CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 7, 2021
CASE: 2020-00366N
Citation: Reid v. Ottawa-Carleton Standard Condominium Corporation No. 878, 2021 ONCAT 39

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

Member: Mary Ann Spencer, Member

The Applicant,
Trevor Reid
Self-Represented

The Respondent,
Ottawa-Carleton Standard Condominium Corporation No. 878
Represented by Michael Fraser, Agent

Hearing: Written Online Hearing – February 22, 2021 to April 23, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] Trevor Reid (the "Applicant") requests the Tribunal order the repeal of Rule 3.1 of the rules of Ottawa-Carleton Standard Condominium Corporation No. 878 (the "Respondent"). His position is that the rule, which restricts owners from taking pets into or through the front lobby of the condominium building, violates s. 58 (2) of the *Condominium Act, 1998* (the "Act") because it is inconsistent with the Respondent's declaration and is not reasonable.

[2] The Respondent's position is that Rule 3.1 is "reasonable for its property" and meets the requirements of the Act "for content and procedure." The Respondent submits that its board of directors responded to owners' concerns in 2019 by amending Rule 3.1 to reduce the hours of restricted use of the lobby and to permit its use in emergencies by owners with pets.

[3] For the reasons set out below, I find that the Respondent's Rule 3.1 is consistent with its declaration and is reasonable and therefore make no order that it be repealed. I also find that the Respondent did not follow the legislated requirements when its board resolved to amend the rule in 2019 to ease its restrictions and that Rule 3.1 as amended by board resolution dated June 1, 2017 is the current rule.

B. BACKGROUND

[4] The Applicant, a dog owner, purchased a unit of the Respondent condominium corporation on January 15, 2020. As part of the purchase process, he requested a status certificate. In January, 2021, he requested a copy of the Respondent's governing documents. In response to both requests, he received the following version of Rule 3.1, as amended in 2017:

> No pet shall be taken into/through the lobby; side and rear doors shall be used.

[5] The Applicant filed his application with the Tribunal seeking repeal of the rule set out above. However, the Respondent's representative, who is the Respondent's condominium manager, testified that Rule 3.1 had been amended in 2019. The 2019 version of Rule 3.1 states:

> No pet shall be taken into/through the lobby between the hours of 7:00 a.m. and 9:00 p.m.; side and rear doors shall be used. This rule is suspended in the event of a fire or emergency evacuation.

[6] The Applicant's position is that neither the 2017 nor the 2019 version of Rule 3.1 is consistent with the Respondent's declaration or reasonable and he asks the Tribunal to order the rule be repealed.

C. ISSUES & ANALYSIS

[7] The issue to be decided in this matter is whether the Respondent's Rule 3.1 relating to the use of its lobby by owners with pets is consistent with its declaration and is reasonable. However, as noted above, the testimony of the Respondent's representative during the hearing raised a question with respect to the current wording of Rule 3.1. Therefore, the issues to be addressed in this matter are:

1. **What is the current version of the Respondent's Rule 3.1?**
2. **Is the current version of Rule 3.1 consistent with the declaration and/or is it reasonable?**
3. **If it is found that Rule 3.1 is not consistent with the declaration and/or is not reasonable, what order should the Tribunal make?**
4. **Should an award of costs be assessed?**

[8] The Respondent's representative and Jacques Laflamme, a member of the Respondent's board of directors, testified on behalf of the Respondent. I note that both the Applicant and his witness Veljko Bajagic submitted their testimony with

respect to the 2017 version of Rule 3.1. Only the evidence most relevant to the issues to be decided is set out in this decision.

Issue No. 1: What is the current version of the Respondent's Rule 3.1?

[9] The status of Rule 3.1 emerged as an issue five weeks into the hearing of this matter. On February 23, 2021, the parties confirmed that the issue to be addressed was with respect to Rule 3.1 as amended by board resolution dated June 1, 2017. The Respondent's representative testified this amendment had been sent to owners with the notice required by s. 58 (6) of the Act. As set out above, this version of the rule forbids owners from taking their pets into or through the Respondent's lobby at any time.

[10] Notwithstanding the confirmation that the 2017 version of the rule was at issue, in his written testimony dated March 31, 2021, the Respondent's representative advised that the 2017 version of the rule had been further amended by board resolution dated August 22, 2019.

[11] The Applicant advised that he received the 2017 version of Rule 3.1 in response to an October 28, 2019 request for a status certificate made as part of his purchase process and that he also received the 2017 version when he requested copies of the Respondent's governing documents in January 2021. He further testified that he received a copy of an updated "welcome book" in November 2020 which does contain a paraphrased description of the 2019 rule. Before the Respondent's representative testified, the Applicant alleged the rule change had been fabricated by the Respondent to make it appear more reasonable during the Tribunal proceedings.

[12] Section 58 (6) of the Act sets out the process a corporation must follow in making or amending rules:

> Upon making, amending or repealing a rule, the board shall give a notice of it to the owners that includes,
>
> (a) a copy of the rule as made, amended or repealed, as the case may be;
>
> (b) a statement of the date that the board proposes that the rule will become effective;
>
> (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (7) and (8); and

(d) a copy of the text of section 46 and this section.

[13] I asked the Respondent's representative to clarify if the Respondent had sent the notice to owners of the 2019 amendment. His response was that the amended Rule 3.1 was sent with the Respondent's 2019 Notice of its Annual General Meeting which he explained "was a meeting called for the purpose (an item on the Agenda for the AGM). The Board had earlier amended the rule as instructed by Ottawa Fire Services (OFS) specifically their Fire Prevention Bureau."

[14] The Respondent's representative explained that the Applicant would not have received the 2019 version in response to his request for a status certificate because that request was made before the Respondent circulated the rule amendment to owners with the November 1, 2019 Notice of its AGM. However, he offered no explanation as to why the Applicant did not receive the 2019 version in January 2021.

[15] At my request, on April 1, 2021, the Respondent's representative provided the Notice of Meeting of Annual General Meeting dated November 1, 2019, the prescribed Notice of Meeting of Owners and a copy of the document "Condominium Rule Regarding Pets, Amended by Board Resolution August 22, 2019" which was distributed with the notices.

[16] Section 58 (5) of the Act states that "the owners may amend or repeal a rule at a meeting of owners duly called for that purpose." The evidence is that the Notice of Meeting of Owners sent for the November 20, 2019 AGM indicates that one of the meeting's purposes was to discuss proposed changes to the declaration, by-laws or rules. The meeting's agenda includes the item "Review of Rules Regarding Dogs".

[17] The Applicant entered into evidence the Respondent's 2020 Notice of AGM which includes the draft minutes of the November 20, 2019 meeting. The minutes record a discussion about a number of the corporation's rules respecting dogs and state that the board would take the owners' comments into consideration. There is no indication that the 2019 amendment to Rule 3.1 was approved; rather, the draft minutes record there was no quorum for the meeting and under the pet item state "the President advised there was no quorum for the vote."

[18] I find that the 2019 version of Rule 3.1 was not made in accordance with the requirements of the Act. Notice of the amendment was neither sent to owners as required by s. 58 (6) of the Act nor was the rule amended at a meeting of owners called for the purpose as set out in s. 58 (5). Therefore, the 2019 version of Rule 3.1 is null and void. The 2017 version of Rule 3.1 is the current rule. The result of

my finding is that an owner who objects to dogs in the Respondent's lobby during the hours permitted in the 2019 version could challenge the board to enforce the more stringent 2017 version.

Issue No. 2: Is the current version of Rule 3.1 consistent with the declaration and/or is it reasonable?

[19] The rule-making authority of a corporation is set out in s. 58 (1) of the Act:

> The board may make, amend or repeal rules under this section respecting the use of the units, the common elements or the assets, if any, of the corporation to,
>
> (a) promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or
>
> (b) prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation

Section 58 (2) of the Act states "the rules shall be reasonable and consistent with this Act, the declaration and the by-laws."

[20] The Applicant's position is that Rule 3.1 should be repealed because it is inconsistent with the Respondent's declaration and it is not reasonable.

[21] The Applicant submitted that Rule 3.1 is inconsistent with Article 4 of the Respondent's declaration. Article 4.1 of the declaration states:

> Subject to the provisions of the Act, the Declaration, the by-laws and the rules, each owner has the full use, occupancy and enjoyment of the whole or any part of the common elements, except as herein otherwise provided.

The Applicant argued that Rule 3.1 is inconsistent because article 4.25 of the declaration only requires that pets be on leash when on the common elements.

[22] The Applicant has misunderstood article 4.1. The wording "subject to the provisions of ...the rules" contemplates that rules might limit "the full use, occupancy and enjoyment" of the common elements. Such rules would have force as long as they did not conflict with the corporation's by-laws, any other provision in the declaration, or the Act. A rule prohibiting dogs from being on specific parts of the common elements is not in conflict with the declaration's requirement that they be on leash; the effect of the requirement is that dogs be leashed when on the common areas the rules permit them to be on. Therefore, I find that there is no inconsistency between Rule 3.1 and the Respondent's declaration.

[23] With respect to the reasonableness of Rule 3.1, the Applicant submitted that the rule is not reasonable when compared to the rules of other condominium corporations in the community and that it is not reasonable from a safety perspective.

[24] The Applicant provided the rules of four condominiums in the immediate neighbourhood of the Respondent, including those of the adjoining building with which the Respondent shares amenities and a garage. He testified that none of these rules restrict an owner from using their buildings' front entrances with their pet.

[25] With respect to safety, the Applicant testified that requiring owners with dogs to use the side and back entrances exposes them to safety hazards which are not at the front entrance which is staffed by a 24/7 concierge who monitors people entering and exiting the building and enforces a no-loitering policy. He provided photographs and a detailed description to describe the routes from the suite elevators to both the front entrance and to the back doors which the 2017 version of Rule 3.1 requires owners with pets to use at all times. He did not provide detail with respect to the side doors, explaining those are "exit only" doors and any pet owner using them would be required to use one of the back doors to enter again.

[26] The evidence is that the route to the front entrance is direct. In summary, to reach the rear or back doors, which exit to the sidewalk of a one-way street behind the building, an owner must open a door to a corridor and walk its length to another door leading to the garage. An owner must then pass through "a high traffic area where vehicles are loading/unloading and/or entering/exiting the garage" to reach the exit doors. One of the exits has automatic sliding glass doors which are adjacent to a garage door. The garage door has a 15 second closing delay which the Applicant indicated could allow intruders to enter. He also stated that vehicles exiting the building cannot see pedestrians or pets on the sidewalk before pulling out of the garage.

[27] In addition to what the Applicant described as a high traffic route behind the building, he testified that there is a drugstore located in the building which contributes to the number of deliveries in the loading zone. Further, the drugstore has two dumpsters permanently located on the sidewalk. In addition, on a weekly basis, the condominium building's dumpsters are hauled up the garage ramp to the street for pick up and debris can spill over to the sidewalk.

[28] The Applicant further testified that the back doors of the Respondent's building are in proximity to a shelter and that he has "been subjected to unwanted interactions that include both verbal harassment and aggressive behaviour, typically by

individuals who are seemingly intoxicated and/or suffering from a mental illness." He provided photographs of individuals rummaging through recycling bins and of litter on the sidewalk.

[29] Mr. Bajagic also testified to safety issues arising from traffic in the garage, particularly when the loading dock is occupied and visibility is reduced. He indicated that he felt unsafe walking his dog through the garage and cited an incident when he witnessed two intruders confronting building security. He further testified to hazards on the sidewalk, including syringes that potentially endangered his dog.

[30] Mr. Laflamme testified that Rule 3.1 was amended in 2017 because the Respondent was experiencing problems with dog owners' use of the front entrance including, among others, that owners were not picking up after their dogs, were leaving waste bags in the front lobby garbage can, and, on a hot day, there was a "stench of urine" at the front entrance. Although he could not quantify the volume of complaints, he stated that dog owners were spoken to many times by both security and other owners and there had been altercations in the lobby. While the Applicant submitted that the Respondent should have better enforced compliance, Mr. Laflamme testified that because there was no rule preventing use of the front entrance, security staff "were at a loss". He testified that the board sent letters to offenders but the problems persisted.

[31] Both the Respondent's representative and Mr. Laflamme testified that the Respondent spent approximately $100,000 to upgrade and improve the route to the back door. The corridor was refurbished, the automatic sliding glass doors to the street were installed in the garage, additional outdoor lighting and two additional security cameras, monitored by security staff, were added.

[32] Mr. Laflamme testified that the board considered the safety of all residents when it amended Rule 3.1 in 2017. He also stated that there is little difference outside the front and back entrances of the building; both are on busy streets and people loiter and litter at both. Finally, he testified that the amended rule had been well-received by residents. In this regard, I note that the Respondent's representative testified that notice of the amendment was circulated to owners in accordance with s. 58 (6) of the Act and there was "no contest".

[33] It is established law that, unless a rule is clearly unreasonable, deference should be shown to the decisions of a condominium corporation's board. In Yo*rk Condominium #382 v. Dvorchik, 1997 CanLII 1074 (ON CA)*, a case which involved the enforcement of a condominium rule, the Court of Appeal wrote:

> …a court should not substitute its own opinion about the propriety of a rule enacted by a condominium board unless the rule is clearly unreasonable or contrary to the legislative scheme. In the absence of such unreasonableness, deference should be paid to rules deemed appropriate by a board charged with responsibility for balancing the private and communal interests of the unit owners.

[34] I find that the evidence does not support that Rule 3.1 as amended in 2017 is clearly unreasonable and I dismiss the Applicant's request that I order its repeal. That the Respondent's rule may be uncommon for condominiums in its neighbourhood does not make it unreasonable. Each corporation establishes its rules based on its own situation and the requirements of its community. As Mr. Laflamme testified, the use of the front entrance by owners with dogs created a number of specific issues for the Respondent. I note the amendment the Respondent made is consistent with s. 58.1(b) of the Act; its purpose was to prevent interference with the use and enjoyment of the common elements, in this case, the front lobby.

[35] I also find that the safety concerns about which both the Applicant and Mr. Bajagic testified do not make the rule clearly unreasonable. Those concerns were largely speculative. While Mr. Bajagic cited one incident he witnessed in the garage, his testimony was that building security was in fact present at the time. In his closing statement, the Applicant referred me to the 2019 AGM draft minutes which contain a discussion about bike thefts; however, the minutes refer to these as being on lower levels of the garage. Further, I note that the Respondent made a considerable investment in improvements to the route to the back entrance and in additional security measures.

[36] I have found that Rule 3.1 is consistent with the declaration and is reasonable. Therefore, there is no need to address Issue No. 3.

Issue No. 4: Should an award of costs be assessed?

[37] The Applicant requested costs of $200, representing the filing fees he paid to the Tribunal. The Respondent requested no costs.

[38] The Applicant requested costs on the basis that the Respondent caused unreasonable delays in the hearing. Rule 45.1(c) of the Tribunal's Rules of Practice states that the Tribunal may order a User to pay "costs that were directly related to a User's behaviour during the Case that was unreasonable, for an improper purpose, or that caused an unreasonable delay."

[39] I award no costs in this matter. While the Respondent's representative did not

always follow my instructions, I note that he is not a legal professional and had no experience with a hearing process. Aside from the confusion caused when he did not disclose that there was a 2019 version of Rule 3.1 during the issue confirmation stage of this hearing, he failed to disclose documents and to post witness statements by the due date and he failed to notify me before the deadline that a week's extension was needed to obtain the cross-examination responses of Mr. Laflamme. While the delays were undoubtedly frustrating for the Applicant, the issues in this hearing were not time-sensitive and the hearing was not significantly delayed. The Applicant incurred no costs as a result of the delays, claiming only his Tribunal fees which he is not entitled to receive because he was unsuccessful in his application.

D. CONCLUSION

[40] I have found that Rule 3.1 as amended by board resolution dated June 1, 2017 is consistent with the Respondent's declaration and is reasonable and I dismiss the Applicant's request that I order it be repealed. I have also found that Rule 3.1 as amended by board resolution dated August 22, 2019 is null and void because it was not made in accordance with the requirements of the Act.

[41] In his closing statement, the Respondent's representative acknowledges that the 2019 rule may not have been not properly made. He wrote "if the Tribunal finds that the last modification (allowing pets in the lobby overnight) was not implemented properly, that amendment would be struck and/or re-circulated." As I noted above, the fact that the 2019 version of the rule was not properly made exposes the Respondent to potential challenges to enforce the more stringent 2017 version of the rule. If the board decides to re-circulate the 2019 version of the rule, it should ensure that it does so in accordance with the requirements set out in s. 58 of the Act.

E. ORDER

[42] The Tribunal dismisses the Applicant's request that it order the repeal of Rule 3.1 of Ottawa-Carleton Standard Condominium Corporation No. 878.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: May 7, 2021