

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 11, 2022

CASE: 2022-00448N

Citation: Koivusalo v. Toronto Standard Condominium Corporation No. 1542, 2022 ONCAT 121

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

Member: Monica Goyal, Member

The Applicant,
Sandra Koivusalo
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1542
Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – September 9, 2022 to October 7, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] This case relates to whether the declaration, by-laws or rules (“Governing Documents”) of a corporation that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements or the assets, should apply to the City of Toronto boulevard (the “Boulevard”) maintained by the Toronto Standard Condominium Corporation No. 1542 (“TSCC 1542” or the “Corporation”).
- [2] The Applicant, Sandra Koivusalo, is a unit owner in TSCC 1542. The Applicant asserts that TSCC 1542 is not doing enough to control pets from defecating on the Boulevard, which has resulted in the deterioration of the Boulevard. The Respondent, TSCC 1542, says the Boulevard does not form part of the condominium corporation, and as such it cannot be subject to the *Condominium Act, 1998* (the “Act”) and therefore the Tribunal does not have jurisdiction to hear this case. In response, the Applicant argued that the pet rules should be applicable to the maintenance and upkeep of the Boulevard whose costs are paid by the condominium fees.
- [3] The Applicant asks the Tribunal to find that the Respondent is in breach of the Governing Documents, and then order that signage be placed on the property that says, “dogs should not walk” and install a fence around the area. The Respondent says that the Tribunal does not have jurisdiction over the land in question, and the

case should be dismissed.

- [4] For the reasons set out below: I find that the Tribunal does not have jurisdiction over the Boulevard and as such the case should be dismissed. I order no costs in this case.

B. ISSUES & ANALYSIS

- [5] The issue to be determined in this case can be stated as follows:

1. Does the Tribunal have jurisdiction over the Boulevard?
2. What costs should apply to this case?

Issue no. 1: Does the Tribunal have jurisdiction over the Boulevard?

- [6] The Applicant says that several years after she moved into TSCC 1542, a fence was installed on the grounds to deter against dogs using the Boulevard and transit patrons from standing on the lawn. The installation of the fence improved the quality and condition of the lawn. The fence was removed on December 11, 2011, after which the Applicant says the lawn's condition deteriorated. A sign has been placed by TSCC 1542 on the lawn that says, "Please clean up after your pet and dispose responsibly". Even with this sign, there is evidence that pet owners were not abiding by the sign. From the Applicant's submission, it was unclear whether these pet owners resided at TSCC 1542, or were residents of the neighbourhood.
- [7] Rule 12.5 of the Corporation's governing documents say that the pets may not be walked on the grounds or in the interior parking garages and are not permitted on the grounds except to enter and exit the building. It is this rule that the Applicant says is not being enforced. In response to the Respondent's argument that this property is not owned by the Corporation, the Applicant says that the rule refers to "grounds" and that, as the TSCC 1542 is paying for the maintenance of the land, it is "grounds" as described in the Corporation's rules. The Applicant also referred me to the Toronto Municipal Code Chapter 743 s.743-36, which says that TSCC 1542 has a mandatory obligation to maintain the Boulevard at their own expense.
- [8] The Respondent explained that the land in question runs along the western boundary of the Corporation's property. The western boundary of the Corporation's property ends at the top of the stairwell and runs in a straight line along that western limit. The Boulevard is the grass area in front of the property line.
- [9] The Boulevard is legally described as Part 2 on Plan RS-1234 and identified by the Property Identification Number 10365-0276, as shown on the TSCC 1542's Condominium Plan, and the registered owner is the Corporation of the County of York. TSCC 1542 says they do not have any special rights or easements over the Boulevard. The Applicant did not provide any evidence to the contrary.
- [10] The Tribunal has jurisdiction over disputes as set out in the Act. Subparagraph 1

(1) (d) (i) of Ontario Regulation 179/17 (O. Reg. 179/17), made under the Act, gives the Tribunal jurisdiction over disputes with respect to provisions of the declaration, by-laws or rules of a condominium corporation that prohibit, restrict, or otherwise govern pets or other animals in a unit, the common elements, or assets of the corporation. Rule 12.5 is a rule that governs the behaviour of pets.

[11] As stated in section 58 of the Act, condominium rules can only be made for two purposes:

1. [to] promote the safety, security or welfare of the owners and of the property and the assets, if any, of the corporation; or
2. [to] prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation.

[12] Property as defined in the Act means the land, including the buildings on it, and interests appurtenant to the land, as the land and interests are described in the description and includes all land and interests appurtenant to land that are added to the common elements

[13] The parties both agreed that the Boulevard, as confirmed by TSCC 1542's survey, is not owned by the Corporation. The Applicant still states that the lands in question are grounds as referenced in Rule 12.5. A search of the rules finds that "grounds" is not a defined term in the governing documents. Absent some clear language that indicates that the Corporation meant to include lands that they maintain pursuant to the Toronto Municipal Code but are not owned by it, the "grounds" in question cannot refer to the Boulevard, as the Respondent is only able to make rules prohibiting conduct on the property of the Corporation pursuant to section 58 of the Act.

[14] The Tribunal derives its jurisdiction from the Act and associated regulations. Where the property is not part of a condominium's property, and thus not governed by the Act, the Tribunal has no jurisdiction to deal with such a dispute.

[15] The Applicant also argued that the Boulevard was an asset of the Corporation. No evidence was provided by the Applicant to support the assertion that there was any interest in the land by the Corporation. Further, the Corporation pointed out that there are no special rights or easements set out in their governing documents. The Boulevard in question would not be an asset of the Corporation.

Issue no 2: What costs should apply?

[16] Neither party requested costs. I note that pursuant to Rule 48.1 of the Tribunal's Rules of Practice, the Tribunal may order reimbursement of a successful party's CAT fees. The Applicant was not successful in this matter, so she is not entitled to be reimbursed her Tribunal fees.

C. ORDER

[17] The Tribunal Orders that:

1. The application is dismissed.
2. No costs to be awarded to either party.

Monica Goyal
Member, Condominium Authority Tribunal

Released on: November 11, 2022