

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 1, 2022

CASE: 2022-00409N

Citation: Chang v. Peel Condominium Corporation No. 409 et al. 2022 ONCAT 136

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Monica Goyal, Member

The Applicant,
Ying-Hao Chang
Self-Represented

The Respondents,
Peel Condominium Corporation No. 409
Represented by Bharat Kapoor, Counsel

Mahmud Jamal Blaqez
Represented by Silvat Syed, Paralegal

Faisa Ali
Self-Represented

Hearing: Written Online Hearing – August 4, 2022 to October 28, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] Ying-Hao Chang (the “Applicant”) is the owner of a unit of Peel Condominium Corporation No. 409 (“PCC 409” or the “Corporation”). Mr. Chang alleges that he and his family have been experiencing unreasonable noise (the “Noise Nuisance”) from Faisa Ali (the “Tenant”) living in the unit above his. The unit that the Tenant lives in, is owned by Mahmud Jamal Blaqez and is managed under power of attorney by Mohammad Bondugje (the “Landlord”). Mr. Chang alleges that PCC 409 and the Landlord failed to take adequate steps to deal with the Noise Nuisance. Shortly after Mr. Chang initiated this action with the Tribunal, the Tenant moved out of the premises and the Noise Nuisance ceased. Mr. Chang continued his case, alleging that compensation was owed to him by both PCC 409 and the Landlord for failing to take remedial actions to address the Noise Nuisance.

[2] The Landlord did not join the case; as such, the case proceeded as a default proceeding against him, with only the Corporation participating. The Tenant did join

the case but did not participate in the hearing.

- [3] PCC 409 and Mr. Chang agreed to conduct the case as Mediation/ Adjudication under the authority of Rule 44 of the CAT's Rules of Practice. The Corporation and Mr. Chang were able to fully settle the issues. The Corporation and Mr. Chang agreed that the following wording would be included in the final order:

PCC 409 and Mr. Chang agree that:

1. PCC 409 will confirm in writing to Mr. Chang the standard operating procedure for dealing with noise nuisances;
 2. The CEO of the property management company of PCC 409, will be copied on communications from Mr. Chang to the property manager for noise related complaints;
 3. PCC 409 will respond in a timely manner to communications from Mr. Chang;
 4. PCC 409 will pay Tribunal fees of \$150 to Mr. Chang; and
 5. PCC 409 will pay \$500 in costs to Mr. Chang.
- [4] After the conclusion of the mediation with PCC 409, Mr. Chang requested to continue the adjudication against the Landlord. As the Landlord had not joined the case at this time, the case proceeded on a default basis.
- [5] On or around September 30, 2022, the Landlord requested to join the case. The Landlord claimed that he had not received the notice of the case and wanted to join the case to provide a defence to the complaint against him. I allowed the request of the Landlord.
- [6] The Landlord challenged the Noise Nuisance allegations saying that the noises complained of were routine sounds that would not be considered a nuisance, annoyance or disruption. Furthermore, the Landlord said he did not receive communication from PCC 409 about the Noise Nuisance, and once he knew, he the asked the Tenant to leave the unit. The Landlord asks that the case be dismissed against him as the Noise Nuisance no longer is an issue.
- [7] The Tenant's position in this case is unknown. While the Tenant did receive notice of the case and did join the Tribunal's online portal, she never submitted any response to the Applicant's submissions. Several attempts were made by the Tribunal staff to contact her by email and telephone, but she did not respond to those requests.
- [8] For the following reasons, I find that the Tenant's conduct constitutes a nuisance in violation of PCC 409's governing documents. I find that the Tenant and Landlord failed to take reasonable steps to stop the nuisance until almost seventeen months passed, and that this failure breached their obligations under the *Condominium*

Act, 1988 (the “Act”) and the Corporation’s governing documents. As the Corporation is already paying costs, no further order of costs is made against the Landlord and Tenant.

B. ISSUES & ANALYSIS

Issue no: 1 Did Mr. Chang experience unreasonable noise that is a nuisance, annoyance or disruption?

- [9] Mr. Chang had been living in his unit with his family for 15 years. March 25, 2021 was the first of seventeen noise complaints that Mr. Chang made to the condominium’s security desk between the hours of 11pm and 6am. Mr. Chang also submitted as evidence detailed logs of times, dates and types of noise occurrences taken contemporaneously with the noise incidents. It is clear from the evidence that Mr. Chang’s complaints to security only reflect some of the noise nuisances he experienced.
- [10] Mr. Chang submitted an audio recording of one noise incident. The Landlord says that the audio recording does not indicate a complaint worthy noise problem. I agree that the sound quality of the recording is poor. The recording does confirm that there were noises at certain times of the night, but the recording was difficult to hear, and I find that it does not support the Applicant’s allegation of a pervasive noise nuisance.
- [11] On the other hand, the security incident reports include the observations of the security guard who confirmed the occurrence of noise incidents which are highly persuasive evidence. Also, the date and time logs kept by Mr. Chang contemporaneously to the noise incidents, demonstrate that the noise disruptions occurred frequently and often. The Landlord did not provide evidence to refute the security incident reports, or the noise nuisance reports kept by Mr. Chang.
- [12] Section 1 (1) (c.1) of Ontario Regulation 179/17 (“O. Reg. 179/17”) establishes that the Tribunal has jurisdiction over disputes with respect to noise nuisance disputes pursuant to subsection 117(2) of the Act. Section 117 (2) of the Act states:
- 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,
- (a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation;
- [13] The Act does not define ‘nuisance’. 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.

[14] I find that based on the Mr. Chang's noise log report and the security incident reports kept by the Corporation that the Tenant frequently created a disruption of noise in the middle of the night that disturbed the quiet enjoyment and use of Mr. Chang's residence. I find that the Tenant engaged in this conduct regularly and frequently in the seventeen months before she vacated the premises. The impact on Mr. Chang and his family was not trivial.

[15] Based on my review of the evidence provided by the Applicant and the Landlord, I find that the Tenant's actions constitute an unreasonable noise that was a nuisance, annoyance or disruption contrary to section 117(2) of the act. As the Tenant has vacated the premises, the Noise Nuisance has ceased according to Mr. Chang, thus no remedies are ordered against the Landlord or the Tenant.

Issue no 2: Is the Landlord responsible for the Noise Nuisance created by the Tenant?

[16] 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.

[17] PCC 409 reinforces the owner's obligation in section 3.3(a) of the declaration that states:

Requirements for Leasing. No owner shall lease his Unit unless he causes the tenant to deliver to the Corporation an agreement signed by the tenant to the following effect:

"I, _____, covenant and agree that I, the members of my household and my guests from time to time will, in using the unit rented by me, and the common elements, comply with the Condominium Act, the Declaration, By-Laws and Rules of the Condominium Corporation during the term of my tenancy."

[18] The Landlord claims that he did not know of the Noise Nuisance. The Landlord says he did not receive any phone calls, or written communications from PCC 409. The Landlord says the Tenant complained of being harassed by Mr. Chang and informed him that a case had been initiated at the Tribunal. Following this, the Landlord called the property manager and learned about the Noise Nuisance. Upon learning of the Noise Nuisance, the Landlord asked the Tenant to vacate the unit. He says that after the Tenant vacated the unit, and he checked the unit's mailbox, he saw the lawyer's letter of a charge back to the unit for \$1,194.98. After this, he again spoke with the property manager of PCC 409 and learned about the Tribunal case against him. The Landlord claims that PCC 409 did not update their records with his address, and instead PCC 409 erroneously was sending communications to the unit address. He also said that PCC 409 had his email and admitted to receiving the lawyer's letter of June 3, 2022, by email, to which the

lawyer's letter was attached but the Landlord admits he did not open the attachment.

- [19] Mr. Chang disputes the Landlord's testimony. In response, he called Ms. Ahmad a former board member of PCC 409, who very carefully summarized the noise issue experienced by Mr. Chang and the steps taken by the Corporation to address the Noise Nuisance. According to Ms. Ahmad, the Corporation first spoke with the Landlord about the Noise Nuisance starting in September of 2021. PCC 409 spoke with the Landlord and sent written notifications to him on October 5, 2021, November 26, 2021, and March 18, 2022. PCC 409 says they visited the Tenant on October 8, 2021, to discuss the Noise Nuisance. This visit is confirmed by the security incident report of the same date.
- [20] It is the owner's responsibility to keep their address updated and to give notice of any address change. I find that service to the Landlord was made in accordance with section 47(4)(d), which says that any notice that is required to be given to an owner shall be delivered at the owner's unit or at the mail box for the unit unless the owner has provided a written request to the party that the notice not be given in this manner or the owner had provided an address of service. The Landlord did not provide written evidence demonstrating that he had advised the parties of an alternative address for service.
- [21] Based on the evidence before me, I find that notices to the Landlord and the Tenant were sent pursuant to the Act. I also find, on a balance of probabilities, that the Landlord was aware of the Noise Nuisance, but did not seek to address the issue until he became aware of the Tribunal case. I find that the Landlord failed to fulfill his obligations to take reasonable steps to ensure the Tenant complied with the Act and the Corporation's governing documents.

Issue no. 3: Is Mr. Chang entitled to compensation, or costs?

- [22] Mr. Chang requested \$5,000 in compensation from the Landlord and the Tenant based on the City of Mississauga By-Law Number 785-80, which allows the City of Mississauga to fine persons up to \$5,000 for contraventions of the By-Law. The Tribunal has no jurisdiction to enforce the by-laws of the City of Mississauga or to order fines or penalties in such circumstances.
- [23] The Tribunal has authority under section 1.44 (1) 3 of the Condominium Act, 1998 (the "Act") to order a party to pay compensation to another party for damages incurred on account of the paying party's non-compliance. Mr. Chang failed to provide evidence of expenses incurred to support a claim for damages, so no award of compensation is ordered.
- [24] The authority of the Tribunal to make orders for costs is set out in section 1.44 of the Act. Section 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.

[25] The Corporation has already agreed to pay the Applicant's Tribunal fees and costs. The Applicant did not provide documents to support an award of additional costs. I find no evidence from the Applicant to support deviating from the general rule of no costs. As such, no award is made against the Landlord and Tenant of legal fees or costs.

C. ORDER

[26] Mr. Chang and PCC 409 agreed to incorporate the following settlement terms into a Consent Order. Mr. Chang and PCC 409 agreed, and it is hereby ordered that:

1. PCC 409 will confirm in writing to Mr. Chang the standard operating procedure for dealing with noise nuisances;
2. The CEO of the property management company of PCC 409, will be copied on communications from Mr. Chang to the property manager for noise related complaints;
3. PCC 409 will respond in a timely manner to communications from Mr. Chang;
4. PCC 409 will pay Tribunal fees of \$150 to Mr. Chang; and
5. PCC 409 will pay \$500 in costs to Mr. Chang.

Monica Goyal
Member, Condominium Authority Tribunal

Released on: December 1, 2022