

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 14, 2021

**CASE:** 2021-00133N

**CITATION:** Smith v. Toronto Standard Condominium Corporation No. 1472, 2021 ONCAT 64

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Victoria Romero, Member

**The Applicant,**

Andrew Smith

Self-Represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 1472

Represented by Ranjeet Chugh, Agent

### **DISMISSAL ORDER**

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 2 - Mediation on May 10, 2021.
- [2] Under Rule 32.3 of the CAT's Rules of Practice, the CAT can dismiss a case in Stage 2 if the CAT determines that it has no legal power to hear or decide upon the dispute.
- [3] The CAT proposed to dismiss the case after reviewing the information and documents presented by the parties for the following reasons:
1. The Applicant filed this case as a storage dispute with respect to compliance with the Condominium's governing documents. The Applicant asserted that, on February 25, 2021, Toronto Standard Condominium Corporation No. 1472 (TSCC1472) changed the storage locker lock of the Applicant without prior notice.
  2. The Applicant argues that TSCC1472 has infringed his right to access his storage unit by changing the door lock without consent or advance notification where "nowhere in the declaration does the condo corporation have the authority to do this."
  3. The Respondent admits to changing the lock but advises that it was justified and carried out in accordance with Section 10.1(b) of the Declaration. The

Respondent further advises that: “the compromised locks were changed immediately for security reasons after a key theft. The priority for the Board was to secure the site and to prevent loss. A police report was filed. Owners were notified after the locks had been changed so as to ensure they could retrieve their new keys and have access to the lockers. Locks are the responsibility of the Corporation in an emergency situation and as per unit boundaries.”

4. The provisions of the Respondent’s declaration cited by the parties included sections 7.1, 10.1(b) regarding Repair and Maintenance, Schedule C (section b and c) of the Declaration, Section 4 (b) (iii): Boundaries of the Storage Units of Schedule C of the Declaration, section 1.5 (c) of the Declaration: Boundaries of Units and Monuments which state that the door of the Storage Unit is not excluded. Therefore, it remains part of the common elements. Furthermore, section 10.1(b), Articles 1.5 (c) and 4.4 of the Declaration, and section 97.2 of the *Condominium Act, 1998* were used to explain that, at minimum, the Respondent took this course of action for safety and emergency reasons.
  5. Accordingly, a storage dispute regarding these provisions would appear to be outside of the CAT’s jurisdiction, as set out under Ontario Regulation 179/17.
- [4] Therefore, the Tribunal issued a Notice of Intent to Dismiss the case on June 24, 2021. It asked the parties to respond to these concerns. The Applicant and Respondent were given a chance to respond to the Notice. Both parties did.
- [5] After reviewing the Application, response to the Notice and associated documents, I have determined that the CAT has no legal power to decide this dispute. The Applicant is correct that section 7.1 of the declaration refers to the maintenance and repair to units and exclusive use common elements including storage, but that is not enough to bring the dispute within the CAT’s jurisdiction. Moreover, it is important to note that Tribunal clerks do not give definitive answers regarding whether a case is within the Tribunal's jurisdiction. They explain the jurisdiction. They don’t make decisions on it.
- [6] In their response to the Notice, the Respondent states that “Section 1.(1)d.iii of Ontario Regulation 179/17 includes: Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes. The corporation's position is that this is not about the storage of items in a storage unit but the right of the condominium to repair the storage unit door in an emergency situation and subsequent to the above, does not seem to fall under the CAT jurisdiction.”
- [7] After reviewing the application, response to the Notice and associated documents, I have determined that the CAT has no legal power to decide this dispute. The

Applicant is correct that section 7.1 of the declaration refers to the maintenance and repair to units and exclusive use common elements including storage, but that is not enough to bring the dispute within the CAT's jurisdiction. Ontario Regulation 179/17 establishes the Tribunal's jurisdiction. Section 1.(1)d.iii specifies that it relates to disputes related to:

Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.

- [8] Based on the facts, the issue of this dispute is the right of the condominium to change the storage unit door lock in an emergency situation without notice to the unit owner and not about provisions that prohibit, restrict or otherwise govern the storage of items in the storage units.
- [9] I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

## **ORDER**

[10] The Tribunal orders that:

1. This case is dismissed in Stage 2 under Rule 32.3 of the CAT's Rules of Practice.
2. Any documents and messages that have been shared for this Case in Stage 1 - Negotiation and/or Stage 2 - Mediation are private and confidential. That means that the Users cannot share, or tell anyone about, messages or documents they received from other Users during these stages without the permission of the other User.
3. The Users may share a copy of any document they received during the course of this case if required by law, such as to a government organization or a court.

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Victoria Romero  
Member, Condominium Authority Tribunal

Released on: July 14, 2021