

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 4, 2022

CASE: 2021-00191N

Citation: Metropolitan Toronto Condominium Corporation No. 736 v. Verstova, 2022 ONCAT 1

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

Member: Mary Ann Spencer, Member

The Applicant,

Metropolitan Toronto Condominium Corporation No. 736
Represented by Michael Pascu, Counsel

The Respondent,

Halyna Verstova
Represented by: No one appeared

Hearing: Written Online Hearing – November 1, 2021 to December 15, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Metropolitan Toronto Condominium Corporation No. 736 (“MTCC 736”) requests the Tribunal order the Respondent Halyna Verstova to permanently remove a cat from her condominium unit. MTCC 736’s position is that the Respondent is in violation of the pet-related provisions of its declaration and rules. Further, MTCC 736 alleges that the cat has damaged the corporation’s common elements. MTCC 736 also requests an order that the Respondent be forbidden to bring any additional pets into the unit. Finally, pursuant to the indemnification provisions in its declaration and rules, MTCC 736 requests that the Respondent be ordered to indemnify it for its legal costs and expenses in this matter and for the cost of repair of the common elements.
- [2] Halyna Verstova did not join this proceeding. This decision is based on the evidence and submissions of MTCC 736.
- [3] For the reasons set out below, I find that Halyna Verstova has failed to comply with MTCC 736’s declaration and rules and order her to permanently remove her cat from her condominium unit within 30 days of the date of this decision. I also order that she is prohibited from bringing any additional pets into her unit. Further, I

order her, within 30 days of the date of this decision, to pay MTCC 736 a total of \$9,248.96 in respect of its legal fees and expenses and Tribunal fees. I also order her to pay 50% of the cost to repair damage to the common elements, such cost not to exceed \$3,247.60 and to be paid within 30 days of the date on which she is provided with an invoice setting out the actual cost of the repairs.

B. BACKGROUND

- [4] MTCC 736 is a three-storey residential condominium with wooden balconies. Halyna Verstova is the registered owner of a third-floor unit.
- [5] MTCC 736's declaration states that no animals, including those usually considered pets, are allowed in the residential units or on the common elements of the corporation. Notwithstanding these "no pet" provisions, at an unknown date, MTCC 736 passed a rule which permitted pets. However, on October 2, 2013, in accordance with the provisions of s. 58 of the *Condominium Act, 1998* (the "Act"), MTCC 736 notified owners of its intent to modify the rules to be consistent with the declaration.
- [6] The amended rules, effective November 7, 2013, stated that only existing pets registered by owners within 30 days of the rules' effective date could be kept on the premises. It further stated that these registered pets could not be replaced.
- [7] The registration form signed by Ms. Verstova on November 28, 2013 indicates she had one dog and two birds at the time the new rules became effective.
- [8] In April, 2019, Gordon Marshall, MTCC 736's condominium manager, was notified by the residents of the unit directly below Ms. Verstova's that a cat was urinating on Ms. Verstova's balcony, and the urine was leaking through its wooden floor onto their balcony.
- [9] On April 22, 2019, in a letter signed by Mr. Marshall, Ms. Verstova was advised that the rules forbade the use of the balcony by pets, that the practice must stop, that she would be responsible for any required repairs to the balconies, and that a cat was not allowed as it was not a registered animal.
- [10] On December 23, 2019, following receipt of complaints about both the smell of urine in the corridor outside Ms. Verstova's unit and about cat urine continuing to leak onto the balcony below, Mr. Marshall sent a further letter to Ms. Verstova. The letter again advised that the rules forbade the use of the balcony by pets and that the practice must stop. The situation did not resolve and the board of directors of MTCC 736 sought legal advice.

- [11] On April 13, 2020, Fine & Deo Condominium Lawyers (“Fine & Deo”) wrote to Ms. Verstova. The letter set out that the corporation had received complaints about cat urine dripping onto balconies, reminded her that only previously registered animals were allowed on the premises, and demanded the cat be removed by May 1, 2020. It further advised Ms. Verstova that she would be required to clean the balcony and to co-operate with the corporation to make any needed repairs. Finally, it advised that she would be required to indemnify MTCC 736 for its costs.
- [12] Ms. Verstova did not comply with the demand that her cat be removed. On November 19, 2020, Fine & Deo wrote to her again. The letter stated that MTCC 736’s board of directors had deemed Ms. Verstova’s cat to be a nuisance, demanded that she permanently remove it from her unit by December 7, 2020, and confirm she had done so. It again advised Ms. Verstova that she would be required to indemnify MTCC 736 for both its legal expenses and any costs it incurred to repair damage to the balconies.
- [13] Ms. Verstova did not advise MTCC 736 that she had removed the cat. The corporation continued to receive complaints, and, on June 7, 2021, it submitted its application to the Tribunal.
- [14] Halyna Verstova did not join this matter at the outset of the Tribunal’s three stage process and therefore the matter proceeded directly to Stage 3 – Tribunal Decision. Before I began the hearing, I asked Tribunal staff to attempt to contact her. They were unsuccessful. Staff confirmed the dates on which the Applicant served notice of their application to the Tribunal, and I am satisfied that Ms. Verstova was properly served with notice of the Tribunal’s proceedings. Therefore, the hearing took place without her participation.

C. ISSUES & ANALYSIS

[15] The issues to be addressed in this matter are:

1. Should the Tribunal order Halyna Verstova to permanently remove her cat from her condominium unit?
2. Should the Tribunal issue an order prohibiting Halyna Verstova from acquiring additional pets?
3. Should an award of costs be assessed?

Issue 1: Should the Tribunal order Halyna Verstova to permanently remove her cat from her condominium unit?

[16] MTCC 736 submits that Ms. Verstova is keeping a cat in her unit and allowing it to use her balcony in violation of the provisions of its declaration. It requests the Tribunal order her to permanently remove the cat from her condominium unit.

[17] Section 119(1) of the *Condominium Act, 1998* (the “Act”) sets out the requirement that owners and occupiers of units comply with the Act, the declaration, the by-laws and the rules of a corporation:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

[18] Article III (6) of MTCC 736’s declaration states “No animal, livestock or fowl of any kind whatsoever, including those usually considered pets shall be allowed on the common elements or the exclusive use common elements.” Schedule F to the declaration sets out that a balcony to which a unit has sole access is an exclusive use common element. Article IV(2)(e) of the declaration states “No animal, livestock or fowl of any kind whatsoever, including those usually considered pets shall be allowed in any Residential Unit.” Finally, Rule IV of MTCC 736’s current rules dated April 18, 2018, states:

Pets are not permitted on the property as residents or guests. The only exceptions are the pets which have been grandfathered.

I note that while the rule refers to “grandfathered” pets, I will refer to them as “legacy animals” in this decision.

[19] Alex Crowe, one of the owners of the unit directly below Ms. Verstova’s, testified that while he has not seen or heard a cat, cat urine has regularly dripped onto his windows and balcony and onto items on the balcony, some of which he had to dispose of. In July 2020 he sealed the gaps around the wooden floorboards of Ms. Verstova’s balcony with insulating foam to stop the leaking. He stated that he is unable to use his balcony because “every morning it smells like fresh cat urine from the balcony [of Ms. Verstova’s unit].”

[20] Mr. Marshall testified that on April 22, 2020, after Ms. Verstova advised the corporation that there was water damage to the floor of her unit, he entered the unit accompanied by MTCC 736’s superintendent and a contractor. He stated that the odor of cat urine, which he indicated he was able to identify because he is a

cat owner himself, was noticeable in the hallway outside the unit and so overpowering inside that they wore masks to protect themselves. Mr. Marshall further testified that he observed both a small dog and a cat in a cage inside the unit.

[21] Mr. Marshall stated that in the spring and summer of 2020 he continued to receive complaints from the owners of the unit below Ms. Verstova's. E-mails from the owners with accompanying photographs taken in May, 2020 were submitted into evidence. In September, 2020, he inspected the balcony of the complainants' unit and observed urine stains. He further testified that at its board meeting held on October 21, 2020, the board deemed Ms. Verstova's cat to be a nuisance. On November 19, 2020, the corporation's lawyers sent their second letter to Ms. Verstova demanding that the cat be removed by December 7, 2020 and that she confirm she had done so.

[22] Mr. Marshall testified that the corporation has not received a confirmation that the cat has been removed. He stated that although he has not been in Ms. Verstova's unit recently and therefore has not seen the cat, he has no reason to believe it has been removed; he noted that the owners of the unit below Ms. Verstova's continue to complain about the smell of cat urine.

[23] There is no evidence before me of recent confirmed sightings of the cat. However, based on Mr. Marshall's testimony that the corporation has received no confirmation from Ms. Verstova that the cat has been removed, and on Mr. Crowe's testimony that the odor of cat urine emanating from Ms. Verstova's balcony is noticeable "every morning", I find, on a balance of probabilities, that Ms. Verstova has failed to comply with the corporation's demand that the cat be permanently removed from her unit. Therefore, I find that Ms. Verstova is in violation of Articles III (6) and IV(2)(e) of MTCC 736's declaration and of its Rule IV. The only animals allowed at MTCC 736 are those which residents registered as legacy animals when the corporation's pet rules were amended in November, 2013 and a cat was not included on the form Ms. Verstova signed on November 28, 2013.

[24] Section 17(3) of the Act sets out the duty of a corporation to ensure owners and occupiers of units comply with its governing documents:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[25] The evidence before me is that MTCC 736 took steps to enforce the provisions of its declaration and rules before seeking an order from the Tribunal. It attempted to obtain Ms. Verstova's voluntary compliance by writing her in both April and December of 2019. Legal letters demanding the removal of the cat were sent in April and November of 2020. I note that the November 2020 legal letter is somewhat confusing in that it indicates the corporation's board of directors had declared the cat a nuisance in accordance with the 2013 pet rule which was no longer in effect. I also note that there was some significant delay between each of the steps the corporation took, and it is possible that Ms. Verstova interpreted these delays to mean that the corporation would not take more decisive action. However, that there has been delay does not abrogate the right of the corporation to seek an order from the Tribunal to compel compliance with the provisions of its declaration.

[26] Counsel for the Applicant submitted that the courts have clearly articulated the need to enforce compliance and referred me to the decision in *Metropolitan Toronto Condominium Corp. No. 776 v. Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.):

The major advantage of requiring compliance, on the other hand, appears to me to be that a message will be sent out by the Board to the unit owners that the Declaration and by-laws are in place for a good reason and they will be enforced, and a message will also be sent by the Court that where the Board acts reasonably in carrying out its duty to enforce the by-laws and Declaration the Board will be supported by the Court. To permit non-compliance in this case would clearly open the door to numerous, possibly very legitimate, requests by other unit owners to exempt them from certain other requirements in the Declaration and by-laws on the basis that each case should be decided on its own merits. While I do not disagree that each case must be decided on its own merits, at least by the Court if not by the Board who appears to have no discretion, the general message surely must be that enforcement will be expected and exceptions will be rare and will require a Court Application in any event. A longer-term result of this position will surely be that people will only move into the building if they are prepared to live by the rules of the community which they are joining--if they are not they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes or preferences.

[27] The Tribunal's recent decision in *Middlesex Vacant Land Condominium Corporation No. 605 v. Cui*, 2021 ONCAT 91 affirmed the duty of a corporation to enforce compliance. At p. 30, the Tribunal wrote:

As the Court recognized in *Ramadani*, it is a serious matter to require that the Respondent's dogs be removed, but it is also a serious matter when condominium residents do not conduct themselves in a way that is considerate of their neighbours

and other owners. In order to ensure protection of the interests of other condominium owners and residents, a condominium corporation must be able to enforce compliance with its governing documents.

[28] In the case before me, Ms. Verstova's actions in keeping a cat and allowing it to use her balcony have both infringed on the interests of her neighbours and caused damage to the common elements. Ms. Verstova is obligated under s. 119 of the Act to comply with the provisions of MTCC 736's declaration and I will order her to permanently remove the cat from the condominium unit.

Issue 2: Should the Tribunal issue an order prohibiting Halyna Verstova from acquiring additional pets?

[29] MTCC 736 has also requested the Tribunal order that Ms. Verstova be prohibited from bringing any additional pets into her unit. Such an order should not be necessary. The "no pet" provisions of the corporation's declaration are very clear, and Rule IV of the corporation's rules specifically indicates that only legacy animals are permitted on the condominium property. However, given Ms. Verstova did not include a cat when she completed her registration form in November 2013 but later acquired one despite the restrictions, I will issue the order as MTCC has requested.

Issue 3: Should an award of costs be assessed?

[30] MTCC 736 is requesting that, pursuant to the indemnification provisions of its declaration and rules, the Tribunal order Ms. Verstova to pay \$21,171.23. The \$21,171.23 is comprised of \$14,551.04 in legal fees and expenses incurred to enforce her compliance, \$125 in Tribunal filing fees, and \$6,495.19, the cost quoted by a contractor to repair damage to the corporation's wooden balconies.

[31] The relevant indemnification provisions of MTCC's governing documents are as follows:

Article VI of the declaration states:

Each owner shall indemnify and save harmless the Corporation from any loss, costs, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission of such Owner, his family, guests, visitors or tenants to or with respect to the Common Elements and/or all other Units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy of insurance) and insured against by the Corporation.

Rule III.19 of the corporation's rules dated April 18, 2018 states:

Any loss, cost or damages incurred by the Corporation by reason of a breach of any Rule by any resident, his family, guests/visitors, servants, agents or occupants of his unit shall be borne by the unit owner and may be recovered against such resident.

Similarly, Rule XIV.3 states:

Any loss, cost or damages incurred by the Corporation by reason of a breach of the Rules from time to time by any owner, their family, guests, servants, agents or occupants of their unit shall be borne by such owner and may be recovered by the Corporation against such owner.

[32] Counsel for the Applicant submitted that it would not be fair for the costs resulting from the non-compliance of one owner to be borne by all owners. In this regard, he referred me to the decision in *Chan v. Toronto Standard Condominium Corporation No. 1834* 2011 ONSC 108 (CANLII) and noted that the court affirmed the principle that it is neither fair nor equitable for all unit owners to subsidize the costs of enforcing compliance against an owner who fails or refuses to comply with its governing documents. The court awarded costs to the corporation on a full indemnity basis.

[33] I agree that it would be neither fair nor reasonable for all unit owners to pay the costs the corporation incurred as a result of Ms. Verstova's violation of the corporation's pet rules. That Ms. Verstova was aware of the rules is evidenced by the fact she did complete a form to register a dog and two birds as legacy animals in November, 2013.

[34] The authority of the Tribunal to make orders is set out in s. 1.44 of the Act. Section 1.44(1) states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding." Section 1.44(2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The Tribunal's Rules of Practice effective September 21, 2020 were those in effect when this case was heard. They address the costs related to the use of the Tribunal as follows:

45.1 The CAT may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT, including:

- a) any fees paid to the CAT by the other User;
- b) another User's expenses or other costs that were directly related to this other User's participation in the Case; and,

45.2 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the

successful User's CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise. This does not include legal fees.

46.1 The CAT will not order a User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so.

[35] \$8,815.52 of the \$14,551.04 requested in legal fees and expenses and the \$125 in Tribunal fees relate to the Applicant's use of the Tribunal. Therefore, in considering the Applicant's request for an order enforcing its indemnification provisions, I will consider the request for the costs associated with its use of the Tribunal in accordance with the Tribunal's rules as set out above.

[36] MTCC 736 incurred \$5,735.52 of the requested \$14,551.04 in legal fees and expenses with respect to its efforts to enforce Ms. Verstova's compliance with its pet rule before it filed its application with the Tribunal. The indemnification provisions set out above at paragraph 29 clearly indicate an owner's responsibility to pay such costs. However, the fact that the provisions in a corporation's governing documents indemnify it for its costs of enforcing compliance should not relieve it from a duty to mitigate those costs.

[37] The legal demand letter sent in April, 2020 stated that the corporation intended to take legal steps to enforce Ms. Verstova's compliance if she did not remove the cat from the property. On October 1, 2020, jurisdiction over disputes relating to provisions in governing documents which prohibit pets was transferred to the Tribunal. Rather than filing an application with the Tribunal, the corporation sent a second legal demand letter in November 2020, notwithstanding that the two letters sent by Mr. Marshall in 2019 and the April, 2020 legal letter had all failed to secure her compliance.

[38] MTCC 736 delayed filing an application with the Tribunal until June, 2021, more than a year after the first legal demand letter was sent. This delay resulted not only in additional legal costs associated with the November 2020 letter but also in continued inconvenience to the owners affected by Ms. Verstova's violation of the pet rules. I am ordering Ms. Verstova to pay \$4,716.20 in accordance with the corporation's indemnification provisions. This represents a reduction of the requested \$5,735.52 by \$1,019.32, the amount of the legal costs incurred by the corporation with respect to the second legal letter sent in November, 2020.

[39] MTCC 736 also requests that the Tribunal order Ms. Verstova to pay \$6,495.19, the amount of a quote it received from Pinnacle Disaster Services to repair damage to the finish of the wooden balconies caused by urine. I note that these costs have not yet been incurred by the corporation.

[40] As noted above in paragraph 17, the balconies of MTCC 736 are exclusive use common elements and Article III.6 of the corporation's declaration sets out that no animal is allowed on them. Ms. Verstova was duly advised of this in both the April 22, 2019 and the December 23, 2019 letters sent to her by Mr. Marshall. The April letter stated:

The balconies are owned by the Corporation for your exclusive use and therefore considered a common element. Common Elements are not permitted to be used as an area for pets to defecate/urinate. Any damage to the balcony itself and or repairs to the structure would be charged back to yourself as well.

[41] The damage to the balconies' finish is clearly visible in the photographs submitted as evidence. Notwithstanding Mr. Crowe's testimony that there is a smell of cat urine each morning, I note that Ms. Verstova did register a legacy dog and it is entirely possible that the damage to the balconies has not been caused solely by the cat. However, that more than one animal may have been allowed to inappropriately use her balcony does not alter Ms. Verstova's responsibility for the damage.

[42] I have reviewed the scope of work set out in the quote provided to the corporation by Pinnacle Disaster Recovery Inc. and, while I find it reasonable, I note that had the corporation acted more decisively after it was informed of the problem in April, 2019, that the extent of damage would likely have been reduced. The evidence is that it was the owner of the unit below Ms. Verstova's, and not the corporation, who made some attempt to stop the damage to his balcony in July 2020 when he sealed it with insulation. For these reasons, I find that Ms. Verstova should be held responsible for only 50% of the cost of repair. Therefore, in accordance with the corporation's indemnification provisions, I will also order Ms. Verstova to reimburse the corporation 50% of the actual cost of repair, to a maximum of \$3,247.60, within 30 days of being provided with the invoice for the completed work.

[43] The balance of MTCC 736's request is comprised of \$125 in Tribunal fees and \$8,815.52 in legal fees and expenses. In accordance with Rule 45.2 of the Tribunal's Rules of Practice, I will order reimbursement of the \$125 Tribunal fee. With respect to the legal fees, I must determine if there are exceptional reasons to order them. In this regard, counsel for the Applicant referred me to *Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48*, a case in which the Tribunal ordered the removal of an owner's dog and awarded the corporation 100% of the legal costs it requested.

[44] In its decision in *Psofimis*, the Tribunal noted that the corporation was required to submit an application to the Tribunal "only because Mr. Psofimis deliberately and

repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters and blatantly disregarded the agreement entered into by him, evidently not in good faith, promising to comply...". I note that the applicant had acquired the subject dog after he had signed a written agreement with the corporation not to do so.

- [45] Ms. Verstova was clearly aware of the pet restrictions at MTCC 736; when the rules were modified in 2013 to permit only legacy animals, she submitted a form to register her dog and birds. She ignored two letters sent to her by MTCC 736 in 2019 and two letters sent by its legal counsel in 2020, both of which demanded she remove her cat from the corporation's premises. Further, over a period of two years, she allowed the cat to cause considerable inconvenience to the unit owners below her and to damage the exclusive use common elements. I find that her persistent refusal to comply with the corporation's declaration and rules comprises an exceptional reason to award legal fees.
- [46] However, this was an uncontested proceeding in which the Applicant was required only to make one submission. I have reviewed the legal bills submitted in support of the corporation's claim. Given counsel's involvement in this case since April, 2020, I find the approximate 14 hours claimed in respect of a relatively short and straightforward submission to be high, notwithstanding there were two witnesses. Therefore, I award the Applicant \$4,407.76, 50% of the legal costs and expenses it incurred with respect to its application to the Tribunal.
- [47] In summary, in accordance with s. 1.44 (1)1 of the Act, I am ordering Ms. Verstova to indemnify MTCC 736 for \$4,716.20 in legal fees and, upon completion of the work and provision of an invoice, 50% of the actual cost of repair of damages to the exclusive use common elements, such amount not to exceed \$3,247.60. In accordance with s. 1.44(1)4 of the Act and Rule 45 of the Tribunal's Rules of Practice, I am ordering Ms. Verstova to pay a total of \$4,532.76, comprised of \$125 in Tribunal fees and \$4,407.76 in legal fees.

D. ORDER

[48] The Tribunal Orders that:

1. Within 14 days of the date of this Order, Halyna Verstova shall permanently remove her cat from her unit of Metropolitan Toronto Condominium Corporation No. 736.
2. Halyna Verstova is prohibited from bringing any additional pets into her unit.

3. Halyna Verstova shall indemnify Metropolitan Toronto Condominium Corporation No. 736 as follows:
 - (a) Within 30 days of the date on which she is provided an invoice for the repair of damage to the common element balconies, Halyna Verstova shall reimburse Metropolitan Toronto Condominium Corporation No. 736 50% of the actual cost of repairs, such cost not to exceed \$3,247.60; and
 - (b) Within 30 days of the date of this Order, Halyna Verstova shall pay \$4,716.20 in respect of legal fees and expenses to Metropolitan Toronto Condominium Corporation No. 736.

4. In accordance with Rule 45 of the Tribunal's Rules of Practice, within 30 days of the date of this Order, Halyna Verstova shall pay \$4,532.76 in costs to Metropolitan Toronto Condominium Corporation No. 736.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: January 4, 2022