

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 5, 2022

CASE: 2022-00367N

Citation: Toronto Standard Condominium Corporation No. 2138 v. Palmer et al. 2022 ONCAT 104

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

Member: Jennifer Webster, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2138
Represented by Natalia Polis, Counsel

The Respondents,

Adrian Palmer
No one appearing

Kris Rana
Represented by Reena Bassar, Paralegal

Hearing: Written Online Hearing – July 14, 2022 to September 20, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Toronto Standard Condominium Corporation No. 2138 (TSCC 2138) brings this case to the Tribunal in response to alleged conduct by Ms. Kris Rana related to her use of an exclusive use common element balcony. TSCC 2138 claims that Ms. Rana's conduct amounts to a nuisance that affects the quiet enjoyment of the units and common elements by other residents and owners.
- [2] Ms. Rana is the tenant of a unit of TSCC 2138 owned by Mr. Adrian Palmer. TSCC 2138 submits that Ms. Rana has caused a nuisance and breached its declaration and rules by repeatedly and regularly causing water, dirt and debris to fall from the unit balcony to other parts of the common elements. TSCC 2138 further submits that Mr. Palmer has failed to comply with his obligations under the governing documents and the *Condominium Act, 1998* (the Act) to take all reasonable steps to ensure that his tenant, Ms. Rana, complies with the rules.
- [3] Prior to starting this case, TSCC 2138 received numerous complaints from owners and residents about Ms. Rana's conduct. These complaints started in 2020 and related to Ms. Rana's behaviour of allowing debris, dirt and water to fall from her

balcony to other common elements and of shaking or hanging a rug over the balcony railing. TSCC 2138's concierge staff investigated the complaints, confirmed Ms. Rana's conduct and the impact on owners and residents, and advised Ms. Rana that the conduct was in breach of the rules. TSCC 2138 also advised Mr. Palmer by telephone, email and letter about the complaints about Ms. Rana's conduct and that this conduct was not in compliance with the rules.

- [4] When Ms. Rana's conduct continued despite the interventions from TSCC 2138, the condominium corporation started to send compliance letters to her and Mr. Palmer. In each of these letters, TSCC 2138 demanded that Ms. Rana stop shaking rugs, hanging them from her balcony, and sweeping debris off her balcony. TSCC 2138 further advised that if this conduct continued, it would commence a proceeding at the Tribunal against Ms. Rana and Mr. Palmer.
- [5] TSCC 2138 requests that the Tribunal order Ms. Rana to cease and desist from the conduct of sweeping / mopping and permitting debris and dirt to fall off the balcony and to cease and desist from hanging, shaking or beating rugs or other items off of the balcony. It also requests an order directing Mr. Palmer to take all reasonable steps necessary to obtain Ms. Rana's compliance with the governing documents. Finally, TSCC 2138 seeks an order requiring Mr. Palmer to pay its legal costs and Tribunal fees in this matter.
- [6] Mr. Palmer did not join this case and it proceeded directly to Stage 3 – Tribunal Decision pursuant to Rule 28 of the Tribunal's Rules of Practice. Before I started the hearing, the Tribunal staff contacted Mr. Palmer at my request to confirm that he was aware of the case. He advised that he had been notified of the case and that he understood his representative was participating on his behalf. Despite the contact from Tribunal staff, neither Mr. Palmer nor his representative participated in the hearing, and the hearing proceeded in his absence.
- [7] Ms. Rana participated in a limited manner through her representative. She provided submissions on her motion to dismiss and on the merits of TSCC 2138's case. Ms. Rana did not, however, submit any evidence either through documents or a witness statement.
- [8] As a consequence of Ms. Rana's limited participation and Mr. Palmer's non-participation, the only evidence I received in this hearing was submitted by TSCC 2138. This evidence included letters, incident reports, emails, photos, videos, and a witness statement from Ms. Angelica Gonzalez, the condominium manager.
- [9] For the reasons that follow, I find that Ms. Rana's conduct constitutes a nuisance in violation of TSCC 2138's governing documents. I also find that Mr. Palmer has failed to take reasonable steps to stop the nuisance caused by Ms. Rana and that this failure breaches his obligations under the Act and the governing documents. I order Ms. Rana to comply with the provisions in the governing documents with respect to the use of common elements and to cease and desist from the conduct complained of in this case. I order Mr. Palmer to take all reasonable steps to

ensure that Ms. Rana complies with the provisions about the use of common elements. I also order Mr. Palmer to pay costs of \$6385.42 and Ms. Rana to pay costs of \$2075.00 for Tribunal filing fees and legal costs to TSCC 2138 within 30 days of the date of this decision.

B. MOTION TO DISMISS

- [10] As a preliminary matter, Ms. Rana brought a motion asking the Tribunal to dismiss TSCC 2138's application because there was another proceeding before the Landlord and Tenant Board (LTB) in which Mr. Palmer was seeking to end her tenancy. She stated that a hearing scheduled for February 15, 2022 had been adjourned at the request of Mr. Palmer's representative, and not yet rescheduled. Ms. Rana argued that it was an abuse of process for the Tribunal to allow the same matter to proceed before two different tribunals at the same time. She submitted that this case should be dismissed because it was commenced after the LTB matter.
- [11] Ms. Rana also argued that the Tribunal case should be dismissed because Mr. Palmer had not joined and that the hearing should not continue in his absence.
- [12] During the hearing, I advised the parties that I denied the motion to dismiss and that I would provide reasons for this ruling in the decision on the merits of the application. These are the reasons for denying the motion.
- [13] Firstly, the fact that Mr. Palmer has not joined is not a reason to dismiss TSCC 2138's application. Tribunal Rule 28 expressly contemplates situations in which a respondent does not respond to the Notice of Case or further notices. In those circumstances, an applicant may ask the Tribunal to make orders without hearing further from that respondent and the case will proceed immediately to Stage 3- Tribunal Decision. I am satisfied that Mr. Palmer had notice of this case and did not join or participate in any way. However, his failure to join the case does not affect the ability of TSCC 2138 to proceed with its application. I will not dismiss the case due to Mr. Palmer's non-participation.
- [14] Secondly, the LTB matter does not affect the case before this Tribunal because the two cases are not about the same issues. The Tribunal case involves a claim by TSCC 2138 to enforce compliance with its governing documents by Ms. Rana and Mr. Palmer. In the LTB matter, the issue is whether Mr. Palmer, the landlord, can obtain an order to end the tenancy of Ms. Rana, and TSCC 2138 is not a party to the proceeding. The parties and issues are different in the two proceedings, and I find that the LTB proceeding is not a reason to dismiss TSCC 2138's application to the Tribunal.

C. ISSUES & ANALYSIS

Issue No. 1: Has Ms. Rana failed to comply with the provisions in the governing documents prohibiting nuisances?

- [15] The Tribunal has jurisdiction to hear disputes related to provisions in a condominium corporation's governing documents that prohibit, restrict or otherwise govern any nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets of the corporation. TSCC 2138 argues that Ms. Rana's conduct is a nuisance that is negatively impacting the quiet enjoyment of units and common elements by other owners and residents.
- [16] TSCC 2138 provided evidence of complaints and incidents, starting in April 2020, related to Ms. Rana's use of her exclusive use common element balcony.
- [17] In summary, the complaints identify that dirty water / mud, yellow liquid, dirt, and debris have fallen from Ms. Rana's balcony to other balconies. TSCC 2138's concierge staff investigated the numerous complaints and confirmed that Ms. Rana had caused the falling debris based on their observations, photos, videos, and conversations with Ms. Rana and the owners who complained. The concierge staff completed three incident reports in 2020 about Ms. Rana's conduct. In each report, the concierge noted that dirty water had fallen from Ms. Rana's balcony to the balcony below and that he had discussed with Ms. Rana that her conduct in sweeping or mopping water and debris off her balcony was in violation of the condominium corporation's rules.
- [18] The incidents and complaints continued in 2021. In relation to one of the incidents on April 30, 2021, the owner of the unit below Ms. Rana's unit provided a photo to show debris, mud, dirt, and water on the balcony floor, railing, and the glass panel at the front of the balcony. In the concierge's incident report about this event, the concierge wrote that he saw black mud all over the owner's balcony and on the chairs and cushions. He also reported that he talked to Ms. Rana about the mud and that he observed mud on the railing of her balcony.
- [19] On May 4, 2021, Ms. Gonzalez, the condominium manager, wrote to Ms. Rana and Mr. Palmer about the series of incidents and identified that Ms. Rana's conduct was in breach of the governing documents. She further advised that her letter was a final warning letter before the issues would be referred to TSCC 2138's legal counsel.
- [20] TSCC 2138 received the next complaint about Ms. Rana's conduct on May 22, 2021. As part of the response to this complaint, TSCC 2128's legal counsel wrote to Mr. Palmer and Ms. Rana on June 2, 2021 to advise them of the most recent complaint and seek compliance with the rules about the use of common elements. A second compliance letter was sent to Mr. Palmer and Ms. Rana by TSCC 2138's legal counsel on July 19, 2021, given that TSCC 2138 had received further complaints and there had been no change in Ms. Rana's conduct.
- [21] I find that TSCC 2138's evidence of photos, videos, complaints and incident reports shows that water, debris, and dirt fell or were permitted to fall from Ms. Rana's balcony to other parts of the common elements as a regular and frequent occurrence from early 2020 to July 2022.

- [22] In addition to the falling dirt, water and debris, the photos and videos also show Ms. Rana shaking rugs or carpets off her balcony and hanging rugs on the balcony railing. In an incident report dated September 15, 2021, the concierge reported that he saw a wet carpet or blanket on the balcony railing of Ms. Rana's unit with water dripping down from it. He wrote that he called Ms. Rana and advised her that the rules of the condominium corporation prohibited the hanging of rugs, carpets or clothes on the balcony. According to the concierge's report, Ms. Rana confirmed that she hung the rug on the railing and she explained that she had done this because the rug was wet from the previous night's rain. The concierge also noted in an April 9, 2022 incident report that Ms. Rana confirmed that she hung a wet rug on the balcony to avoid having a smell in her unit.
- [23] Ms. Rana submits that she has a disability and is not capable of engaging in the alleged activities related to the impugned conduct. I find that the evidence submitted by TSCC 2138 shows that Ms. Rana can and did engage in the conduct. For example, more than one of the videos shows Ms. Rana sweeping her balcony and there are a series of photos over the two-year period showing rugs or carpets hung on her railing. Ms. Rana also did not provide evidence of a disability beyond her general claim that she has a disability that prevented from sweeping and mopping her balcony. TSCC 2138 states that Ms. Rana never identified her disability or requested accommodation in response to its numerous requests for compliance between April 2020 and July 2022. Moreover, Ms. Rana did not challenge the statements attributed to her by the concierge staff in the incident reports. In these statements, she confirmed that she did hang wet rugs on the balcony railing and that she was sweeping debris off her balcony.
- [24] Based on my review of the evidence provided by TSCC 2138, I conclude that, starting at least as early as April 2020, Ms. Rana regularly engaged in behaviour that caused dirt, debris, water and mud to fall from her unit balcony to other parts of the common elements. I also conclude that, in this same time period, Ms. Rana regularly hung a carpet or rug on her balcony railing and shook a rug off the balcony.
- [25] Section 119 of the Act requires all owners and occupiers of condominium corporations to comply with the Act, the declaration, the by-laws and the rules. Article III.1 of TSCC 2138's declaration prohibits owners, residents and guests from engaging in activities in or upon the common elements that are likely to damage the property or unreasonably interfere with the use or enjoyment of the common elements by other owners.
- [26] Rule 3.1 of TSCC 2138's rules provides as follows:
- No one shall create or permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the Property Manager, may or does disturb the comfort or quiet enjoyment of the common elements by other Owners and / or Residents.

[27] In its Rule 13.11, TSCC 2138 has prohibited owners and residents from throwing anything out of windows and doors, and from beating or shaking mops, brooms, dusters, rugs or bedding from windows, doors or exclusive use common elements. This rule also prohibits the hanging or drying of clothes on windows or any part of the common elements.

[28] There is no definition of nuisance in TSCC 2138's declaration or rules. In *Carleton Condominium Corporation No. 132 v. Evans*, 2022 ONCAT 97, the Tribunal found that the case law related to the law of nuisance was instructive in the absence of a definition and set out these key points related to the law of nuisance:

[20] ...To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

[29] I agree with TSCC 2138's submission that Ms. Rana's regular activities of hanging and shaking rugs and allowing dirt, water and debris to fall to other common elements has created a nuisance that disturbs the quiet enjoyment of other owners and residents. I find that Ms. Rana engaged in this conduct regularly and frequently over two years and substantially interfered with the ability of other owners and residents to enjoy and use their balconies. The impact of Ms. Rana's conduct on other owners and residents was not trivial.

[30] In creating this nuisance, I conclude that Ms. Rana has acted contrary to TSCC 2138's declaration and rule 3.1. I also find that Ms. Rana's actions breached rule 13.11 because she beat or shook rugs from her balcony and hung rugs on her balcony railing, and both of these activities are prohibited by this rule.

[31] This is a recurring pattern of conduct by Ms. Rana. TSCC 2138 repeatedly took steps to enforce its rules before seeking an order from the Tribunal, and Ms. Rana's behaviour has not changed. I find that Ms. Rana has failed to comply with the governing documents and has caused a nuisance to other owners and residents.

Issue No. 2: Has Mr. Palmer failed to comply with the provisions in the governing documents and the Act related to his responsibilities for his tenant?

[32] Section 119(2) of the Act requires an owner to take all reasonable steps to ensure that an occupier of the owner's unit complies with the Act, the declaration, the by-laws and the rules.

[33] TSCC 2138 reinforces the owner's obligation in Article IV1 (i) of its declaration that states:

Compliance with Rules – The Corporation, its directors, officers and employees of the Corporation, the Declarant, the Owner of each Unit and all occupiers and encumbrances of each Unit, shall comply with the Act,

this Declaration, the by-laws of the Corporation, the Reciprocal Agreement and any Rules of the Corporation. An Owner of a Unit shall take all reasonable steps to ensure that an occupier of the Owner's Unit and all invitees, agents, employees of the Owner or occupier, comply with the Act, This Declaration, the by-laws of the corporation and any Rules of the Corporation.

- [34] In addition, TSCC 2138's rule 13.3 provides that owners and residents shall take all reasonable steps to ensure that their guests comply with the Act and the governing documents.
- [35] TSCC 2138 has made Mr. Palmer aware of the complaints about Ms. Rana's conduct through email, phone calls, and letters. TSCC 2138 argues that Mr. Palmer has failed to meet his obligation to take all reasonable steps to ensure that Ms. Rana complies with the governing documents, despite being notified of the concerns.
- [36] As noted above, Mr. Palmer has not joined or participated in this case. From Ms. Rana's submissions, it is evident that he has initiated an eviction proceeding against her, but there is no other evidence that he has taken any steps to ensure that Ms. Rana stop creating a nuisance on the common elements and comply with TSCC 2138's rules. I find that Mr. Palmer has failed to fulfill his obligations to take reasonable steps to ensure that Ms. Rana complies with the Act and the governing documents.

Issue No. 3: Should the Tribunal grant TSCC 2138's request for an order directing Ms. Rana to cease and desist the conduct that is in breach of the governing documents?

- [37] TSCC 2138 asks the Tribunal to issue an order under section 1.44(1)2 of the Act that Ms. Rana cease and desist from the activities that are causing a nuisance, in breach of the governing documents.
- [38] Ms. Rana has continued the activities on her balcony of sweeping, mopping, hanging rugs, and shaking rugs for at least a two-year period, despite repeated interventions from TSCC 2138's staff, condominium manager and legal counsel. I find that, in these circumstances, it is appropriate to prohibit Ms. Rana from engaging in these activities in order to end the nuisance and disturbance of the quiet enjoyment of other owners and residents.
- [39] I will issue an order under section 1.44 (1) 1 directing Ms. Rana to comply with the governing documents and an order under section 1.44 (1)2 prohibiting Ms. Rana from:
- sweeping / mopping and / or creating or permitting debris, dirt, human hair, cat hair, soil, mud and / or other debris and dirt to fall off and / or be swept and / or mopped off the balcony of her unit;

- hanging, shaking or beating rugs, carpets or other items off of the balcony of her unit.

Issue No. 4: Should the Tribunal grant TSCC 2138's request for an order directing Mr. Palmer to take all reasonable steps to obtain Ms. Rana's compliance with the provisions of the governing documents relating to the use of common elements?

- [40] TSCC 2138 has contacted Mr. Palmer by telephone, email and letter to advise him of the complaints and concerns about Ms. Rana's behaviour and to direct him to take steps to ensure that she stopped allowing debris to fall from her balcony to other common elements. Unfortunately, TSCC 2138's efforts have not been effective.
- [41] Ms. Gonzalez wrote to Mr. Palmer on behalf of TSCC 2138 about Ms. Rana's conduct on May 4, 2021. In this letter, she identified that the conduct violated the governing documents and advised that the file had been forwarded to TSCC 2138 legal counsel. Ms. Gonzalez also told Mr. Palmer that TSCC 2138 would pursue legal action if Ms. Rana failed to comply with the rules and that he would be responsible for TSCC 2138's costs related to such legal action, in accordance with articles II(2) and X(4) of the declaration.
- [42] On June 2, 2021, TSCC 2138's legal counsel wrote to Mr. Palmer, noting that the condominium corporation had continued to receive complaints about Ms. Rana's behaviour. In this letter, TSCC 2138 directed him to ensure that Ms. Rana no longer allowed water, dirt, debris or other materials to migrate from his unit to other units or any part of the common elements.
- [43] A second letter was sent to Mr. Palmer by legal counsel on July 19, 2021. In this letter, counsel confirmed that there had been an email exchange with Mr. Palmer in which he advised that he was going to issue a notice to Ms. Rana to end her tenancy under the Landlord and Tenant Act. Counsel also noted that TSCC 2138 had received complaints on July 14, 2021 that an occupant of Mr. Palmer's unit was shaking a rug and sweeping dirt off the unit's balcony. In this letter, counsel directed Mr. Palmer to ensure that this behaviour stop because it violated the rules and declaration of the condominium corporation.
- [44] On March 29, 2022, TSCC 2138's legal counsel sent a final letter to Mr. Palmer about the ongoing compliance issues related to Ms. Rana's behaviour, advising that the complaints continued and that the issue was urgent. Counsel advised that Mr. Palmer was required to act and that there would be consequences for him in failing to do so: (emphasis in the original)

...YOU MUST IMMEDIATELY TAKE ALL STEPS NECESSARY TO STOP YOUR TENANT FROM CAUSING THESE DISTURBANCES – UP TO AND INCLUDING TERMINATING THE TENANCY. It is imperative that this issue be dealt with immediately, as it is preventing other residents from being able to enjoy their balconies and is a potential health and

safety hazard as the items can fall on individuals on the common elements beneath your balcony.

If the conduct continues, the Corporation will have no choice but to commence a proceeding at the Condominium Authority Tribunal against both you and your tenant.

[45] Despite these letters from TSCC 2138, Mr. Palmer has not taken reasonable steps to change or end Mr. Rana's behaviour. Although it is unclear what steps Mr. Palmer could take to obtain his tenant's compliance given that the repeated efforts of TSCC 2138 have had no impact, I will, nonetheless, order Mr. Palmer to fulfill his obligations under the Act and the governing documents to take all reasonable steps necessary to obtain Ms. Rana's compliance and to end the nuisance created by her conduct.

Issue No. 5: Is TSCC 2138 entitled to an order requiring Mr. Palmer to pay costs incurred because of non-compliance with governing documents?

[46] TSCC 2138 is requesting the Tribunal order Mr. Palmer to reimburse the costs it has incurred in relation to this matter. These costs are:

1. Costs of \$4,310.42 related to communications through letters and emails to both Respondents from TSCC 2138's legal counsel prior to the commencement of the application;
2. Costs of \$8,984.45 for legal fees incurred in relation to the application and this hearing; and
3. Tribunal filing fees of \$150.

[47] TSCC 2138 submits that, according to the explicit provisions of its governing documents, Mr. Palmer is responsible for all costs incurred related to its efforts to obtain compliance from him and Ms. Rana.

[48] Article II.2 of TSCC 2138's declaration requires owners to pay for any losses, costs or damages incurred by the condominium corporation due to a breach of the Act and / or governing documents. In its general operating by-law no. 6, TSCC 2138 further describes the indemnification obligation in article 10.4 (c):

(c) each owner shall indemnify and save the Corporation harmless from and against any and all damages, loss and / or cost, which the Corporation may suffer or incur resulting from, or caused by an owner, or any person, thing or animal for whom or for which the owner is responsible including, but not limited to:

- (i) legal costs and disbursements incurred by the Corporation; and
- (ii) any costs incurred by the Corporation:

(A) to redress, rectify and / or obtain relief from any injury, loss or damage;

(B) by reason of a breach of the Act, declaration, by-laws and / or any rules of the Corporation in force from time to time; and / or

(C) in relation to the enforcement of any rights or duties pursuant to the Act, the declaration, the by-laws and / or the rules of the Corporation, including the need for an oppression remedy.

[49] The indemnification obligation is reinforced in rule 1.4 of TSCC 2138's rules which provides that the condominium corporation can recover any and all losses, costs or damages, including legal fees, from an owner where the costs are incurred due to a breach of the Act or the governing documents.

[50] In its letters to Mr. Palmer prior to the filing of this case, TSCC 2138 advised him that the costs associated with seeking compliance from him and Ms. Rana would be his responsibility in accordance with the indemnification provisions of the governing documents. Each of these letters was copied to Ms. Rana.

[51] Based on my review of the indemnification provisions, I find that Mr. Palmer is responsible for the costs incurred by TSCC 2138 prior to filing the application to the Tribunal. These costs were necessary and reasonably incurred by TSCC 2138 to enforce its by-laws and rules and to end the nuisance caused by Ms. Rana's regular and repeated conduct. I order Mr. Palmer to pay the costs incurred by TSCC 2138 prior to the start of this case of \$4,310.42.

[52] With respect to TSCC 2138's claim for its legal costs of the proceeding, I note that the Tribunal's cost-related rules provide as follows:

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 a 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.

[53] The Tribunal has a Practice Direction about its approach to ordering costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include the conduct of a party or its representative in the hearing, whether the parties

attempted to resolve the issues before the case was filed, the provisions of the governing documents, and whether the parties had a clear understanding of the potential consequences for contravening them. The Tribunal may also consider whether the costs incurred are appropriate and proportional to the nature and complexity of the issues in dispute.

- [54] TSCC 2138 submits that Mr. Palmer should be responsible for all legal costs of the hearing in accordance with the indemnification provisions and because he has failed to participate in the Tribunal process in any way. In addition, TSCC 2138 argues that it made Mr. Palmer aware of the cost consequences of this legal proceeding through the following paragraphs in the letters to him from legal counsel:

If any further complaints are received by Management with respect to non-compliance with the Corporation's governing documents, then the Corporation will initiate legal proceedings against you to obtain your and your tenant's compliance without any further notice.

All costs associated with seeking compliance will be your responsibility. Should further steps be necessary, all costs incurred, which in our experience can range from \$5,000 (at a minimum) to \$50,000 and up, will be claimed personally against you in accordance with the Corporation's governing documents and the Condominium Act, 1998.

- [55] Despite being advised of these cost consequences, Mr. Palmer failed to take any meaningful action to get Ms. Rana to stop engaging in the conduct that was causing a nuisance.
- [56] In *Toronto Standard Condominium Corporation No. 1791 v. Franklin*, 2022 ONCAT 96, the Tribunal noted at paragraph 45, that enforcing compliance, which can include litigation, is part of "doing business" for a condominium corporation and that this is the kind of activity for which owners contribute to the common expenses. The Tribunal's Rule 48.2 is consistent with this concept in stating that, as a general rule, the Tribunal will not order one party to reimburse the legal fees and disbursements incurred by another party in relation to a proceeding.
- [57] In the present circumstances, however, I am persuaded that a costs order is appropriate. It is not fair or reasonable that all unit owners pay all the costs incurred by TSCC 2138 in relation to seeking compliance from Ms. Rana and Mr. Palmer. TSCC 2138 made both Ms. Rana and Mr. Palmer aware of the complaints and the need for Ms. Rana to change her conduct through numerous interventions over a two-year period. From my review of TSCC 2138's evidence, I find that the condominium corporation explicitly advised Ms. Rana and Mr. Palmer of the rules, the requirement to comply with them, and the consequences of a failure to comply. Despite TSCC 2138's efforts, Ms. Rana did not stop her activities of sweeping and mopping dirt and water off her balcony and hanging rugs on her balcony railing.

- [58] However, I do not accept that the legal fees claimed by TSCC 2138 are proportional to the nature and complexity of the issues in this hearing. Although additional time was required due to Ms. Rana's motion to dismiss, the hearing was straightforward and mostly uncontested by both Respondents. Neither Respondent presented any evidence or sought to challenge TSCC 2138's evidence. TSCC 2138's participation was limited to submitting its evidence, responding to the motion to dismiss, and providing closing submissions on the merits. I order costs in the amount of \$4000 in relation to the costs claimed by TSCC 2138 for this hearing. This is less than 50% of the total legal costs claimed by TSCC 2138, and I find this amount is reasonable and proportionate to the nature of the issues.
- [59] TSCC 2138 has been successful in this case and I also order a cost award of \$150 in respect of its Tribunal fees, in accordance with Rule 48.1 The Tribunal fees are \$25 for filing the matter at Stage 1 and \$125 to move the matter to Stage 3. There is no Tribunal fee in relation to Stage 2 because the matter moved directly from Stage 1 to Stage 3 pursuant to TSCC 2138's request and Tribunal Rule 28.
- [60] There are two respondents in this case. Although TSCC 2138 seeks an order that all costs be paid by Mr. Palmer, I consider it to be reasonable that the costs be allocated between Ms. Rana and Mr. Palmer. Section 119(1) of the Act requires both an owner and an occupier to comply with the Act, the declaration, the by-laws and the rules, and it is Ms. Rana's conduct that is the primary cause of TSCC 2138's enforcement efforts. Again, Mr. Palmer has offered no evidence of the steps he took in response to TSCC 2138's compliance letters. He has, however, started proceedings to end Ms. Rana's tenancy. Taking into account the behaviour of both respondents, I find it is appropriate to order that each respondent pay one-half of the costs order related to Tribunal fees and the legal fees for this hearing.

D. CONCLUSION

- [61] I have concluded that Ms. Rana has engaged in conduct that has caused a nuisance, contrary to TSCC 2138's governing documents. I have also found that Mr. Palmer has failed to take reasonable steps to obtain Ms. Rana's compliance and to stop the nuisance, despite repeated notices from TSCC 2138. I am ordering Ms. Rana and Mr. Palmer to comply with the governing documents. I am also ordering Mr. Palmer to indemnify TSCC 2138 for costs of \$4,310.42 incurred prior to starting the case. I order each of Mr. Palmer and Ms. Rana to pay TSCC 2138 compensation in the amount of \$2075, which is one half of the total of \$150 in Tribunal fees and legal costs of \$4000.

E. ORDER

- [62] The Tribunal Orders that:

1. Under section 1.44 (1) 1 of the Act, Ms. Rana shall comply with rule 3.1 of TSCC 2138's rules and all other provisions of TSCC 2138's governing documents;

2. Under section 1.44(1) 1 of the Act, Mr. Palmer shall take all reasonable steps necessary to obtain Ms. Rana's compliance with TSCC 2138's governing documents and to cease the conduct that constitutes a nuisance, as described in order #3 below:
3. Under section 1.44(1) 2 of the Act, Ms. Rana is prohibited from engaging in the following conduct that constitutes a nuisance:
 - a. sweeping / mopping and / or creating or permitting debris, dirt, human hair, cat hair, soil, mud and / or other debris and dirt to fall off and / or be swept and / or mopped off the balcony of her unit;
 - b. hanging, shaking or beating rugs, carpets or other items off of the balcony of her unit.
4. Under section 1.44(1) 3 of the Act, within 30 days of this Order, Mr. Palmer shall pay pre-Tribunal costs of \$4310.42 to Toronto Standard Condominium Corporation NO. 2138.
5. Under section 1.44(1) 4 and 5 of the Act, within 30 days of this Order, Mr. Palmer shall pay costs of \$2075.00 to Toronto Standard Condominium Corporation No. 2138.
6. Under section 1.44(1) 4 and 5 of the Act, within 30 days of this Order, Ms. Rana shall pay costs of \$2075.00 to Toronto Standard Condominium Corporation No. 2138.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: October 5, 2022