

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 15, 2022

CASE: 2022-00034N

Citation: Metropolitan Toronto Condominium Corporation No. 1177 v. Brunet et al.,
2022 ONCAT 66

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

Member: Mary Ann Spencer, Member

The Applicant,

Metropolitan Toronto Condominium Corporation No. 1177
Represented by Alec Napier, Agent

The Respondents,

Rob Brunet
Self-Represented

Petar Abula

Represented by: No one appeared

Hearing: Written Online Hearing – April 27, 2022 to June 6, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Rob Brunet is the owner of a unit of Metropolitan Toronto Condominium Corporation No. 1177 (“MTCC 1177”). Petar Abula has been the tenant occupant of Mr. Brunet’s unit since April 1, 2021. MTCC 1177 requests the Tribunal order Mr. Abula to comply with the provision of its declaration which forbids the creation of any odour or smoke emanating from a unit to disturb the comfort and quiet enjoyment of other units by their owners or occupants. MTCC 1177 alleges that Mr. Abula’s use of cannabis violates this provision. Mr. Brunet supports MTCC 1177’s position in this matter and submits that he has made all reasonable efforts to obtain Mr. Abula’s compliance. MTCC 1177 also requests costs of \$600.
- [2] Petar Abula did not participate at any stage of the Tribunal’s process. When he failed to join at the onset of Stage 3 - Tribunal Decision, I asked Tribunal staff to contact him. They received no response to the e-mails sent to him. Mr. Napier

confirmed that the notices of the proceeding were personally delivered to Mr. Abula and I am satisfied that he was properly served. Therefore, the hearing in this matter proceeded without Mr. Abula's participation and my decision is based solely on the evidence and submissions of MTCC 1177 and Mr. Brunet.

- [3] For the reasons set out below, I find that Mr. Abula has violated the provision of MTCC 1177's declaration that forbids the creation of smoke and odour that disturbs other owners and I order him to comply by immediately ceasing to smoke cannabis in the unit he occupies at MTCC 1177. I also order him to pay costs of \$150 and compensation of \$450 to MTCC 1177 within 30 days of the date of this decision.

B. ISSUES & ANALYSIS

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

1. Is Petar Abula in violation of the provision of MTCC 1177's declaration which forbids the creation of smoke and odours that disturb other owners and occupants and, if the Tribunal finds he is, what order(s) should the Tribunal issue?
2. Should an award of costs and/or compensation be assessed?

Issue 1: Is Petar Abula in violation of the provision of MTCC 1177's declaration which forbids the creation of smoke and odours that disturb other owners and occupants and, if the Tribunal finds he is, what order(s) should the Tribunal issue?

- [5] MTCC 1177 submits that Mr. Abula is smoking cannabis in Mr. Brunet's unit and that the resultant smoke and odour is in violation of section IV 1. I of its declaration which states:

No Owner shall create or permit the creation or continuation of any amplified music performed or rehearsed in his Unit, or any noise, vibration, odour, gasses, smoke, fumes, waste or other nuisance to emanate from his Unit...which, in the sole opinion of the Board or the Manager, does or may disturb the comfort or quiet enjoyment of the Units or Common Elements by other Owners or the owners or occupants of any property adjacent to the Property. Upon receiving a written notice from the Board or the Manager indicating that any such amplified music, noise, vibration, odour, gases, smoke, fumes, waste or other nuisance is obnoxious, offensive or disruptive, or is an annoyance or a nuisance, then the Owner of such Unit shall at his

expense take such steps as shall be necessary to abate same to the satisfaction of the Board...If the Owner of such Unit fails to abate same, the Board shall take such steps as it deems necessary to abate same, and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating same as provided in Article VII, together with its reasonable solicitor's fees, and all such expenses shall be deemed to be the Owner's additional contribution to the Common Expenses and shall be recoverable as such;

- [6] Section 117 (2) of the *Condominium Act, 1998* (the "Act") also forbids any person to carry on activities that create certain prescribed nuisances:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

Section 26 of Ontario Regulation 48/01 lists unreasonable odour and smoke among the prescribed nuisances.

- [7] Alec Napier is the condominium manager at MTCC 1177. Mr. Napier testified that he has received multiple complaints from unit owners about the smell of cannabis emanating from Mr. Brunet's unit and permeating both the common element hallways and other units. He further testified that the odour is an ongoing problem which occurs at all times of day. He also advised that MTCC 1177 only permits smoking within units for those owners who registered as "legacy" smokers when MTCC 1177 passed a no-smoking by-law. Owners may smoke in outdoor areas, including balconies. He advised that Mr. Brunet's unit is one of only three at MTCC 1177 with a balcony.
- [8] Alexia Patton resides in the unit one floor above and adjacent to Mr. Brunet's. Ms. Patton described the amount of cannabis smoke she experiences as "nauseating," stating that it smells like "skunk," and permeates the wall which would be the dividing wall to Mr. Brunet's unit were their units on the same floor. She described the odour as "constant," occurring as early as 7 a.m. She testified that she works from home and needed to leave her windows open throughout the winter to try to abate the odour which she stressed was "seeping in from indoors." She also testified that she has been able to smell it from outside the building. She further noted that excessive noise from Mr. Brunet's unit has also been an issue. In this regard, I note that while some of the documentary evidence refers to noise, to incidents of Mr. Abula tampering with the building locks, and to incidents of parking

his vehicle in unauthorized areas, the application before me is only with respect to smoke and odour and that is the only evidence I am considering.

- [9] Mr. Napier testified that he advised Mr. Brunet of the odour problem in writing on multiple occasions. Mr. Brunet testified that he then notified Mr. Abula of the problem and asked him to stop smoking within the unit but advised that Mr. Abula has been consistently unresponsive to phone messages and texts and only communicates when he requires something. Mr. Brunet also noted that the owner of another unit reached out directly to him about the odour problem. Mr. Brunet stated that the cannabis odour has been an issue for a year; however, when he was able to meet with Mr. Abula on September 3, 2021, Mr. Abula claimed there had only been one incident. He further testified that he has had reason to enter the unit, with Mr. Abula's permission, and has seen evidence of "half-burnt joints" in an ashtray in the unit. He stated that the unit "reeks" of cannabis and noted that the lease agreement Mr. Abula signed has a clause which forbids smoking.
- [10] On March 18, 2022, Mr. Brunet gave Mr. Abula the Landlord and Tenant Board's N7 Notice to End Tenancy which required Mr. Abula to vacate the premises by March 28, 2022. The notice cited "continued marijuana smoking from October 2021 to present" as one of the three reasons for the notice. Mr. Abula ignored the notice. On April 7, 2022, Mr. Brunet filed an application to the Landlord and Tenant Board for an Order of Eviction and requested an expedited hearing. In his closing submission, he noted that he has now received a hearing date of July 14, 2022.
- [11] Mr. Abula is required to comply with the provisions of the Act and MTCC 1177's governing documents. Section 119 (1) of 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.
- [12] There are some gaps in the documentary evidence submitted by MTCC 1177 and Mr. Brunet. While MTCC 1177 provided a number of examples of written complaints it received about the odour of cannabis emanating from Mr. Brunet's unit and some of the correspondence it sent to Mr. Brunet asking him to intervene with his tenant, Mr. Napier's oral testimony indicated that both the number of complaints and his outreach to Mr. Brunet have been more extensive. Similarly,

Mr. Brunet was unable to provide a complete record of the texts and e-mails which he testified he sent to Mr. Abula asking him to cease the behaviour. The written complaints which were filed with the Tribunal indicate the complainants identified the source of odour as Mr. Brunet's unit and Mr. Brunet's testimony was that the unit "reeks" of cannabis. I accept the evidence of Mr. Napier, Mr. Brunet and Ms. Patton that Mr. Abula smokes cannabis in the unit he rents at MTCC 1177 and that this smoking results in odours which are offensive and disruptive to other owners. The witnesses' evidence was not disputed given Mr. Abula chose not to participate in this proceeding.

[13] Based on the evidence provided by Mr. Napier, Ms. Patton and Mr. Brunet, I find that Mr. Abula has been smoking cannabis within Mr. Brunet's unit in violation of his lease agreement and MTCC 1177's no-smoking by-law, and this has resulted in the creation of nuisance smoke and odour in contravention of section IV 1. I of MTCC 1177's declaration and section 117 (2) (b) of the Act. I will order that Mr. Abula comply by immediately ceasing to smoke within the unit he leases at MTCC 1177. I note that Mr. Napier explained that smoking is permitted on outdoor balconies and in one of his written messages to Mr. Abula, Mr. Brunet advised him to smoke on the balcony. While no evidence was presented to confirm that smoking on the balcony would resolve the issue of odour entering the common area hallways and other units, my order applies only to smoking within the unit.

[14] In his closing submission, Mr. Brunet expressed his hope that the Tribunal would order Mr. Abula's eviction. The evidence indicates that Mr. Abula, by continuing to create offensive smoke and odour after being advised that it was creating issues for his neighbours, has little respect for either his neighbours or for the rules of the community in which he resides. However, the Tribunal does not have the authority to make the requested order; section 1.44 (4) of the Act states "The Tribunal shall not make an order requiring a person to vacate a property permanently."

Issue 2: Should an award of costs and/or compensation be assessed?

[15] MTCC 1177 is requesting costs and compensation totalling \$600 in this matter, comprised of \$150 in Tribunal filing fees and \$450 in administrative costs.

[16] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (2) states that an order for costs "shall be determined...in accordance with the rules of the Tribunal." The cost-related rules of the Tribunal's Rules of Practice relevant to this case 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.

[17] MTCC 1177 was successful in this case and therefore, in accordance with Rule 48.1 of the Rules of Practice, I will order a cost award of \$150 in respect of the Tribunal fees it paid.

[18] The corporation also requested \$450 as compensation for the expenses it incurred to have cleaning staff go to the corporation's property outside of their normal working hours to investigate odour complaints from residents. The corporation submitted that "we received complaints at all hours of the day and during weekends which necessitated someone coming in to check for odours in the hallway." Under section 1.44 (1) 3 of the Act, the Tribunal may issue an order for a party to pay compensation for damages incurred by another party as a result of an act of non-compliance. If an award of compensation is not granted, the owners of MTCC 1177 will be assessed the expenses the corporation incurred to investigate what I have found to be nuisance smoke and odour created by Mr. Abula. It is not reasonable that the owners whose quiet enjoyment of their units was disturbed by Mr. Abula's cannabis smoking should pay even the relatively modest expense the corporation incurred. Therefore, I will order a compensation award of \$450.

[19] Because there are two respondents in this case, I must determine how the cost and compensation awards should be allocated between them. As set out in paragraph 11 above, section 119 (1) of the Act requires both an owner and an occupier of a condominium unit to comply with the Act, the declaration, the by-laws and the rules. Section 119 (2) of the Act states that an owner shall take all reasonable steps to ensure an occupier of their unit complies with the Act and the corporation's governing documents. Mr. Brunet submits that he should not be held responsible because he has fully supported MTCC 1177's position and made all reasonable efforts to obtain Mr. Abula's compliance. Those efforts included notifying Mr. Abula to cease his smoking of cannabis indoors when he was informed of the issue and when those efforts failed, issuing a Notice of Eviction

and then applying to the Landlord and Tenant Board for an Order of Eviction and an expedited hearing. I find that Mr. Brunet has made all reasonable efforts to obtain Mr. Abula's compliance. In these circumstances, I am ordering Petar Abula to pay the awards. It was Mr. Abula's behaviour which created the need for MTCC 1177 to incur additional staff expense to investigate complaints and ultimately to apply to the Tribunal for a compliance order.

ORDER

[20] The Tribunal Orders:

1. Under section 1.44 (1) 1 of the Act, Petar Abula shall comply with section 117 (2) of the Act and section IV 1. I of the declaration of Metropolitan Toronto Condominium Corporation No. 1177 by immediately ceasing to smoke cannabis within the unit he leases at Metropolitan Toronto Condominium No. 1177.
2. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Petar Abula shall pay costs of \$150 to Metropolitan Toronto Condominium Corporation No. 1177.
3. Under section 1.44 (1) 3 of the Act, within 30 days of the date of this Order, Petar Abula shall pay compensation of \$450 to Metropolitan Toronto Condominium Corporation No. 1177.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: June 15, 2022