

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 11, 2022

CASE: 2022-00559N

Citation: Rahman v. Peel Standard Condominium Corporation No. 779, 2022 ONCAT 107

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Ian Darling, Chair

The Applicant,

Aqib Rahman

Self-Represented

The Respondent,

Peel Standard Condominium Corporation No. 779

DISMISSAL ORDER

- [1] Aqib Rahman submitted an application to the Condominium Authority Tribunal (CAT) on August 22, 2022. The Applicant asserts that water condensation from window-based air conditioner dripping from the building's upper units is causing a nuisance. The CAT reviewed the application but did not accept it.
- [2] The CAT issued a Notice of Intent to Dismiss (NOID) the application on September 6, 2022. On September 12, 2022, the Applicant requested an opportunity to revise their application. The CAT approved the request, and the Applicant updated their application on September 17, 2022. Following the revisions to the application, the CAT reissued the NOID.
- [3] The Applicant sent several emails to the Tribunal but did not respond directly to the NOID. Respondent was given a chance to make submissions on the NOID, but chose not to.
- [4] Under Rule 19.1 of the CAT's Rules of Practice, the CAT can close a case if the CAT determines that it has no legal power to hear or decide upon the dispute.
- [5] The CAT was established in 2017. It is created under the Condominium Act, 1998 (the "Act") and the jurisdiction is determined by the government. Ontario Regulation 179/17 sets out the specific disputes the CAT can hear. On January 1, 2022, the jurisdiction of the Tribunal was expanded to include specific "nuisance disputes". The nuisances are specified in s.117 (2) (b) of the Act, and s. 26 of

Ontario Regulation 48/01. These include Noise; Odour; Smoke; Vapour; Light; Vibration.

[6] This application was filed under the Tribunal's jurisdiction to decide disputes with respect provisions of the declaration, by-laws or rules of a corporation:

... (iii.2) ... that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[7] While I am not deciding what constitutes a nuisance in this decision, I do note the recent Tribunal decision where the issue was considered. The Tribunal referred to the Supreme Court of Canada decision in *Antrim Truck Centre Ltd. V. Ontario (Transportation)* 2013 SCC 13 (CanLII), which is the leading authority on defining nuisance in Canadian law. The Tribunal found¹ that where a respondent's conduct:

[20] ... does not clearly fall within the prescribed categories of nuisance set out in s. 117 (2) of the *Condominium Act, 1998* (the "Act") and Ontario Regulation 48/01 and there is no definition of nuisance in its declaration and rules, it is instructive to consider the well-established jurisprudence on the law of nuisance. 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.

[8] Here, the Applicant asserts that the corporation has failed to enforce provisions of its governing documents because it has not addressed dripping air conditioner condensation.

[9] The declaration, by-laws and rules are collectively referred to as the governing documents of condominiums. The Act establishes the purpose of each of these documents. They are unique to each condominium community. When considering the "other" nuisance disputes, the CAT must consider if and how the provisions "prohibit, restrict, or otherwise govern" the alleged nuisance.

[10] The application alleges that the Respondent has failed to enforce several provisions of the governing documents, specifically:

1. a rule prohibiting plumbing fixtures from sticking off the side of balconies;
2. a rule requiring that only outdoor furniture is allowed on balconies;
3. a rule prohibiting owners from obstructing the common elements;
4. a provision of the declaration, requiring that nothing be thrown off balconies; and

¹ Carleton Condominium Corporation No.132 v. Evans 2022 ONCAT 97

5. by-laws requiring the board to enforce compliance with the governing documents.

[11] The Applicant argues that by not enforcing these provisions, the condominium is allowing a nuisance to occur.

[12] After the CAT reviewed the application, the Applicant was informed by the CAT that the provisions identified by the Applicant do not clearly relate to or define the alleged nuisance (the falling and dripping of condensation). Therefore, the provisions do not prohibit, restrict or otherwise govern the circumstances the Applicant complains of. Further, those circumstances do not qualify as a nuisance, and it appears that nothing in the condominium documents would define it as such. When asked to clarify how the identified provisions were related to the nuisance, the Applicant made changes to the problem description, but these changes do not address the fundamental concerns that the dispute is outside of the CAT's jurisdiction.

[13] For the CAT to accept this type of application, the issues in dispute must relate to a type of nuisance, annoyance or disruption that is prohibited, restricted, or governed under the condominium's governing documents. The provisions identified in this application do not apply to the alleged nuisance. I have reviewed the relevant governing documents and find that they do not apply for the following reasons:

1. The plumbing fixture rule stipulates that plumbing fixtures should only be used for their intended purposes. The Applicant asserts that the garden hoses that are attached to the air conditioner condensate drain are plumbing fixtures. I find that this does not apply because the air conditioners and hoses are not plumbing fixtures.
2. The rule requiring that only outdoor furniture is allowed on balconies does not apply because the intent of the rule is to limit storage of items on the balcony, rather than limiting air conditioners or addressing condensation coming from them.
3. Although clearly the Applicant feels that the dripping interferes with his use or enjoyment of the common elements, the Applicant has not established a connection between the air conditioner condensate and any obstruction of the common elements;
4. The Applicant has not established that the water dripping qualifies as anything being thrown off the balcony. Therefore, the provision of the declaration, requiring that nothing be thrown off balconies does not apply.

5. While it is true that the by-laws require the board to enforce compliance with the governing documents, this general provision does not apply since the Applicant has not identified any provisions that prohibit or restrict the circumstances in question, and therefore there appear to be no provisions in relation to it that the board can be said to have failed to enforce.

[14] In communication with the Tribunal, the Applicant cited previous CAT cases: one in which the Tribunal determined that exercise equipment stored on a balcony violated the governing documents², and another where the Tribunal found that water and dirt falling on balconies from upper units constituted a nuisance. These cases were decided based on the particular facts of each case and the governing documents of the relevant condominiums. In this case, the governing documents of Peel Standard Condominium Corporation No. 779 do not restrict, prohibit or otherwise govern the specific circumstances described in this application.

[15] I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

ORDER

[16] The Tribunal orders that this case is closed.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: October 11, 2022

² Sarros v. York Region Standard Condominium Corporation No. 1445 2021 ONCAT 86 & Toronto Standard Condominium Corporation No. 2138 v. Palmer et al. 2022 ONCAT 104