

Corrected Decision

This decision was amended to remove the name of a witness.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 16, 2022

CASE: 2022-00528N

Citation: Carleton Condominium Corporation No. 111 v. Lega, 2022 ONCAT 123

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

Member: Mary Ann Spencer, Member

The Applicant,

Carleton Condominium Corporation No. 111

Represented by Melinda Andrews, Counsel

The Respondent,

Daniel Lega

Did Not Appear

Hearing: Written Online Hearing – October 11, 2022 to November 8, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Daniel Lega is the owner of a unit of Carleton Condominium Corporation No. 111 (“CCC 111”). CCC 111 alleges that Mr. Lega has breached its pet rules by keeping a dog that weighs more than 25 pounds on its premises, by failing to register the dog, and, by failing to muzzle and control the dog while it is on the corporation’s common elements. CCC 111 requests the Tribunal order the permanent removal of Mr. Lega’s dog from its premises. It also requests costs of \$6,286.02.
- [2] Mr. Lega 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 could not contact him at the telephone number provided to the Tribunal and received no response to the e-mail sent to him. Counsel for CCC 111 confirmed that the notices of the proceeding were sent to Mr. Lega by both e-mail and regular mail and I am satisfied that he was properly served and is aware of this matter. Therefore, the hearing proceeded without Mr. Lega’s participation and

my decision is based solely on the evidence and submissions of CCC 111.

- [3] For the reasons set out below, I find that Mr. Lega has violated the provisions of CCC 111's pet rules which require that all pets be registered and that dogs be muzzled and under their owner's control while on the corporation's common elements. I order Mr. Lega to permanently remove his dog from CCC 111's premises within 15 days of the date of this decision. I also order him to pay \$3,500 in costs and \$450 as compensation for damages to CCC 111 within 30 days of the date of this decision.

B. BACKGROUND

- [4] Mr. Lega has been the owner of his unit of CCC 111 since July 28, 2021. The date he acquired his dog is unknown. Similarly, the age and breed of the dog are also unknown.

- [5] Schedule E of the corporation's rules effective July 2015 (the "pet rules") includes the following rules with respect to pets:

7. No Permitted Pet shall be allowed in any part of the common elements except in transport; and when in transport it must be carried or held on a short leash not to exceed two (2) feet at the side of and fully controlled by its walker. In the case of a dog(s) on a leash, the dog(s) must also be muzzled.

15. Upon moving into our building, or acquiring a Permitted Pet, pet owners must deliver to the Management office a fully completed and signed Pet Responsibility Agreement in the form approved by the Board, and will be given at that time a copy of our Corporation's Schedule 'T' Rules Respecting Pets.

16. (a) Dogs weighing more than 25 pounds (11.35 Kilograms) are not permitted in any unit or anywhere in or on the common elements.

- [6] Alex Robichaud is the assistant condominium manager of CCC 111. He testified that CCC 111's condominium managers and its site staff received a number of verbal complaints from residents about an aggressive dog. However, the owner of the dog was not identified until a resident showed a picture to condominium manager Debbie MacEwen who, with the assistance of the corporation's superintendent, was able to identify the owner as Mr. Lega.
- [7] On March 1, 2022, the resident witness in this matter sent an e-mail to CCC 111's condominium manager in which she stated that a large brown dog, which she indicated weighed more than 25 pounds and was not muzzled, had barked and jumped at her several times. She stated that she had advised the owner, who she

knew only by his first name, “Danny”, that dogs had to be muzzled in common areas and had asked him to keep better control of the dog’s leash. The resident witness testified that she had encountered the dog several times beginning in February 2022 and had tried to avoid encounters with it but reported it to CCC 111’s condominium manager when those efforts failed.

- [8] Mr. Robichaud testified that in response to receipt of the verbal complaints and the resident witness’s written complaint, CCC 111’s board of directors discussed the matter at its meeting held on March 24, 2022. The board determined that Mr. Lega had breached CCC 111’s pet rules by keeping a dog which exceeded the 25-pound weight limit, by failing to complete a Pet Responsibility Agreement and by failing to muzzle and control the dog when it was on the common elements. The board’s decision was that the dog was a nuisance and must be permanently removed from CCC 111’s premises, pursuant to Rule 6 of Schedule E to the corporation’s rules:

No Permitted Pet deemed to be a nuisance or danger by the Board of Directors or the Manager in their respective absolute discretion, shall be permitted in any unit or on the common elements. Any person who keeps such a pet on the property or any part thereof or who is otherwise determined by the Board to be in violation of these rules shall, within two (2) weeks of receipt of written notice from the Board or the Manager respecting the removal of such pet, permanently remove such pet from the property.

- [9] On March 28, 2022, Ms. MacEwen e-mailed Mr. Lega and advised him of the board’s decision. The e-mail, which included the full text of the corporation’s pet rules, stated the dog must be removed from CCC 111’s premises by April 11, 2022, and noted that if Mr. Lega failed to comply, the issue would be escalated and all costs the corporation incurred would be charged back to him. Mr. Lega did not respond.
- [10] On April 13, 2022, Ms. MacEwen e-mailed Mr. Lega and requested confirmation that the dog had been removed from the corporation’s premises. She received no response.
- [11] On May 4, 2022, Ms. MacEwen again e-mailed Mr. Lega and requested confirmation that the dog had been removed. The e-mail stated that if CCC 111 did not receive the requested confirmation by May 6, 2022 the matter would be referred to legal counsel and all costs would be charged back to Mr. Lega. Mr. Lega did not respond.
- [12] On May 13, 2022, in a letter delivered by both e-mail and regular mail, counsel Christy Allen of Davidson, Houle, Allen LLP set out the violations of CCC 111’s pet

rules and advised Mr. Lega that, pursuant to the board's March 24, 2022, decision, the dog must be removed from CCC 111's premises by May 26, 2022. The letter noted that if he failed to remove the dog, CCC 111 would file an application with the Tribunal and would seek recovery of all its related costs. The letter also requested payment of the \$550 in legal fees and expenses the corporation incurred to prepare the letter. Mr. Lega did not respond.

[13] On August 6, 2022, the resident witness advised CCC 111's condominium management that she had seen the unmuzzled dog and its owner, with the muzzle in his hand, exiting to the lobby from a building elevator.

[14] CCC 111 filed its application with the Tribunal on August 11, 2022.

[15] The resident witness testified about a number of encounters she had with Mr. Lega, both with and without his dog, during the month of September 2022. On September 9, 2022, she encountered Mr. Lega with his unmuzzled dog in the building lobby. Mr. Lega told her he had never been told muzzles were required. He followed her to the elevators despite her asking him to back away and building staff intervened. On September 10 and 11, Mr. Lega made obscene gestures towards her. On September 12, 19, and 20, 2022, he made rude comments. She reported these incidents to Ms. MacEwen on September 19, 2022, and again on September 20, 2022.

[16] On September 26, 2022, Counsel for CCC 111 wrote to Mr. Lega. The letter stated that Mr. Lega's dog must be permanently removed from CCC 111's property by no later than October 11, 2022. It advised that CCC 111 had filed an application with the Tribunal and enclosed copies of the notices which had been sent to him. It also set out the reported incidents of Mr. Lega's behaviour during the month of September and requested he cease and desist from harassing or intimidating other residents. Mr. Lega did not respond.

[17] Mr. Robichaud testified that the dog remains on CCC 111's premises.

C. ISSUES & ANALYSIS

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

1. Should the Tribunal order the permanent removal of Daniel Lega's dog from CCC 111's premises?
2. Should an award of costs be assessed?

Issue 1: Should the Tribunal order the permanent removal of Daniel Lega's dog from CCC 111's premises?

[19] Mr. Lega is required to comply with the rules of CCC 111. Section 119 (1) of the *Condominium Act, 1998* (the "Act") states that owners and occupiers of units must comply with the Act, the declaration, the 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.

Section 17(3) of the Act sets out the duty of a corporation to ensure owners and occupiers of units comply with its governing documents:

The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.

[20] CCC 111 is asking the Tribunal to order Mr. Lega to permanently remove his dog from its premises as determined by the corporation's board of directors at its March 24, 2022, meeting. CCC 111 submits that the dog is a nuisance, that it exceeds the 25-pound weight limit set out in Rule 16 of CCC 111's pet rules, and that Mr. Lega has failed both to file the Pet Responsibility Agreement required by Rule 15 and to muzzle and control the dog while it is on the common elements as required by Rule 7.

[21] It is established law that deference should be shown to reasonable decisions of a condominium corporation's board. In this regard, Counsel for CCC 111 referred me to the decision in *3716724 Canada Inc. v. Carleton Condominium Corporation No. 375, 2016 ONCA 650* (CanLII) which states, at paragraph 53:

Therefore, to summarize, the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a complainant under s.135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a

complainant.

- [22] CCC 111's board of directors decided that Mr. Lega's dog was a nuisance and must be removed from the corporation's premises at its March 24, 2022 meeting. Mr. Robichaud testified that the board based its decision on the complaints it had received about Mr. Lega's failure to muzzle and control the dog on the common elements as required by Rule 7 of CCC 111's pet rules, the fact that Mr. Lega had not filed the Pet Responsibility Agreement required by Rule 15, and the board's determination that the dog's weight exceeded the 25-pound limit set out in Rule 16.
- [23] I am not persuaded that CCC 111's determination of the dog's weight was reasonably made. Mr. Robichaud testified that the board relied on Ms. MacEwen's assessment which she based on a comparison of the size of Mr. Lega's dog to that of her own dog whose weight she knew. I find that this subjective assessment was not a reasonable basis on which to determine Mr. Lega had violated Rule 16 of CCC 111's pet rules. If the dog's weight was the only violation of CCC 111's rules, a decision to require the dog's removal would not be reasonable. However, I find that the board's decision was reasonable based on Mr. Lega's violations of Rules 7 and 15. Rule 6 of CCC 111's pet rules is broadly written and permits the board to order a pet's removal for any violation of its rules; CCC 111 knew that Mr. Lega had not filed the required Pet Responsibility Agreement and had evidence of multiple complaints about Mr. Lega's failure to muzzle and control the dog on the corporation's common elements.
- [24] Mr. Lega has had ample opportunity either to comply with the corporation's pet rules or to dispute the corporation's decision. While it is unknown whether he was aware of the rules when he brought the dog onto CCC 111's premises, he was advised of them by Ms. MacEwen in her March 28, 2022, e-mail and, in the letter sent by legal counsel on May 13, 2022.
- [25] The evidence is that Mr. Lega has not filed the Pet Responsibility Agreement which I note would require him to set out the breed and weight of the dog. While that failure suggests that the dog may indeed weigh more than the 25-pound limit set out in Rule 16 of the pet rules, I cannot make that determination from the pictures submitted into evidence. However, the evidence is that the dog continues to be unmuzzled on the common elements in what I find is a blatant disregard for the corporation's rule 7. I note that Mr. Lega appears to be well aware of the requirement. The resident witness's evidence is she has seen him on the common elements with a muzzle in his hands on more than one occasion and photographs taken on September 9, 2022, show him in the lobby with the dog unmuzzled and what appears to be a muzzle in his hand.

[26] The undisputed evidence is that Mr. Lega continues to breach Rules 7 and 15 of CCC 111's pet rules, notwithstanding that he has been advised of them on multiple occasions. Therefore, I will order that the dog be permanently removed from the corporation's premises within 15 days of the date of this decision.

Issue 2: Should an award of costs be assessed?

[27] CCC 111 is requesting costs and compensation totalling \$6,286.02 on a full indemnification basis in accordance with Articles XXI and XXV of its declaration and Rule 1 of its rules dated July, 2015. The \$6,286.01 is comprised of \$450 in legal fees and a \$100 administration fee incurred before the application in this matter was filed, \$150 in Tribunal filing fees, and \$5,586.02 in legal fees and disbursements incurred with respect to this proceeding.

[28] In summary, Article XXI of the CCC 111's declaration states that owners shall indemnify the corporation against losses or costs incurred as the result of an act or omission by an owner. Article XXV states that all costs, including solicitors' fees, incurred by the corporation in a proceeding against an owner are immediately payable and may be collected in the same manner as a default on payment of common expenses. Rule 1 of the CCC 111's rules states:

Any losses, costs or damages incurred by the Corporation by reason of a breach of any Rules in force from time to time by any Owner, his family, guests, servants, agents, tenants or occupants of his or her unit shall be borne by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses. Without limiting the generality of the foregoing, such losses, costs or damages shall include but shall not necessarily be limited to the following:

a) All legal costs incurred by the Corporation in order to enforce or in attempting to enforce these Rules.

b) An administration fee of \$100, to be payable to the Corporation for any breach of these rules that continues after initial notice has been served.

[29] The \$550 claimed by CCC 111 as costs incurred before it filed its Tribunal application is comprised of \$450 in legal fees paid to prepare the May 13, 2022, letter sent to Mr. Lega by the corporation's counsel and the \$100 administration fee. The indemnification provisions of the corporation's declaration and rules are clear. In both her March and May e-mails, Ms. MacEwen duly warned Mr. Lega that he would be held responsible for any costs the corporation incurred. Therefore, I will order Mr. Lega to pay the \$450 as compensation for damages under s. 1.44 (1) 3 of the Act. I find no basis on which to award an administration

fee; enforcing the rules is or should be part of a condominium manager's regular responsibilities.

[30] With respect to the costs incurred after the corporation filed its application with the Tribunal, s. 1.44 (2) of the Act 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.

[31] CCC 111 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, the amount of the Tribunal fees it paid.

[32] With respect to the legal fees incurred relating to this proceeding, the Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or causes a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and their representatives; the potential impact an order for costs would have on the parties; and, whether the parties attempted to resolve the issue in dispute before the CAT case was filed.

[33] CCC 111 submits that the legal costs are reasonable and proportionate to the issue and that it is entitled to their recovery on a full indemnity basis. CCC 111 submits that Mr. Lega was given ample opportunity to comply with its rules but has demonstrated a wilful refusal to comply and that it would be neither reasonable nor fair for the costs of obtaining his compliance to be borne by other owners. In this regard, Counsel for CCC 111 referred me to the decisions in *York Condominium Corporation No. 229 v Rockson*, 2022 ONCAT 46 (Canlii) and *Peel Condominium Corporation No. 96 v. Psifimis*, 2021 ONCAT 48 (Canlii), both of which are cases in which the Tribunal awarded 100% of the applicant corporation's legal fees.

- [34] In *Rockson*, the owner ignored four notices he had received from legal counsel asking him to comply with the corporation's noise rules and chose not to participate in the hearing. The Tribunal noted that it would not be fair for the owners whose quiet enjoyment of their units had been disturbed by Mr. Rockson to bear the cost of obtaining his compliance. In *Psofimis*, a case where the owner had brought a dog onto the premises contrary to its rules, the Tribunal found the owner had "deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance" and had "blatantly disregarded" an agreement he had made not to acquire a new pet.
- [35] It is the responsibility of the owners of a condominium to familiarize themselves with its rules. While it is unknown whether Mr. Lega was aware of the rules when he brought the dog onto CCC 111's premises, he was advised of them by Ms. MacEwen in her March 28, 2022, e-mail and in the letter sent by legal counsel on May 13, 2022. He was duly made aware of the fact that he could be held responsible for any costs incurred by the corporation to obtain his compliance in Ms. MacEwen's March 28, 2022, and May 4, 2022, e-mails and in both the May 13, 2022, and the September 26, 2022 letters sent by legal counsel.
- [36] Mr. Lega did not respond to any of the correspondence and failed to join this proceeding. The evidence is that in spite of multiple warnings, he failed to register the dog which continued to be unmuzzled on the common elements. Mr. Lega has been seen on more than one occasion with a muzzle in his hand, suggesting he is aware of the latter requirement but chooses not to follow it. Further, the evidence is that Mr. Lega's behaviour towards the resident witness in this matter who challenged him on the muzzling requirement has been aggressive, including with his dog on September 9, 2022, necessitating a further letter from CCC 111's counsel on September 26, 2022. Notwithstanding that Rule 48.2 states that the Tribunal will not generally award legal costs, I find that Mr. Lega's failure to respond to the multiple notices he received and his conduct in continuing to breach the rules in what I find to be a willful disregard for them warrants the award of costs in this case.
- [37] I have reviewed the \$5,586.20 in legal costs CCC 111 incurred with respect to this proceeding which represents 25 hours of counsel's time and 15 hours of an articling student's time. I find that the 40 hours charged are not proportionate to the complexity of this matter. This matter was not contested. The one issue to be addressed was straightforward and, while I acknowledge there were two witness statements, the evidence submitted was not extensive and counsel was required to provide only one submission. I find that an award of costs of \$3,350 representing 60% of the amount requested, is appropriate in these circumstances.

Therefore, the total costs award is \$3,500, comprised of \$3,350 in legal fees and \$150 in Tribunal fees.

D. ORDER

[38] The Tribunal Orders:

1. Under section 1.44 (1) 2 of the Act, within 15 days of the date of this Order, Daniel Lega shall permanently remove his dog from the premises of Carleton Condominium Corporation No. 111.
2. Under section 1.44 (1) 3 of the Act, within 30 days of the date of this Order, Daniel Lega shall pay \$450 to Carleton Condominium Corporation No. 111.
3. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Daniel Lega shall pay \$3,500 to Carleton Condominium Corporation No. 111.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: November 16, 2022