

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 6, 2022

CASE: 2022-00128N

Citation: Toronto Standard Condominium Corporation No. 2048 v. Mortazavi, 2022 ONCAT 47

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Toronto Standard Condominium Corporation No. 2048

Represented by Megan Mackey, Counsel

The Respondent,

Houman Mortazavi

Self-represented

ADJOURNMENT ORDER

- [1] The Applicant, Toronto Standard Condominium Corporation No. 2048 ("TSCC2048"), brought an application to the Tribunal for an order that the Respondent, a unit owner in TSCC2048, has contravened provisions in its declaration and an order directing the Respondent to stop creating noise disturbances. TSCC2048 alleges that the Respondent is pounding on metal pipes with a metal object causing unreasonable nuisance, annoyance or disruption to residents of multiple units. The case moved to Stage 3 of the Tribunal's process on April 7, 2022. At that time, the Respondent had not yet joined the case.
- [2] The Respondent did join the case on April 11, 2022, though he did make submissions on the issue of whether he had received proper notice of the case. At that time, the Respondent requested an adjournment of the case to August 15, 2022, for medical reasons. The Respondent has provided a letter from his doctor dated April 21, 2022, in support of his request. Specifically, the doctor confirmed his advice that the Respondent continue his leave of absence (which he has been on since September 2020) for medical reasons and that accommodation be given as much as possible so as to not expose the Respondent to stress or physically or psychologically taxing tasks in order for his treatment to not be compromised.
- [3] The Applicant was given the opportunity to make submissions in response to the request. In its submissions, the Applicant stated that it appreciated that the Tribunal may take the Respondent's health and safety into account when

considering the adjournment request but did ask the Tribunal to consider the impact on the health and safety of other residents in the condominium. The Applicant has requested an interim order, for the period of the adjournment, prohibiting the Respondent from creating banging sounds or banging on pipes or allowing any guest or occupant of the unit to do so.

- [4] For the reasons that follow, the adjournment is granted, on terms.
- [5] I accept the doctor's letter as supporting an accommodation; that is, the adjournment request. However, the length of the adjournment is of concern. The Tribunal process is intended to be a fair, timely and efficient means by which to resolve disputes within a condominium community – disputes that may impact many residents within a building as are the allegations here. The Respondent is asking for an adjournment of over three months because engaging in this process will have a significant and negative effect on his health. Yet, he did, on April 14, 2022, file two cases with the Tribunal with similar allegations as those made by TSCC2048 in this case, against two other residents and the condominium corporation. Those two cases (2022-00152N and 2022-00154N) are not currently before me. While the fact that the Respondent has initiated two cases is somewhat perplexing given the basis for this adjournment request, I do not question the credibility of the doctor's assessment. This development does, however, impact the terms which I will attach to this adjournment order.
- [6] In particular, given both the length of time requested for the adjournment and the very recent cases filed by the Respondent himself, he will be ordered to provide an updated doctor's letter by no later than June 29, 2022, which is to provide the doctor's independent opinion on whether the Respondent is sufficiently recovered to engage in the Tribunal process. Further, in the event that either of the two other cases proceed to Stage 2 – Mediation, as confirmed by the parties in this case and by Tribunal staff, this adjournment will be lifted and this case will continue.
- [7] Regarding TSCC2048's request for an interim order, while I can appreciate why it made this request given that it is trying to balance the interests of various residents in the condominium community, for me to make such an order at this stage, would in effect be a determination of the very issue in dispute – whether the noise is emanating from the Respondent's unit and whether he is actively causing the noise or disturbance. For that reason, I did not allow TSCC2048 to file witness statements from eight residents who assert that the Respondent is causing the disturbance. I did allow TSCC2048 to file an engineer's report dated July 2021 for the limited purpose of establishing that the condominium has investigated reports of sound and vibrations in various residential units which have generated noise complaints. Though the engineer's report did suggest that the source of the noise may have come from the Respondent's unit, I noted to the parties that the report

has not yet been tested within the hearing context and I am not making a determination on that issue in dealing with this adjournment request.

- [8] I do note that the Respondent did post six messages on the CAT-ODR system on May 4, 2022, responding to TSCC2048's request to file the engineer's report and my permission for it to do so. A reasonable inference from these messages, and from earlier ones posted by the Respondent, as well as the two new cases, is that there is a fractious relationship between TSCC2048 and the Respondent, and between the Respondent and other residents. Some of the issues between the parties here, such as the lien dispute, are not matters which can be addressed by the Tribunal. But I do, at this point, refer the parties to the condominium's governing documents. There is an obligation on all residents to comply with the declaration, by-laws and rules. Section 119(1) of the *Condominium Act, 1998* (the "Act") clearly sets out the requirement for compliance. While I will not grant the interim relief sought by TSCC2048, I do emphasize the Tribunal's expectation that parties will comply with the Act and the governing documents at all times, and particularly, in this instance, in the interim period while this case is pending.

ORDER

- [9] Pursuant to Rule 4 of the Tribunal's Rules of Practice, the Tribunal grants the Respondent's adjournment request. The case shall be adjourned to August 15, 2022, on the following terms:
1. The Respondent is to upload an updated doctor's letter by no later than June 29, 2022 (and shall post a message in the CAT-ODR system when this is done), failing which the adjournment may be lifted and the case may proceed.
 2. In the event that the cases 2022-00152N and 2022-00154N proceed to Stage 2, this adjournment shall be lifted, and the case will proceed.

The member will not respond to messages posted on the CAT-ODR system other than those which respond directly to the two terms above.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: May 6, 2022