

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 4, 2024

CASE: 2024-00439N

Citation: Toronto Standard Condominium Corporation No. 2243 v. Orenstein et al.,
2024 ONCAT 163

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

Member: Mary Ann Spencer, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2243

Represented by Darlene Mezzabotta, Paralegal

The Respondents,

Alegra Orenstein

Represented by Vitale Orenstein, Agent

Doffy Oren

Represented by Vitale Orenstein, Agent

Douglas Finn

Not appearing

Hearing: Written Online Hearing – September 5, 2024 to October 29, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Toronto Standard Condominium Corporation No. 2243 (“TSCC 2243” or the “corporation”), filed this application alleging that the Respondent Douglas Finn’s smoking of cannabis and tobacco has created nuisance smoke and odour in violation of the corporation’s Smoking and Drug Rules and of s. 117 (2) (b) of the *Condominium Act, 1998* (the “Act”). Mr. Finn is the tenant of a unit owned by the Respondents Alegra Orenstein and Doffy Oren (the “Respondents owners”). TSCC 2243 further alleges that the Respondents owners failed to take all reasonable steps to obtain Mr. Finn’s compliance, in violation of Article 4.1 (c) of its Declaration and s. 119 (2) of the Act. It requests the

Tribunal order both Mr. Finn's and the Respondents owners' compliance and it seeks its costs in this matter from them on a joint and several basis.

- [2] The Respondents owners request that the Tribunal dismiss this application without costs. They submit that they have taken reasonable steps to address the situation; they issued Mr. Finn a Notice to Vacate under the *Residential Tenancies Act, 2006* (the "RTA") and the unit will be vacated on October 31, 2024. Mr. Finn did not join this proceeding.
- [3] For the reasons set out below, I find that Mr. Finn has violated both TSCC 2243's Smoking and Drug Rules and s. 117 (2) (b) of the Act. I also find that the Respondents owners failed to take all reasonable steps to obtain his compliance. However, the evidence indicates that Mr. Finn no longer occupies the unit and therefore I issue no compliance orders. I do order the Respondents owners to pay \$2,560 in costs to TSCC 2243.

B. PROCEDURAL MATTERS

- [4] Mr. Finn did not join this matter in Stage 1 – Negotiation and therefore it proceeded directly to Stage 3 – Tribunal Decision. At the outset of this proceeding, at my request, Tribunal staff contacted him by e-mail to advise that the matter was at the hearing stage, but they received no response. Staff did inform me that had previously contacted Mr. Finn who had told them he would not be joining the case because he was moving out of the unit. Darlene Mezzabotta, the Applicant's representative, confirmed the dates and method of service of notice of the application and I am satisfied that Mr. Finn was properly served. Therefore, this matter proceeded without his participation and my decision is based solely on the evidence and submissions of TSCC 2243 and the Respondents owners.
- [5] As a preliminary matter, Vitale Orenstein, the Respondents owners' son and their representative in this proceeding, requested that the Tribunal dismiss this matter on the basis that Mr. Finn would be moving out. He advised that on September 1, 2024, the Respondents owners had served Mr. Finn an N12 notice ("Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit") under the RTA with the effective date of October 31, 2024. He further advised that he had notified TSCC 2243's condominium manager David Wallace accordingly. Ms. Mezzabotta indicated the corporation wished to proceed with this case because there was no indication that an eviction order had been served on Mr. Finn and the corporation was continuing to receive complaints about his smoking. I denied the Respondents owners' request that the matter be dismissed as Mr. Finn continued to occupy the unit and there was no evidence to confirm that he intended to vacate it.

[6] On September 16, 2024, Ms. Mezzabotta requested an extension in time to provide submissions. She advised that the corporation had some indication that Mr. Finn would be vacating the unit because he had booked the moving elevator for September 19, 2024. On September 21, 2024, she advised that the corporation had informed her that Mr. Finn had not permanently vacated the unit and requested the matter continue. Therefore, the hearing proceeded.

C. ISSUES & ANALYSIS

[7] The parties confirmed that the issues to be decided in this matter are:

1. Has the Respondent Douglas Finn failed to comply with TSCC 2243's Smoking and Drug Rules and with s. 117 (2) (b) of the Act? If so, what order should the Tribunal make?
2. Have the Respondents owners failed to comply with Articles 4.1 (c) and 4.2 (d) of TSCC 2243's Declaration and s. 119 (2) of the Act related to their responsibility to ensure their tenant's compliance? If so, what order should the Tribunal make?
3. Should the Tribunal award costs in this matter?

Issue No. 1: Has the Respondent Douglas Finn failed to comply with TSCC 2243's Smoking and Drug Rules and with s. 117 (2) (b) of the Act? If so, what order should the Tribunal make?

[8] TSCC 2243's Smoking and Drug Rules effective February 19, 2018 forbid smoking in units or on the common elements. The rules provide an exception for individuals who were residents before the rules came into effect, provided their activity does not create a nuisance. Mr. Finn was a resident before the rules came into effect. Rules 4 and 5 state:

4. Subject to s. 12(e) and (f), no person shall smoke any Smoking Implements in any unit or on any exclusive use common elements, including, without limitation, any balcony, terrace or patio.

5. Section 12(d) is not enforceable against any occupant who occupies a unit in the Corporation prior to the date on which these Smoking & Drug Rules are passed by the board (the "Grandfathered Occupant"), provided that any such Grandfathered Occupant shall not create or permit the creation or continuation of any smoking nuisance which, in the opinion of the board or manager, may or does disturb the comfort or quiet enjoyment of the property by others.

Documents filed by the parties in this matter indicate that Mr. Finn asserts he uses cannabis for medical reasons. The rules relevant to this use are:

6. Section 12(d) is not enforceable against any occupant who is a registered patient legally entitled to consume marijuana pursuant to a doctor's prescription based on a medical need (the "**Eligible Occupant**"), provided that such Eligible Occupant promptly produces evidence (medical or otherwise), as may be requested by the board or manager from time to time, demonstrating

i. that the Eligible Occupant has a disability that necessitates the use of medical marijuana;

ii. that the disability impacts physical mobility in such a way that enforcing s.12(d) would cause undue hardship;

iii. that the marijuana is prescribed legally by a medical doctor, with the Eligible Occupant possessing a valid prescription not more than one (1) year old; and

iv. that the Eligible Occupant possesses a government-issued medical marijuana certification or card.

7. Any Eligible Occupant that satisfies the criteria under s. 12(f) shall not create or permit the creation or continuation of any nuisance from the smoking of medical marijuana which, in the opinion of the board or manager, may or does unduly disturb the comfort or quiet enjoyment of the property by other Occupants.

[9] I note that the numerical cross-references contained in the above-cited rules are incorrect. Ms. Mezzabotta explained that these were not changed when the decision was made to produce the rules as a "stand alone" document rather than add them to the existing rules as number 12. Thus, the reference in Rule 5 to s. 12 (d) should in fact be to Rule 4 and the reference in Rule 7 to s. 12 (f) should be to Rule 6. I find that this drafting oversight does not invalidate the rules.

[10] Section 117 (2) (b) of the Act states:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

...

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[11] Smoke and odour are among the prescribed nuisances set out in s. 26 of Ontario Regulation 48/01 (“O. Reg. 48/01”). “Nuisance” is not defined in the Act. In its decision in *Carleton Condominium Corporation No. 132 v. Evans*, 2022 ONCAT 97 (CanLII), summarizing paragraphs 19 and 26 of *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SSC 13 (CanLII), the Tribunal wrote at paragraph 20:

... it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A ‘trivial’ interference will not suffice to support a claim in nuisance.

[12] Mr. Wallace testified that, beginning in June 2023, the corporation began to receive resident complaints about cigarette and marijuana smoke and odour in units and in the hallway on the floor on which the Respondents owners’ unit is located. Mr. Wallace’s testimony is supported by the documentary evidence of 33 security incident reports dated between June 11, 2023 and September 4, 2024. The complaints were made at various times of day ranging from early morning to the middle of the night. Security staff investigated the complaints, the vast majority of which are about marijuana odour, and, on all but three occasions, verified that the Respondents owners’ unit was the odour’s source. The majority of the reports indicate that staff did not contact Mr. Finn when they verified the odour. One report indicates that he was well-known to staff with a history of claiming that he could not be told to stop smoking marijuana because he had a “medical licence” for its use. I note that one report indicates Mr. Finn claimed that he smoked “a pound of weed” daily.

[13] On March 26, 2024, a letter signed only by “Icon Property Management Ltd.” was sent to both the Respondents owners and Mr. Finn. The letter set out ten incidents of complaints by owners of smoke and odour, cited the corporation’s Smoking and Drug Rules, and warned that the corporation would take legal action if Mr. Finn’s “nuisance smoking activity” did not cease. Mr. Finn responded as follows:

I have a medical licence to smoke from a federal judge. Your condo rules are void to me. We have been over this u can’t complain to me. I have rights to not be harassed. And I will be practicing. Those rights if you don’t stop bugging me google medical marijuana patient Sue’s condo board. Every case condo board pays. It’s a thing So please check with the main boss he knows. About my licence I’ve lived here almost 7 years and I medically smoke every day all day like the doctors ordered. You need to tell my cry baby. Neighbour to stop complaining because there’s nothing that could be done.

- [14] The evidence is that the complaints continued. Twelve incident reports were recorded between March 27, 2024, and May 14, 2024, the date on which the Respondents owners were sent a letter from the corporation's Counsel Yuliya Lappo demanding that they obtain Mr. Finn's immediate compliance and reminding them of their responsibilities under the Act. The letter, which was also sent to Mr. Finn, advised that Mr. Finn should submit a request for accommodation to the corporation if he had a need based on one of the grounds set out in the *Ontario's Human Rights Code*. Finally, the letter warned that the corporation would take further legal action if Mr. Finn did not cease creating a nuisance from smoking cannabis and tobacco, that it would seek its legal costs on a full indemnity basis and that it would seek to recover any costs not awarded as common expenses attributable to the unit.
- [15] Mr. Wallace testified that the corporation received no request for accommodation. While Mr. Finn may well meet the criteria set out in Rule 6 of the Smoking and Drug Rules for the use of medical marijuana, that rule requires certain documentation to be provided to the corporation, and Rule 7 requires that the medical use not create a nuisance. The evidence is that further nine security incident reports were recorded after the legal letter was sent on May 14, 2024.
- [16] The corporation's evidence was not contested. The volume and frequency of confirmed resident complaints about smoke and odour emanating from the unit occupied by Mr. Finn is evidence that he has breached TSCC 2243's Smoking and Drug Rules; Rules 5 and 7 both forbid smoking that "disturbs the comfort or quiet enjoyment of the property by others." The volume and frequency of complaints also indicate that Mr. Finn's smoking is not a trivial interference and therefore I find it constitutes a nuisance, annoyance and disruption in violation of s. 117 (2) (b) of the Act.
- [17] TSCC 2243 requests that I order Mr. Finn's compliance with the Smoking and Drug Rules. Notwithstanding the Respondents owners' advice that Mr. Finn will vacate their unit on October 31, 2024, Ms. Mezzabotta submitted that a compliance order is required because Mr. Finn has the right to possess the unit until there is either an order from the Landlord and Tenant Board (the "LTB") ending the tenancy or the tenant provides written confirmation to the owners that he is relinquishing the right to possess the unit. Ms. Mezzabotta submits that there is no such order or confirmation.
- [18] E-mail/text correspondence between Vitale Orenstein and Mr. Finn dating from September 5, 2024 indicates that the Respondents owners sent Mr. Finn an N11 form ("Agreement to End a Tenancy") which they sought as confirmation of his

intent to abide by the October 31, 2024, date set out in the N12 form. Mr. Finn refused to sign the N11, stating he had been advised not to sign anything. I asked if the Respondents owners had applied to the LTB for an eviction order. Vitale Orenstein advised this was “in process” but had not been filed because the Respondents owners believed it was not necessary as Mr. Finn had verbally indicated his intent to permanently vacate the unit on October 31, 2024.

[19] As noted above in paragraph 6, Mr. Finn booked the moving elevator for September 19, 2024. On September 21, 2024, Mr. Orenstein texted Mr. Finn to provide notice of his intent to enter the unit the following day to inspect it for damages. In his September 23, 2024 reply, Mr. Finn objected to the entry and wrote that he would return the keys on October 31, 2024. Mr. Orenstein, after again providing notice to Mr. Finn, did enter the unit on October 10, 2024. He found that Mr. Finn’s furnishings had been removed and only debris remained. Mr. Orenstein also advised that TSCC 2243’s security staff told him that Mr. Finn had not resided in the unit since September 19, 2024 and had only been in the building to pick up packages. On October 18, 2024, Mr. Orenstein uploaded a series of photographs taken on October 10, 2024, which show that, aside from debris, the unit was empty. Further, on October 22, 2024, I asked Mr. Wallace, who in his testimony dated October 4, 2024, wrote “the behaviour continues today”, to provide the dates of any complaints the corporation received dated after September 4, 2024 (the last date of the incidents it had disclosed as evidence in this matter). Mr. Wallace’s response was that the only additional complaint had been received on September 17, 2024.

[20] The evidence persuades me that Mr. Finn no longer resides at TSCC 2243. Section 37 (2) of the RTA states that “if a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice.” Mr. Finn has informed Mr. Orenstein in an e-mail that he will return the keys on October 31, 2024. The photographic evidence is that his possessions have been removed and there have been no complaints after Mr. Finn booked the moving elevator on September 19, 2024. I assess that there is minimal, if in fact any, risk of challenge to the Respondents owners’ obtaining vacant possession of the unit on October 31, 2024. Therefore, there is no need to issue an order that Mr. Finn comply with TSCC 2243’s Smoking and Drug Rules.

Issue No. 2: Have the Respondents owners failed to comply with Articles 4.1 (c) and 4.2 (d) of TSCC 2243's Declaration and s. 119 (2) of the Act related to their responsibility to ensure their tenant’s compliance? If so, what order should the Tribunal make?

[21] TSCC 2243 alleges that the Respondents owners, by failing to take reasonable steps to obtain Mr. Finn's compliance with its Smoking and Drug Rules, breached the following two sections of its Declaration:

4.1 (c) The Owner of each Unit shall comply and shall require all residents, tenants and visitors to their Unit to comply with the Act, Declaration, By-Laws and Rules.

4.2 (d) An Owner leasing his/her Unit shall not be relieved thereby from any of his/her obligations with respect to the Unit, which shall be joint and several with his/her tenant.

The corporation also alleges that the Respondents owners breached their obligations under s. 119 (2) of the Act which states:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

[22] Mr. Wallace testified that the corporation received no response from the Respondents owners to its March 26, 2024, letter. As noted above in paragraph 14, TSCC 2243 continued to receive resident complaints after this letter was sent. The evidence is that Vitale Orenstein did reply to the May 14, 2024 legal letter which included the demand that the Respondents owners "respond in writing to our office confirming that all smoking in the Unit has stopped. You must respond within seven (7) days from the date of this letter." Ms. Mezzabotta submitted the following with respect to that response:

The only response received by the Owners' son was an email to counsel on May 17, 2024 seeking legal advice to evict the tenant for non-payment of rent. The email did not state that the Owners intended to comply with their legal obligations nor that they intended to take proper steps to cause their Tenant to comply.

[23] Ms. Mezzabotta further submits that the steps the Respondents owners have taken to end Mr. Finn's tenancy were not in relation to Mr. Finn's behaviour. She requests that I order them to comply with their obligations under the corporation's Declaration and the Act to ensure Mr. Finn's compliance with its Rules.

[24] The Respondents owners' position is that reasonable steps have been taken to obtain Mr. Finn's compliance. In this regard, Mr. Orenstein referred me to the Tribunal's decision in *Metropolitan Toronto Condominium Corporation No. 1177 v. Brunet et al.*, 2022 ONCAT 66 (CanLII) ("Brunet"), a case in which the corporation sought a compliance order for violation of its smoking rules by a tenant. The

Tribunal ordered the tenant's compliance but found that the unit owner, who had applied to the LTB for an eviction order, had taken reasonable steps to obtain compliance from an uncooperative tenant.

- [25] In this case, the efforts to obtain compliance were made by the Respondents owners' two sons. Joseph Orenstein testified that he and his brother Vitale have taken responsibility for managing the unit because his father, Doffy Oren, is in palliative care and his mother, Alegra Orenstein, is not well.
- [26] Joseph Orenstein testified that he telephoned Mr. Finn on March 27, 2024 – the day after the Respondents owners received the letter from Icon Property Management Inc. – and informed him that he must stop smoking. Mr. Finn's response was that he had a "medical licence" to smoke marijuana and Joseph Orenstein advised him to inform building management accordingly. Mr. Finn then indicated he already had. Joseph Orenstein testified he followed up with Mr. Finn, again by telephone, on April 21, 2024, and Mr. Finn advised him that he was in fact complying with the corporation's Rules. Joseph Orenstein further testified that on May 14, 2024, he telephoned Mr. Finn immediately on receipt of the letter from the corporation's Counsel. He advised Mr. Finn that the corporation did not have the "medical licence" which Mr. Finn claimed permitted his marijuana smoking; Mr. Finn's response was that management was lying and that both management and Joseph Orenstein were harassing him. Joseph Orenstein testified that he then forwarded the legal letter to Vitale Orenstein.
- [27] On May 17, 2024, Vitale Orenstein contacted the corporation's Counsel by e-mail. That e-mail indicates that, while he noted other issues, he did include the residents' complaints about Mr. Finn among his concerns:
- Late rent payments, complaints by other unit tenants/owners, damage to the unit and appliances, as well as damage to another unit (which we had to pay out-of-pocket) because of having an adapter to one of the toilets in the unit, which is not allowed (I just found out) by the condominium laws. I would be grateful if you could guide and assist us on how we may deal with this matter and possibly legally remove him from the unit.
- The corporation's Counsel advised Vitale Orenstein that she could not provide him with legal advice and that he should seek legal representation.
- [28] Vitale Orenstein testified that he telephoned Mr. Finn on May 18, 2024 and told him that he must comply with the corporation's Rules. Mr. Finn advised he had a "medical licence" and then hung up. Mr. Orenstein further testified that he

continued to receive notification about rule violations by Mr. Finn, although I note that neither the corporation nor the Respondents owners provided any documentation of these notifications. On June 1, 2024, Mr. Orenstein again called Mr. Finn to tell him he must comply, but Mr. Finn swore at him and told him he would charge him with harassment.

- [29] I accept the testimony of both Joseph and Vitale Orenstein with respect to the efforts they made after the Respondents owners' receipt of the March 26, 2024, management letter and the May 14, 2024, legal letter. While it would have been more prudent to have corresponded with Mr. Finn in writing and to have copied the corporation on that correspondence, I have no reason to doubt that the telephone calls were made.
- [30] There is documentary evidence of the correspondence between Vitale Orenstein and Mr. Finn dating from June 2024. Again, TSCC 2243 was not copied on any of the correspondence seeking Mr. Finn's compliance. On June 17, 2024, in an e-mail to Mr. Finn, Vitale Orenstein noted that the Respondents owners had not yet received rent for June and that the Respondents owners would take legal action if Mr. Finn did not pay the rent and comply with the corporation's Rules. Mr. Finn's June 18, 2024, reply states that he had quit smoking cigarettes, that he had a "medical licence" and was not breaking any rules; rather, the corporation and Mr. Orenstein were breaking rules by harassing him. On June 19, 2024, Mr. Orenstein replied that Mr. Finn should provide the "medical licence" to the corporation and "maybe we can deal with this once and for all." On June 20, 2024, Mr. Orenstein advised Mr. Finn of his intention to move into the unit when Mr. Finn's lease expired and advised him to begin to look for somewhere else to live. He also offered to move in earlier if Mr. Finn was prepared to leave before the expiration of his lease.
- [31] Mr. Orenstein testified that he telephoned Mr. Finn again on July 21, 2024. However, the correspondence he sent after this date urges Mr. Finn to join this Tribunal proceeding and addresses the potential liability of the owners for costs incurred by the corporation. Notwithstanding various threats to take legal action set out in the correspondence, none was taken until the Respondents owners served the September 1, 2024, N12 notice on Mr. Finn, some two months after Vitale Orenstein informed him of his intention to move into the unit.

[32] I acknowledge that the Respondents owners' sons took some steps on their behalf to obtain Mr. Finn's compliance when they were initially informed about the residents' complaints. However, I find that the Respondents owners' delay in taking decisive action in the face of what Mr. Finn clearly and repeatedly indicated was his refusal to comply with those rules was a failure to take all reasonable steps to obtain his compliance. Unlike the unit owner in Brunet, who not only had applied to the LTB for an eviction order but had also requested an expedited hearing, the Respondents owners in this matter did not apply for an eviction order, even after Mr. Finn refused to sign the N11 form. While I have determined that Mr. Finn has in fact vacated the unit, the Respondents owners had no guarantee that would happen and arguably had no proof that he intended to vacate the unit until Vitale Orenstein entered it on October 10, 2024.

[33] An application for an eviction order can be filed with the LTB any time after an N12 notice has been served. The N12 form states "The landlord can apply to the LTB to evict you immediately after giving you this notice." Notwithstanding that the termination date on the N12 form was required to be the last day of Mr. Finn's lease, it could have been filed earlier. Had the Respondents owners filed it earlier and had they proceeded to apply for an eviction order, it is conceivable that the corporation might not have filed this case.

[34] For the reasons set out in the preceding two paragraphs, I find that the Respondents owners did not take all reasonable steps to obtain Mr. Finn's compliance in breach of their responsibilities under Article 4.1 (c) of TSCC 2243's Declaration and s. 119 (2) of the Act. However, I have found that Mr. Finn has in fact vacated the unit. Therefore, there is no need to issue the compliance order requested by TSCC 2243.

Issue No. 3: Should the Tribunal award costs in this matter?

[35] TSCC 2433 requests the Tribunal order the Respondents, jointly and severally, to pay costs of \$8,494.50, comprised of \$1,890.21 in legal fees which it incurred before it filed its application with the Tribunal, \$150 in Tribunal fees and \$6,454.29 in legal fees incurred with respect to this proceeding.

[36] When the corporation's cost request was posted to the CAT-ODR system, Vitale Orenstein advised me that the Respondents owners had been charged the \$1,890.21 by the corporation and had paid it on August 25, 2024. He requested that the corporation be ordered to reimburse this amount to the owners. Ms. Mezzabotta confirmed that the amount had been paid and advised that the corporation would reimburse the Respondents owners for any amount they had paid which exceeded any cost order the Tribunal might make.

[37] 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.

[38] I have found that Mr. Finn breached TSCC 2243's Smoking and Drug Rules in violation of s. 117 (2) (b) of the Act and that the Respondents owners breached Article 4.1 (c) of the corporation's Declaration and s. 119 (2) of the Act by failing to take reasonable steps to ensure his compliance. However, I am issuing no compliance orders because the evidence is that Mr. Finn has vacated the unit. The corporation's application to the Tribunal was filed on July 2024; while I have found that Mr. Finn has vacated the unit, that resolution of the issues was not evident until mid October when this hearing was nearly concluded. Therefore, I am ordering the reimbursement of the \$150 TSCC 2243 paid in Tribunal fees.

[39] TSCC 2243 is requesting that the \$6,454.29 in legal fees it incurred in the course of this proceeding be awarded on a full indemnity basis and that the Respondents be ordered to pay these costs jointly and severally. Ms. Mezzabotta submits that "no part of these costs should be borne by the Respondents' neighbours who are blameless in this matter."

[40] The Tribunal's Rules of Practice are clear that legal fees are not generally awarded. In this case, there was no inappropriate behaviour during the proceeding or unreasonable delay caused by the participating Respondents. However, I recognize that any costs not awarded by this Tribunal will ultimately be expensed to other owners of TSCC 2243. In this case, Mr. Finn's behaviour persisted in spite of the receipt of letters from both the corporation and its legal counsel and I have found that the Respondents owners failed to take decisive action in a timely manner. In these circumstances, I find that it would be inappropriate for other owners to bear the entire cost of this proceeding, and I order costs of \$3,500 to be paid jointly and severally by the Respondents owners. While I recognize that Mr. Finn was responsible for creating the nuisance smoke and odour, neither the corporation's nor its counsel's letters advised him that he could be held liable for the corporation's legal costs. Moreover, I find it highly improbable that costs could

be recovered from him given he has moved out of TSCC 2243.

[41] With respect to TSCC 2243's request for costs of \$1,890.21 in respect of legal fees it incurred before it filed its application with the Tribunal, such compliance enforcement expenses do not form costs as set out in s. 1.44 (1) 4 of the Act. However, in accordance with s. 1.44 (1) 3 of the Act, the Tribunal may order compensation for damages incurred by a party to the proceeding as a result of an act of non-compliance. It is to be expected that a corporation will incur some costs in fulfilling its responsibility to ensure compliance with its rules. I have reviewed the invoices submitted as substantiation of the corporation's legal fees. While they include the costs incurred to produce the May 14, 2024, legal letter, they also include fees tangentially related to compliance, such as preparing a resolution for the board. I find an award of \$800 in respect of the legal letter to be appropriate.

[42] TSCC 2243 has confirmed that the Respondents owners have already paid \$1,890.21. I am deducting this as a credit from the cost award. Therefore, I am ordering the Respondents owners to pay \$2,410 in respect of legal fees (\$3,500 in costs + \$800 as compensation for damages - \$1,890). With the addition of the \$150 I am ordering as reimbursement of Tribunal fees, the total cost award is \$2,560.

D. ORDER

[43] The Tribunal orders that:

1. Within 30 days of the date of release of this decision, Doffy Oren and Alegra Orenstein, jointly and severally, shall pay costs of \$2,560 to Toronto Standard Condominium Corporation No. 2243.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: November 4, 2024