that MTCC 864 installed the lights to increase energy-efficiency, reduce costs and provide safe lighting for the end of the hallway are valid considerations. After considering these factors and the facts set out above, I conclude that a reasonable owner-occupier of MTCC 864 would not find the light unreasonable.
- [16] Another way to view the issue is to consider the case cited by the Applicants in support of their position. In the case of *Lake v. Bruce Vacant Land Condominium Corporation No. 19*, 2023 ONCAT 28, the applicants were able to demonstrate that the two fountain lights installed by the condominium corporation were a source of excessive light, flooding their home every night for hours during the approximately six months a year that the lights were on. The light penetrated at least 15 feet into the home, lighting up a painting on the inside dining room wall. The light impacted the way they used their home, including their bedroom. The applicants described the lights as “two large bright balls of light” and said that it affected their ability to look out their windows, even with the curtains closed. The Tribunal found that this was a nuisance. The irritation experienced by the Applicants in this present case is simply not comparable in the effect it has on the Applicants’ enjoyment of their unit. I conclude that the light produced by the motion-controlled light in the corridor

adjacent the Applicants' unit is not unreasonable and therefore not a nuisance, annoyance or disruption under the Act and Regulation. Having made this finding, it is not necessary to decide the other arguments made by MTCC 864.

Issue 2. If so, what is the appropriate remedy?

[17] It follows from the finding above that Issue 2 is moot.

Issue 3. Is MTCC 864 entitled to an order directing the Applicants not to disable or otherwise tamper with the light in question?

[18] In an effort to deal with their problem, the Applicants have at various times disabled or partially taped over the corridor motion-controlled light. MTCC 864 consulted its lighting installer and concluded that disabling the light raised safety issues and tampering with it was "not reliable". The Applicants persisted in this conduct after being warned by MTCC 864 to desist. It is appropriate to direct the Applicants not to disable or otherwise tamper with the light.

Issue 4. Can a penalty be ordered in this case?

[19] The Applicants requested a penalty in this case. The Tribunal does not have the authority to order a penalty in an Application of this nature. In any event, the Applicants were not successful, and no penalty will be ordered.

Issue 5. Should the Tribunal order any costs?

[20] The Applicants have not succeeded and therefore are not entitled to costs. MTCC 864 does not claim costs. No order as to costs will be issued.

C. ORDER

[21] The Tribunal orders that:

1. This application is dismissed.
2. The Applicants are directed not to disable or otherwise tamper with the motion-controlled light in the corridor adjacent to their unit.

Released on: November 21, 2024