

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 21, 2022

**CASE:** 2021-00420N

**Citation:** Niagara South Condominium Corporation No. 12 v. Spicer, 2022 ONCAT 21

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

Niagara South Condominium Corporation No. 12  
Represented by Christopher Mendes, Counsel

**The Respondent,**

Eileen Spicer  
Self-Represented

**Hearing:** Written Online Hearing – February 9, 2022 to March 10, 2022

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Niagara South Condominium Corporation No. 12 (“NSCC 12”) requests the Tribunal order the Respondent Eileen Spicer to permanently remove a dog from her condominium unit. Ms. Spicer submits that her dog is an emotional support animal which she should be allowed to keep in accordance with the provision of the *Human Rights Code* (the “Code”), which requires the accommodation of individuals with disabilities. NSCC 12’s position is that Ms. Spicer has not provided evidence of a disability and therefore is in violation of the “no pet” provisions of its declaration and rules. NSCC 12 also requests that Ms. Spicer be ordered to indemnify it for its legal costs and expenses in this matter.
- [2] For the reasons set out below, I find that Ms. Spicer is in breach of the “no pet” provisions of NSCC 12’s declaration and rules. She has not provided sufficient evidence of an entitlement to an exemption from these provisions. I note she has advised the Tribunal that on March 7, 2022, she accepted an offer to purchase her condominium unit with a 90-day closing date. Notwithstanding this sale, I am ordering her to remove her dog from her condominium unit within 14 days of the date of this decision. I also order Ms. Spicer to pay \$200 in costs to NSCC 12.

## **B. BACKGROUND**

[3] Eileen Spicer is the registered owner of a unit of NSCC 12. She moved into the unit in December 2020.

[4] NSCC 12's governing documents have provisions which prohibit animals other than guide dogs at the condominium property. Article III (3.01)(e) of NSCC 12's declaration states:

No animal, livestock, fowl, birds or other animals (other than a seeing-eye dog or guide dog) shall be kept or allowed in any unit.

Article IV(4.05) states:

Animals – no pets or animals (other than a seeing-eye dog or guide dog) shall be kept or allowed upon the common elements, including those parts thereof, of which any owner has the exclusive use.

Similarly, Article VI of NSCC 12's Rules dated September 12, 2020, states:

No pets or other animals shall be kept in or about the units or common elements.

[5] On September 16, 2021, Ms. Spicer wrote to NSCC 12's condominium manager Anna Suters and advised that her physician was recommending she be allowed to have her dog, which she had re-housed elsewhere, live with her for medical reasons. A letter from her physician was forwarded to Ms. Suters the following day. NSCC 12 did not reply to Ms. Suters but referred the matter to its legal counsel.

[6] On September 25, 2021, Robert Mullin of SV Law wrote Ms. Spicer, explained NSCC 12's pet restrictions and advised her that NSCC 12 required further medical information in order to consider accommodation of a disability under the Code. In e-mails dated October 6 and 26, 2021, he repeated the requests for additional medical information. Ms. Spicer's replies to the September 25 letter and the October 6 e-mail were that she had provided sufficient information. Her reply to the October 26 e-mail was that she would not be able to see her physician until January 2022.

[7] On November 12, 2021, Mr. Mullin again wrote to Ms. Spicer, asked for more detailed medical information by November 19, 2021. The letter advised that if the information was not received, NSCC 12 would proceed to file an application with the Tribunal to seek the removal of her dog. By e-mail the same date, Ms. Spicer indicated that she was not comfortable that further medical information would be

treated confidentially and suggested an application to the Tribunal might be the best way to proceed.

- [8] NSCC 12 filed its application with the Tribunal on December 13, 2021. During the Stage 2 mediation in this matter, Ms. Spicer provided a second medical letter from a different physician. The dispute was not resolved and proceeded to Stage 3 – Tribunal Decision on February 9, 2022. The dog remains in Ms. Spicer’s unit.

### **C. ISSUES & ANALYSIS**

- [9] The parties agree that the issues to be addressed in this matter are:

1. Has the Respondent established an exemption to the provisions of NSCC 12’s declaration and rules which prohibit pets?
2. Should the Tribunal order that the Respondent’s dog be permanently removed from her unit, pursuant to the provisions of NSCC 12’s governing documents which prohibit pets?
3. Is Niagara South Condominium Corporation No. 12 entitled to the costs of enforcing compliance with its governing documents against the Respondent?

- [10] After closing submissions had been received in this matter, Ms. Spicer advised the Tribunal that on March 7, 2022, she accepted an offer to purchase her unit with a 90-day closing date. Subject to any cancellation of the sale, the fact that she is moving from NSCC 12 effectively resolves the first two issues to be addressed in this matter. However, these issues must still be decided in order to determine whether NSCC 12 is entitled to its costs of enforcing compliance.

#### **Issue 1: Has the Respondent established an exemption to the provisions of NSCC 12’s declaration and rules which prohibit pets?**

- [11] The decision in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 (CanLII), 2006 SCC14, [2006] 1 SCR 13 established that Tribunals have the jurisdiction to consider the provisions of the Code in the context of matters properly before them. The issue in this matter is whether Ms. Spicer has established the existence of a disability under the Code which requires accommodation; in this case, the requested accommodation is an exemption from the “no-pet” provisions of NSCC 12’s declaration and rules.

- [12] The Code has primacy over the Act. NSCC 12 would be required to allow her to keep her dog as a support animal if the existence of a disability requiring this specific form of accommodation is established. If the existence of a disability is not established, the dog would need to be removed.

[13] Section 2(1) of the Code states:

Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

“Disability” is defined in s. 10 of the Code and includes physical and learning disability and mental disorder. Section 17 of the Code establishes the requirement for an organization to accommodate individuals with a disability unless the accommodation would result in undue hardship.

[14] NSCC 12 submits that Ms. Spicer has not provided adequate information to establish that she has a disability which requires the requested accommodation; that is, that she be allowed to have her dog live with her.

[15] The evidence is that in an e-mail to condominium manager Anna Suters dated September 16, 2021, Ms. Spicer advised that her physician was recommending she be allowed to have her dog live with her for medical reasons. She asked how the corporation would process her request. On September 17, 2021, she provided Ms. Suters with a physician’s letter dated September 1, 2021. The letter states that Ms. Spicer was in some emotional distress due to the separation from her dog which the physician stated he believed was serving as an emotional support animal. The physician recommended that the dog be allowed to live with her.

[16] NSCC 12 referred Ms. Spicer’s request to its legal counsel. However, before receiving any response to her request, Ms. Spicer brought her dog, which she had housed elsewhere when she took possession of her condominium, into the unit. She testified she did so because she assumed the lack of a response from NSCC 12 was acceptance of her request for an exception to the pet prohibitions.

[17] Robert Mullin, in a letter dated September 25, 2021, set out a request for additional information, explained why this was required and advised that NSCC 12 would treat it confidentially:

In order to balance the Condominium’s obligations pursuant to the Act with the needs of individuals which may require accommodation as enumerated in the Code, kindly provide our offices with further medical documentation establishing: (i) the existence and nature of a disability as enumerated in the Code; (ii) the medical and/or disability related need for accommodation; (iii) the nexus between the Code enumerated disability and the requested accommodation; and (iv) the absence of alternative forms of accommodation. With such in hand, the Condominium shall review in a respectful

and confidential manner and shall make a determination regarding accommodation as soon as possible.

[18] In an e-mail also sent on September 25, 2021, Mr. Mullin explained what was needed in simpler terms: "With respect, the medical note ...does not raise the existence of a recognized disability, which is a precondition for the Condominium to exercise an accommodation request. To that end, it is asked that such documentation evidencing a disability (diagnosis and prognosis are expressly not requested) be provided. Once in receipt of such, the Condominium will be able to address this matter more substantively."

[19] NSCC 12's request for further information was consistent with the guidance provided in the Ontario Human Rights Commission's (the "OHRC") "Policy on ableism and discrimination based on disability" (the "Policy"). Section 8.7 of the policy states that the type of information that accommodation seekers may be expected to provide includes that the person has a disability and the needs associated with that disability. It further states:

Where there is a reasonable basis to question the legitimacy of a person's request for accommodation or the adequacy of the information provided, the accommodation provider may request confirmation or additional information from a qualified health care professional to get the needed information.

[20] I agree with NSCC 12 that the physician's letter initially sent by Ms. Spicer does not specifically indicate that she has a disability. While it does state that the physician "believes" that the dog was acting as an emotional support animal, it does not state that Ms. Spicer has a disability that requires this support. Therefore, I find that NSCC 12's request for additional information was reasonable.

[21] Ms. Spicer's response to counsel's September 25, 2021 letter was an e-mail sent the same date in which she wrote she believed the medical information she had submitted was sufficient and her medical history was private. Mr. Mullin responded by e-mail on October 6, 2021, and again asked for more information. Ms. Spicer's e-mail response of the same date was:

I have more than enough documentation to support my Doctors recommendation. The need for four legs to make sure I move my two, together with the needed emotional support my pet is providing during covid times is an avenue to better health all round that an 84 year old may expect. As previously stated to your firm, my health history is personal and I much prefer the "look" of a senior walking biskley [sic] with a pet, appearing to be 42 years young, perhaps times two.

[22] On October 26, 2021, Mr. Mullin again e-mailed Ms. Spicer and advised that the

medical information was needed and requested it be provided by November 15, 2021. Ms. Spicer's e-mailed response was that her next medical appointment was not until January 2022.

- [23] On November 12, 2021, Mr. Mullin sent a further letter to Ms. Spicer requesting additional medical information be provided. He wrote:

The Condominium must also adhere to its duties pursuant to the provisions of the Condominium Act, 1998. The Condominium, however, remains willing to work with you in a respectful and collaborative fashion. As such, kindly provide the aforementioned documentation by November 19, 2021. Failing which, the Condominium shall be required to commence an application in the Condominium Authority Tribunal, naming you as a respondent, and seeking the animal's immediate removal.

- [24] Ms. Spicer's response was that it "may be best" to proceed to the Tribunal which she indicated she was comfortable would handle her personal information confidentially. NSCC 12 submitted its application to the Tribunal on December 13, 2021. Ms. Spicer subsequently provided a letter from a different physician dated January 5, 2022. This letter states that she is in emotional distress due to the separation from her dog "which serves as an emotional support animal", suggests that continued separation could result in depression and then states that the physician "sees no reason" to separate her from the dog if it presents no threat or concern to other residents.

- [25] NSCC 12 rejects the January 2022 physician's letter as being adequate to support the existence of a disability requiring accommodation. I agree with this assessment; the letter does not clearly indicate that Ms. Spicer has a disability which requires accommodation.

- [26] As evidence in this hearing, Ms. Spicer provided a medical letter submitted to NSCC 12 by another owner which she indicated resulted in a decision to allow that owner to keep a cat as an emotional support animal. Ms. Spicer believes that the information her physicians submitted is equivalent to that submitted by this other owner. Ms. Spicer also suggested that the fact she was asking to keep a dog, rather than another animal, may have influenced the corporation's decision. In her closing submission, she noted that NSCC 12's rules do not include any provision for emotional support animals and therefore decisions were being made on an "ad hoc" basis.

- [27] The OHRC Policy sets out that one of the principles of accommodation is individualization. The Policy states "There is no set formula for accommodating

people identified by Code grounds. Each person's needs are unique and must be considered afresh when an accommodation request is made." For this reason, I do not consider the evidence Ms. Spicer submitted from another owner to be relevant to this case. Further, the other owner did not testify and there is no basis on which to conclude that NSCC 12's decision was made only on the strength of the medical letter Ms. Spicer submitted as evidence.

[28] Similarly, I do not consider the evidence submitted by NSCC 12 with respect to either alleged past conversations Ms. Spicer had with a board member about her intention to bring her dog to the condominium or to complaints it received about the potential for a dog to be allowed on the premises to be relevant to this issue. The board member did not testify in this hearing. And, while the alleged conversations may cast some doubt on Ms. Spicer's motivation in requesting accommodation and the evidence of complaints may reflect owners' desire to maintain a pet free building, a decision on requested accommodation under the Code must be made on the evidence of disability and need.

[29] NSCC 12 made multiple attempts to obtain the information it needed to assess Ms. Spicer's need for accommodation. While the letters setting out the nature of the information required sent by Mr. Mullin to Ms. Spicer were very legalistic, he also sent her more informal e-mails in which he summarized the requirements. That Ms. Spicer understood the requests is evident from her responses that she believed the medical information she had provided was sufficient. I note that she was in possession of two letters from NSCC 12's legal counsel detailing the specific information required when she obtained the January 2022 physician's letter; however, that letter is not responsive to the requirements.

[30] The key information needed by NSCC 12 was the confirmation of the existence of a disability requiring accommodation. Neither of the two physicians' letters submitted by Ms. Spicer provide this confirmation. For this reason, I find that Ms. Spicer has not established the basis for an exemption to the provisions of NSCC 12's declaration and rules which prohibit pets.

**Issue 2: Should the Tribunal order that the Respondent's dog be permanently removed from her unit, pursuant to the provisions of NSCC 12's governing documents which prohibit pets?**

[31] 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, 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.

- [32] Ms. Spicer acknowledges that when she purchased her unit, she was aware of the “no pet” provisions contained in NSCC 12’s declaration and rules as set out above in paragraph 4. The evidence is that she had housed her dog elsewhere when she took possession of the unit in December 2020. However, before she received a decision on her request for an exemption from the “no pet” provisions, she brought the dog into her condominium unit, where it remains.
- [33] The “no pet” provisions of NSCC 12’s governing documents are very clear, and Ms. Spicer is required by section 119 (1) of the Act to comply with them. I have found that she has not provided evidence to establish that she has a disability which requires accommodation in the form of an exemption from these provisions. Therefore, I am ordering her to remove her dog from NSCC 12 within 14 days of the date of this decision

**Issue 3: Is Niagara South Condominium Corporation No. 12 entitled to the costs of enforcing compliance with its governing documents against the Respondent?**

- [34] Pursuant to the Tribunal’s Rules of Practice and the indemnification provision of its By-Law No. 4, NSCC 12 is requesting that the Tribunal order Ms. Spicer to pay \$12,427.59, comprised of \$12,227.59 in legal fees and expenses and \$200 in Tribunal filing fees. \$2,185.99 of the legal fees were incurred before this matter came before the Tribunal; the balance of \$10,086.61 was incurred during the proceedings.
- [35] NSCC 12 is requesting indemnification for \$2,185.99 in legal fees it incurred before this matter came before the Tribunal in accordance with Article XIV of its By-law No. 4:

Each owner shall indemnify and save harmless the Corporation from and against any loss, costs, (including legal costs, disbursements and applicable sales taxes all calculated on a solicitor and client basis), damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from or caused by an act or omission or breach of the Act, the Declaration, the By-laws or Rules, of or by such owner, the owner's family or any member thereof, any tenant or other resident of the unit or any guests, invitees or licensees of such owner or resident to or with respect to the common elements and/or all units, except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and insured against by the Corporation but subject to Article XVIII of this By-law. Owners shall be jointly and severally responsible for any such losses, costs,



damages, etc., caused by any tenant or other resident of their unit. All payments pursuant to this clause are deemed to be additional contributions toward the common expenses and recoverable in the same manner as set out in Article XI herein.

Counsel submits that it should be indemnified because Ms. Spicer failed to comply with the “no pet” provisions of NSCC 12’s governing documents and, despite multiple requests, she “failed and/or refused” to provide documentation to support her request for accommodation in the form of an exemption from those provisions.

[36] I award no compensation with respect to the legal fees incurred before this matter came before the Tribunal. While Ms. Spicer’s request for accommodation was unsuccessful, NSCC 12 was obligated to assess that request. At no time did it advise her that she should remove her dog from the premises pending a decision. In fact, the September 25, 2021, letter states:

As you have already brought the animal upon Condominium property, during this period of due diligence, kindly have the animal under control and on a leash at all times while upon the common elements.

I recognize that Ms. Spicer’s refusal to provide additional medical information to NSCC 12 in response to the September 25 letter did result in additional legal costs associated with the preparation of further e-mails and a second letter dated November 12, 2021. However, even as the period of due diligence became extended and NSCC 12 received the complaints from other owners which it submitted into evidence, Ms. Spicer was not advised to remove her dog from the condominium property. Nor was she advised that she could be held responsible for the legal costs associated with the prolonged period of due diligence, which my decision now confirms was non-compliance, if her request for an exemption was unsuccessful.

[37] With respect to the \$200 in Tribunal fees, and the \$10,086.61 in legal bills associated with this proceeding, the authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (1) 4 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 relevant sections of the Tribunal’s Rules of Practice 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] NSCC 12 was successful in this proceeding and therefore, in accordance with Rule 48.1, I will order Ms. Spicer to reimburse the \$200 it paid in Tribunal fees.

[39] With respect to the legal fees associated with this application, the Tribunal’s Rule 48.2 states that the Tribunal generally will not order one party to reimburse another for legal fees. Counsel referred to the Tribunal’s January 2022 “Practice Direction: Approach to Ordering Costs” and submits that there are exceptional reasons in this case to merit a cost award. These include that Ms. Spicer failed and/or refused to comply with the provisions of NSCC 12’s declaration and rules; failed and/or refused to provide the requested additional medical information; required the corporation to file the application to achieve compliance and that NSCC 12 has appropriate and specifically related indemnification provisions.

[40] Counsel submits that it made multiple efforts to resolve the issue before it filed its application with the Tribunal: “the Respondent invited the Condominium to commence the within Application. Such invitation draws the inference that the Respondent was unwilling to resolve the dispute prior to the commencement of the within Application. The Condominium was left with no choice but to commence the within application.”

[41] The November 12, 2021 letter sent by NSCC 12’s counsel states that unless Ms. Spicer provides further medical information, “the Condominium shall be required to commence an application [to the Tribunal]...seeking the animal’s immediate removal.” Ms. Spicer’s response was that it “may be best” to proceed to the Tribunal because she had concerns that the board of NSCC 12 would not keep her medical information confidential and was confident that the Tribunal would. Given Ms. Spicer’s concerns, I cannot conclude that she was unwilling to resolve the dispute.

[42] I also note that Ms. Spicer’s responses to NSCC 12’s requests for additional information were that she believed the physician’s letter she initially provided was sufficient. Her various submissions to the Tribunal indicate that she believed the information in that letter was comparable to that of another owner who successfully requested an exemption and that NSCC 12 was assessing her situation differently because her request involved a dog rather than a cat. I do not find her willingness

to proceed to the Tribunal for a decision on her request for an exemption to be unreasonable in these circumstances. Moreover, as I noted above in paragraph 36, NSCC 12 at no time asked Ms. Spicer to remove her dog from the condominium until a decision was made.

- [43] Counsel for NSCC 12 also submitted that the fact that Ms. Spicer sold her unit during this proceeding merited a larger cost award. He suggested that her intention to sell her unit was likely known significantly earlier in the proceeding and her failure to notify the Tribunal resulted in additional costs being incurred. He also suggested that she was not participating in this proceeding in good faith as required by Rule 8.2 (c) of the Tribunal's Rules of Practice.
- [44] NSCC 12 notified its counsel of the sale of Ms. Spicer's unit, and it was NSCC 12's counsel who notified the Tribunal on March 4, 2022. Ms. Spicer subsequently advised that she retained a real estate agent on March 2, 2022, the unit was listed for sale on March 3<sup>rd</sup>, and she accepted an offer on March 7<sup>th</sup>. The deadline for closing submissions in this hearing was March 4<sup>th</sup> with reply submissions due March 9<sup>th</sup>. The sale caused no time extension to the hearing. It is speculation that Ms. Spicer may have decided to sell earlier in the proceeding and that notification would have resulted in lower costs. Ms. Spicer provided no reasons for her decision to sell her unit; it may well be that the hearing process itself was a contributing factor. Therefore, I find the allegations that Ms. Spicer did not participate in good faith to be overdrawn.
- [45] For the reasons set out above, I award no costs with respect to the \$10,086.61 in legal fees NSCC 12 incurred with respect to this proceeding.
- [46] In considering my decision on compensation for NSCC 12's pre-Tribunal legal fees and on costs for the legal fees associated with this proceeding, I have taken the indemnification clause in NSCC 12's By-law No. 4 into account. I recognize that my decision will result in the legal fees incurred by NSCC 12 ultimately being expensed to all its owners. This case was about a decision on a request for accommodation under the Code and not about a willful refusal to comply with the provisions of the corporation's governing documents. While Ms. Spicer should not have brought her dog into the condominium before a decision on her exemption request was made, NSCC 12, albeit perhaps for compassionate reasons, at no time asked her to remove the animal pending decision; rather, it advised her to keep it under her control and leashed while on the common elements. Therefore, in my view, the fact that the dog was on the premises while the corporation performed its due diligence and during this proceeding should not be characterized as an act of non-compliance. In these circumstances, it would be inappropriate to

apply the indemnification clause.

**D. ORDER**

[47] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, within 14 days of the date of this Order, Eileen Spicer shall permanently remove her dog from her unit of Niagara South Condominium Corporation No. 12.
2. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Eileen Spicer shall pay \$200 to NSCC 12.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: March 21, 2022