

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 7, 2022

CASE: 2022-00458N

Citation: Lajeunesse v. Metropolitan Toronto Condominium Corporation No. 726 et al.,
2022 ONCAT 140

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Ian Darling, Chair

The Applicants,

Victor Lajeunesse and Cathy Lajeunesse
Self-Represented

The Respondents,

Metropolitan Toronto Condominium Corporation No. 726
Represented by Maria Dimakas, Counsel

Chau Lin Leung Chan
Represented by Simmy Leung

Occupant

MOTION ORDER

- [1] The Applicants, when bringing this case, identified a third Respondent as "Occupant". The Applicants state that they mean, by this, an unknown occupier of the unit. Section 1.36 (2) of the *Condominium Act, 1998* (the "Act") states that "an owner or a mortgagee of a unit may apply to the Tribunal for the resolution of a prescribed dispute with the corporation, another owner or an occupier or a mortgagee of a unit". In this motion, Simmy Leung, the representative of the Respondent, Chau Lin Leung Chan, who owns the unit, requests that the CAT remove "Occupant" as a party to the case.
- [2] The parties agree that Simmy Leung is the person who the Applicants intended to identify by the term "Occupant"; however, the question before me is whether Ms. Leung qualifies as an "occupier", as that word is used in section 1.36(2) of the Act and may therefore be named a party to this case.
- [3] The CAT asked the parties to provide submissions on the request to remove "Occupant" as a party to this case. In their submissions, the Applicants assert that Simmy Leung should instead be added as a party because she is a regular visitor to the unit, and they identify her as being the source of the noise which is at issue in this case. Metropolitan Toronto Condominium Corporation No. 726 ("MTCC

726”) also opposed Ms. Leung’s motion for the following reasons:

1. According to MTCC 726’s records, the only occupant of the unit is its owner, the Respondent, Chau Lin Leung Chan.
2. MTCC 726 is aware that Ms. Leung is the daughter and primary caregiver of Ms. Chan. Ms. Leung is also the condominium corporation’s primary contact person for the unit since Ms. Chan is not able to communicate in English.
3. Ms. Leung attends the unit, and stays overnight on occasion to attend to and care for Ms. Chan, but Ms. Leung does not reside in the Unit.

[4] In this motion decision, I am only determining who should be parties to the case. It does not decide if the noises are nuisances or, if so, who is responsible. It decides who should be a party in the case.

[5] Section 1.36 (1) and (2) of the Act states that an occupier of a unit may be a named respondent in a case. However, while the Act provides a definition of "owner," it does not define "occupier". I have considered common statutory and other definitions of this term, each of which have reference to such matters as the duration and frequency of a person’s occupation or possession of property, and the degree of their control over the property.

[6] The generally accepted definition of an “occupier” includes a person who is in physical possession of premises, or a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises, or the persons allowed to enter the premises. This can be distinguished from visitors who may attend a property, but do not possess or control the property.

[7] Neither the Applicant nor the Respondent condominium corporation have provided any evidence through their submissions of the frequency, nature and duration of Ms. Leung's attendance at her mother's unit. There is no basis on which I can reasonably conclude that Ms. Leung has sufficient possession or control of the unit to be considered an “occupier” in any usual sense of the term.

[8] I have also considered the CAT Rules of Practice (effective January 1, 2022), which define an “occupant” as:

an individual or legal entity that occupies a unit that they do not own. This includes residential and commercial tenants.

Based on the submissions before me, Ms. Leung does not meet the definition of an “occupant” under the CAT Rules.

[9] I conclude that the Applicants and Respondent Condominium Corporation have not demonstrated that Ms. Leung can be considered an occupier and therefore she cannot be named as a party to the case. Since all parties agree that Ms. Leung is the person who was intended to be identified as the “Occupant” in this

case, the motion is granted.

ORDER

[10] The Tribunal orders that “Occupant” be removed as a Respondent in this case.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: December 7, 2022