

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 13, 2023

CASE: 2022-00366N

Citation: Hovagimian v. Toronto Standard Condominium Corporation No. 1754, 2023 ONCAT 5

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

Member: Laurie Sanford, Member

The Applicant,
Jean Hovagimian
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1754
Represented by Natalia Polis, Counsel

The Intervenor,
David Convrey
Represented by Doug Levitt, Counsel

Hearing: Written Online Hearing – June 29, 2022 to December 23, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] Jean Hovagimian lives in the unit directly below David Convrey's in Toronto Standard Condominium Corporation No. 1754 ("TSCC 1754"). He has complained of intermittent party noise from Mr. Convrey's unit since June, 2017. Mr. Hovagimian says that the noise he experiences is "pounding on the floor, yelling, talking loud, screaming and singing" and occurs usually between midnight and 4:00 a.m. Mr. Hovagimian wants TSCC 1754 to pay "a penalty" of \$4,000 for its failure to address his problem sooner and he seeks a further \$4,000 from Mr. Convrey, presumably in damages.

[2] TSCC 1754 took several positions in the hearing. It argues that the noises that Mr. Hovagimian complains of are sporadic and do not constitute a nuisance. TSCC 1754 submits that it has taken reasonable steps to deal with any rule violation by Mr. Convrey. The president of the board of TSCC 1754 testified that many of the noise complaints by Mr. Hovagimian were unfounded and that when there was a

finding of noise from Mr. Convrey's unit, these findings were frequently the result of bullying of the security guards by Mr. Hovagimian. The board president speculates that the problem is that Mr. Hovagimian is unusually sensitive to noise.

- [3] TSCC 1754 has sent security guards to Mr. Convrey's floor to investigate Mr. Hovagimian's complaints, sometimes several times a night. TSCC 1754 has written Mr. Convrey ten letters and emails since June, 2017 as a result of its investigations of Mr. Hovagimian's complaints. The letters advise Mr. Convrey of violations of one or more of the rules of TSCC 1754, in particular of violations of its noise rule. Most recently, in April, 2022, TSCC 1754's solicitors wrote Mr. Convrey an eleventh letter, which they called a "final warning" about the noise they said he was making. The parties agree that there have been no further incidents of noise since March, 2022.
- [4] Mr. Convrey takes the position that there is no noise coming from his unit. If there is, his position is that it does not amount to a nuisance. He also is of the view that Mr. Hovagimian's "baseless and relentless" complaining to TSCC 1754 is interfering with his quiet enjoyment of his unit.
- [5] Mr. Hovagimian became increasingly frustrated by what he saw as TSCC 1754's failure to effectively deal with the problem. In early 2022, prior to bringing this application, he wrote an email to the management of TSCC 1754 threatening to knock on the doors of members of the board of TSCC 1754 the next time he was awoken by the noise. He repeated this threat orally to a manager and knocked on one board member's door early one morning. TSCC 1754 referred the matter to its solicitors who, in March, 2022, wrote Mr. Hovagimian a warning letter for which TSCC 1754 is charging Mr. Hovagimian \$533.70 in legal fees. Mr. Hovagimian opposes this and wants a direction to TSCC 1754 to stop charging this amount and to not take any action to enforce the collection of the charge.
- [6] For the reasons set out below, I find that Mr. Convrey has repeatedly violated TSCC 1754's rules against noise. TSCC 1754's testimony to the contrary is not credible. Mr. Convrey's testimony is also not believable, particularly his testimony that there has been no noise from his unit.
- [7] TSCC 1754, by not taking consistent action against Mr. Convrey, has permitted him to continue violating its noise rules, contrary to its obligations under subsection 17 (3) of the *Condominium Act, 1998* (the "Act"). I am directing Mr. Convrey to comply with the noise rules of TSCC 1754. I am directing TSCC 1754 to publish this Decision and Order to TSCC 1754 unit owners. In all the circumstances of this case, I make no order as to damages. I make no order concerning TSCC 1754's charge of \$533.70 to Mr. Hovagimian beyond noting that the condominium

corporation is within its rights to impose this charge. TSCC 1754 will reimburse Mr. Hovagimian \$200 for his filing fees for bringing this application. Beyond that, no order as to costs will issue.

B. PRELIMINARY MATTERS

- [8] The hearing of this matter originally began in May, 2022 but was adjourned to add Mr. Convrey as a party.
- [9] The principal issue in this matter was originally expressed as whether or not any noise emanating from Mr. Convrey's unit constituted an unreasonable noise, nuisance or disruption, wording which approximates the language in the Act. However, as the hearing proceeded, it became clear that the question was more properly whether or not Mr. Convrey had violated TSCC 1754's rules against noise. Since June, 2017, the correspondence from TSCC 1754 to Mr. Convrey concerned TSCC 1754's position that one or more of its rules had been violated. The applicable Rules are set out below. They use different language than is used in the Act. I asked for submissions from the parties on the application of TSCC 1754's Rules and am including this as an issue to be decided.
- [10] TSCC 1754 argued that the Tribunal lacked the jurisdiction to hear this matter. TSCC 1754 acknowledges that the Tribunal has the jurisdiction to "make determinations over noise-related disputes". However, it argues that what Mr. Hovagimian is asserting is that he has been oppressed by TSCC 1754. This, in TSCC 1754's submission, is a claim of oppression under section 135 of the Act and the Tribunal lacks the jurisdiction to deal with those claims. TSCC 1754 notes that the remedies that Mr. Hovagimian seeks fall in line with a claim under section 135. It is true that Mr. Hovagimian complains of being "tortured" by TSCC 1754's failure to enforce its rules and submits that he has been harassed by TSCC 1754. However, I find that his complaints arise in the context of the noise he experiences. In reaching this conclusion, I am mindful of the fact that Mr. Hovagimian is not represented by counsel. He is expressing his reaction to what he sees as TSCC 1754's failure to take effective remedial action to deal with his underlying complaint, that is recurring nighttime noise from the unit above him. As TSCC 1754 concedes, the Tribunal does have jurisdiction to deal with that matter and that, and related issues, are what will be addressed in this decision.

C. ISSUES & ANALYSIS

- [11] The issues in this case may be summarised as follows:
1. Is the noise that Mr. Hovagimian complains of an unreasonable noise,

nuisance, or disruption?

- a. Is the noise that Mr. Hovagimian complains of a violation of TSCC 1754's rules?
2. What responsibility does TSCC 1754 have for dealing with the noise?
 - a. Has TSCC 1754 taken the required steps to deal with the noise?
3. Does Mr. Convrey have a responsibility for dealing with the noise and, if so, what is it?
4. Is TSCC 1754 entitled to be reimbursed for legal costs it incurred in addressing Mr. Hovagimian's conduct?
5. What results flow from the decisions on the above issues?
 - a. What orders, if any, should issue?
 - b. What costs or awards should be ordered?
 - c. What damages or penalties should be awarded?

Issue 1 – Is the noise that Mr. Hovagimian complains of an unreasonable noise, nuisance or disruption? Is it a violation of TSCC 1754's rules?

[12] Since June, 2017, Mr. Hovagimian has made numerous complaints about noise from Mr. Convrey's unit. As noted above, Mr. Hovagimian describes the noise as "pounding on the floor, yelling, talking loud, screaming and singing". The noise usually occurs between midnight and 4:00 a.m, in Mr. Hovagimian's submission. Mr. Hovagimian would frequently complain multiple times a night to TSCC 1754 security, saying that the noise he experienced either continued or resumed.

[13] Based on the submissions made and the documents disclosed by TSCC 1754, it appears that TSCC 1754 has a protocol to deal with noise complaints which they used in this case. In response to Mr. Hovagimian's complaints, TSCC 1754 would send a security guard up to Mr. Convrey's floor to assess the volume of the noise from the hallway or outside the door of the unit. Sometimes, guards would also go to Mr. Hovagimian's unit to listen for the noise. The security guard would file what is called an "Incident Report". As will be detailed below, I conclude that the usual course was to keep the Incident Reports as internal documents and not disclose them to either Mr. Hovagimian or Mr. Convrey. Usually, but not always, following one or more Incident Reports, TSCC 1754 would issue what it called a "rule

enforcement letter” or warning advising Mr. Convrey, that he was in violation of one or more of TSCC 1754’s rules and setting out the procedure that would be followed if the situation continued.

[14] During the hearing, TSCC 1754 and Mr. Hovagimian disclosed over ten Incident Reports. TSCC 1754 also disclosed ten rule enforcement letters or emails to Mr. Convrey about these noise complaints. Despite the fact that approximately the same number of rule enforcement letters were issued as there are Incident Reports, there is not a perfect correlation between the two. Not all Incident Reports were disclosed. Some rule enforcement letters refer to more than one night of noise from Mr. Convrey’s unit. Despite these discrepancies, it may be said that there is a rough concordance between the Incident Reports and the rule enforcement letters.

[15] The three earliest rule enforcement letters, dated June 29, 2017, August 28, 2017 and sometime in February, 2018 address four noise complaints on separate nights. These rule enforcement letters are similar in content. Two of them advise Mr. Convrey that loud or party noises are a major problem and will not be tolerated. The letters set out a procedure that TSCC 1754 intends to follow if the noise recurs. Mr. Convrey is advised that there will be a second warning letter, after which the matter will be referred to TSCC 1754’s solicitors and that Mr. Convrey will bear the cost of any letters they write. The August 28th letter is headed “second warning” but the February, 2018 letter does not refer to the earlier ones and is issued as a stand-alone warning. Two of the letters advise Mr. Convrey that he is in breach of Rule 15.15, which reads:

No Resident shall act in a manner deemed by the Board of Management to be Un-manageable, rude, disruptive, aggressive, abusive, threatening or harassing in nature toward any Resident, Board Members, Property Manager, staff, employee, agent, invitee or contractor of the Corporation or management.

There is no evidence that Mr. Convrey disputed any of these letters. The first Incident Report says that Mr. Convrey thanked the security guard for bringing the matter to his attention.

[16] There were two Incident Reports filed for two incidents where noise was heard by security from Mr. Convrey’s unit on the night of July 28, 2018. No rule enforcement letter was issued. No further Incident Reports or rule enforcement letters were issued until 2020. In that year, TSCC 1754 issued letters on March 5th and November 13th. The November 13th letter is described as a Second Letter. These letters cite a different rule that they warn has been breached and that is Rule 5.11, which reads:

Occupants shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the board or Management, may or does disturb the comfort or quiet enjoyment of the units or common elements by other Occupants.

- [17] On December 14, 2020 the TSCC 1754 manager, presumably the Condominium Manager, emailed Mr. Convrey to follow up on a conversation between them about the “recurring noise complaints against your unit”. The email says that they have received no further complaints and notifies Mr. Convrey that the board of directors has been advised of the nature of the complaints and the history. It continues, “I also informed them of our conversation in the lobby, where you acknowledged the letters and asked what reasonable steps you could take. I expressed to them that you were cooperative and trying to take steps to prevent it from recurring.”
- [18] Mr. Convrey responded to this email on the same day saying that he wanted to have a further conversation about the matter and saying, “I genuinely feel there is an issue here with regards to these complaints coming from one person and one person only. Furthermore, some of this persons [*sic*] actions towards me have not been documented up to now, which I would like to change.” Mr. Convrey proposes coming to the office to discuss the matter further. This email is followed-up by another email on January 29, 2021 with Mr. Convrey wanting to discuss “an incident that occurred on the evening of January 14th, as well as some previous issues generally.” The manager proposes a telephone or Zoom meeting. There is no evidence that this meeting took place or, if it did, what was discussed at it.
- [19] There were no further rule enforcement letters until December 6, 2021 when TSCC 1754 sent a “3rd Letter Regarding Noise Complaints & History of Noise Complaints . . .” to Mr. Convrey. The letter refers to the November 13, 2020 letter and the email exchange of December 14, 2020, both of which are summarised above. TSCC 1754 advises Mr. Convrey of late-night noise complaints received on October 30, 2021 at 12:45 a.m. and two complaints on December 5th at 2:24 a.m. and again at 4:08 a.m. The October 30th complaint was investigated and substantiated by security. The letter reports that on December 5th, the security guard spoke with Mr. Convrey after the first complaint but the noise “seemed to get louder as the night went on”. The security guard attempted to telephone Mr. Convrey after 4:00 a.m. but the telephone call was unanswered. TSCC 1754 refers to rule 5.11. The letter says that the board of TSCC 1754 directed the manager to deliver “another enforcement letter to you last week”. That letter was not disclosed. The December 6th letter advises Mr. Convrey that the incidents of the night before will be brought to the board of directors’ attention. Mr. Convrey is referred to Section 20 of the Declaration prohibiting unreasonable interference with the use or

enjoyment of units or common elements. He is also referred to Rule 1.3 on reimbursement of costs of compliance. The letter requests that Mr. Convrey “avoid causing further recurrences of late-night noise disturbances.” The letter concludes by warning Mr. Convrey that the board may “ultimately” decide to refer the matter to its solicitors.

- [20] On December 18, 2021 there is an Incident Report concerning two noise complaints, one at 1:21 a.m. and the second at 1:30 a.m. The security guard reports loud noises on both visits. No rule enforcement letter to Mr. Convrey was disclosed concerning these incidents.
- [21] On February 11, 2022, the property administrator of TSCC 1754 emailed Mr. Convrey to warn him of a loud music from his unit at approximately 12:45 a.m. The property administrator acknowledges that Mr. Convrey lowered the volume of the music in response to the security guard’s request but notes that the noise is a “recurring pattern”.
- [22] On April 21, 2022 solicitors for TSCC 1754 wrote to Mr. Convrey “concerning the excessive noise coming from your Unit, which is disturbing the quiet enjoyment of the property by other residents”. It reminds Mr. Convrey that excessive noise issues have been “ongoing since approximately June 2017” and refers to “loud talking and screaming and loud music”. The letter refers to ten previous warning notices and it notes that despite multiple opportunities to comply, the noise continues and incidents have “become more frequent since Fall 2021”. The letter states that “many” of the noise complaints were substantiated by security. It also reports that another resident, presumably Mr. Hovagimian, has brought an application to this Tribunal. The letter states that Mr. Convrey’s conduct is in breach of section 20 (a) of the Declaration prohibiting conduct which unreasonably interferes with the use or enjoyment of the property by other residents. It also states that the conduct is in breach of rule 5.11 against noise or nuisance disturbing the comfort of quiet enjoyment by others. The letter states, “This is your final warning.” but does not say what further steps might be taken. The letter ends by charging Mr. Convrey \$533.70 in legal fees for the preparation of the letter and noting that the charge may be recoverable by way of lien on Mr. Convrey’s unit. Mr. Convrey contests the amount and has not paid it but the enforceability of the charge was not raised as an issue in the hearing.
- [23] There have been no further complaints since March, 2022, according to Mr. Hovagimian.
- [24] Despite the April 21, 2022 letter and the prior rule enforcement letters summarised above, TSCC 1754 took a variety of positions concerning the question of noise

from Mr. Convrey's unit during this hearing. Stephen Hollinger, the president of the board of directors of TSCC 1754 testified. He noted the "sporadic" nature of the complaints of noise from Mr. Convrey's unit and testified that the process of issuing rule enforcement letters was sufficient to deal with the problem. His testimony was that many of the complaints received were "deemed not to constitute excessive noise or a nuisance, in the opinion of the Corporation's security". He testified that no other unit has ever complained about noise from Mr. Convrey's unit and that he had been advised that the security guards "usually did not hear any egregious noises". His evidence was that Mr. Hovagimian's "aggressive demeanor and emphasis on documenting noises had pressured them into speaking" with Mr. Convrey about shutting down his gathering or turning off his music "even though no excessive noise was heard". Mr. Hollinger referred to an incident in 2016 in which Mr. Hovagimian complained of noise from the elevator but the acoustical engineers hired by TSCC 1754 had found the noise and vibration well within normal parameters. Mr. Hollinger speculated, on the basis of this, that Mr. Hovagimian might be unduly sensitive to noise.

- [25] Mr. Hollinger devoted much of his testimony to detailing what he characterised as the "tumultuous" history between TSCC 1754 and Mr. Hovagimian. He stated, "On various occasions, the Applicant has engaged in threatening behaviour and actions towards other residents, building staff (as I have been advised by them) and members of the Board." Mr. Hollinger's testimony was that Mr. Hovagimian has been sent "cease and desist letters" on multiple occasions. Mr. Hovagimian's conduct will be considered below.
- [26] In a number of respects, Mr. Hollinger's testimony is inconsistent with other evidence. He testified that no one other than Mr. Hovagimian had ever complained of noise from Mr. Convrey's unit. However, on August 28, 2017, TSCC 1754 wrote a letter to Mr. Convrey headed "Second Letter". The letter says that TSCC 1754 has received "several noise complaints from neighbours" regarding loud noises from Mr. Convrey's unit over the past weekend. In an undated letter sent in February, 2018, TSCC 1754 wrote to Mr. Convrey about "two noise complaints [made] at approximately 3:14 a.m. on February 11, 2018. The complaints were of loud music and loud noises". On February 21, 2018, TSCC 1754 sent Mr. Convrey a letter headed "Second Letter". The letter advises Mr. Convrey of "several noise complaints from neighbours" about loud noises on February 21, 2018 at 4:51 a.m. By letter dated March 5, 2020, TSCC 1754 advised Mr. Convrey that it had received "noise complaints" on February 23, 2020 at 2:30 a.m. regarding "excessively loud music and other noises". I conclude that Mr. Hollinger's testimony on this point is contradicted by the rule enforcement letters. I prefer the evidence in the letters as these were written at the time of the events and are more

detailed than the Mr. Hollinger's general statement.

- [27] Mr. Hollinger testified that "many" of the complaints received were considered by security not to amount to excessive noise. He cites three examples in support of this statement. His first example is of an Incident Report dated November 13, 2020. Mr. Hollinger testified that security investigated a noise complaint by Mr. Hovagimian but "found that only regular conversations were heard" when standing outside Mr. Convrey's unit. Mr. Hollinger testified that Mr. Hovagimian had complained of "loud music" but security had heard no music at all.
- [28] However, on November 13, 2020, TSCC 1754 wrote to Mr. Convrey advising him of "more late-night noise complaints". The letter is titled "2nd Letter Regarding Noise Complaints & History of Noise Complaints", with a reference to Mr. Convrey's unit number. The letter cites multiple complaints on August 29, 2020. It also refers to a noise complaint made on November 13, 2020 at 1:21 a.m. and reads, "The guard on duty investigated the complaints and confirmed that the voices of two individuals within your unit were audible from the hallways and in the complaining unit". The rule enforcement letter appears to contradict Mr. Hollinger's testimony.
- [29] The second example cited by Mr. Hollinger is of an investigation of Mr. Hovagimian's noise complaint on December 5, 2021. Mr. Hollinger testified that security was "unable to hear any loud noises" and heard only normal-volume noises. It is correct that on the security guard's first visit to Mr. Convrey's unit, at about 2:00 a.m. on the morning of December 5, 2021, the security guard heard only a conversation at normal volume. However, what Mr. Hollinger fails to mention is that the same Incident Report also records a second noise complaint at 3:50 a.m. on December 5th. The security investigation of that complaint did report loud noises of conversation. Security attempted to phone Mr. Convrey's unit but received no reply. The security guard reported seeing people leaving Mr. Convrey's unit at around 4:00 a.m.
- [30] Mr. Hollinger's third example is of a security investigation conducted on February 20, 2022 which found no loud noises. No Incident Report dated February 20th was disclosed. There is an Incident Report dated February 22, 2022 but it does not deal with noise directly but rather with Mr. Hovagimian's aggressive complaints to management about their lack of action, which will be discussed below. There is also an email sent on February 11, 2022, from the property administrator of TSCC 1754 to Mr. Convrey to warn him of a loud music from his unit at approximately 12:45 a.m. The property administrator acknowledges that Mr. Convrey lowered the volume of the music in response to the security guard's request but notes that the

noise is a “recurring pattern”.

- [31] What Mr. Convrey fails to mention in his testimony is that several times Incident Reports were filed but there was apparently no follow-up rule enforcement letter. Two Incident Reports were filed on July 29, 2018 about two separate investigations which found noise from Mr. Convrey’s unit. No rule enforcement letter was sent. On December 18, 2021, an Incident Report was filed recording two incidents of noise, one at 1:21 a.m. during which the security guard heard loud voices from outside the unit, knocked on the door and received no reply. The guard then telephoned Mr. Convrey and was told that the voices would be lowered. At around 1:30 a.m., the guard returned to Mr. Convrey’s unit and found there were loud noises coming from the unit. Again, no rule enforcement letter was sent. A review of the Incident Reports shows that there were a few instances where none of the noise complaints over a course of an evening were substantiated. However, Mr. Hollinger’s testimony that there were “many” such cases is not supported by the evidence and is misleading.
- [32] Mr. Hollinger testified that security guards felt pressured by Mr. Hovagimian to speak to Mr. Convrey about noise when they had not heard it. He did not produce statements from any security guard. There is no evidence that the security staff ever investigated noise without filing an Incident Report. Therefore, the Incident Reports serve as reasonable substitutes for statements from the security staff. There is an early incident in which Mr. Hovagimian complained of noise from the unit above him in 2015, apparently before Mr. Convrey owned the unit. A security guard went up to the unit but reported only “momentary” noise. The security guard filed an Incident Report recording that Mr. Hovagimian was obstructive and demanded that all Incident Reports be sent to him. The security guard told him that only the security manager could do this. The guard also told Mr. Hovagimian that security would only note their observations with no additions or subtractions. I note as well that Mr. Hovagimian requested a number of Incident Reports during this hearing. I conclude from this early Incident Report that such reports were not routinely shared with the complainants and, from Mr. Hovagimian’s subsequent records request, that Incident Reports were not shared with him. Incident Reports are internal. There was nothing stopping the person filing an Incident Report from reporting on any aggressive or threatening behaviour on the part of Mr. Hovagimian and indeed, several Incident Reports do that. The confidentiality of Incident Reports means that security guards were free to report that they had been pressured into finding excessive noise when that finding was not warranted. There is no evidence of that. On the contrary, on several occasions, security report hearing loud noises the moment they step out of the elevator on Mr. Convrey’s floor.

- [33] What Mr. Hollinger is asking me to believe is that over a period of four years, and over ten Incident Reports, security guards were repeatedly bullied into writing false Incident Reports reporting loud noise when no such noise in fact occurred. He is also asking me to believe that TSCC 1754 and its solicitors together wrote eleven rule enforcement letters or emails based on these falsified Incident Reports. I conclude that Mr. Hollinger's testimony on this point is not credible.
- [34] It is to be expected that parties to these proceedings will present their best possible case. What is not acceptable is for witnesses to attempt to mislead this Tribunal to bolster their case. I conclude that Mr. Hollinger has attempted to do that in his testimony. As a result, his credibility is materially undermined. I will accept only those parts of his testimony that are independently corroborated.
- [35] Mr. Convrey also testified. His testimony is that "Hovagimian's complaints are vexatious and baseless, as there was no noise emanating from [my unit] into neighbouring units and/or common elements on those dates/times", referring to the dates of Mr. Hovagimian's complaints. Mr. Convrey's testimony continued, "In the alternative, if there were noises emanating from [my unit] on those dates/times that were audible to Mr. Hovagimian in [his unit], then such noises were the result of normal activities that are to be expected in a communal living environment. Furthermore, such noises did not amount to a nuisance." He went on to say that, despite the fact that the noise was not unreasonably loud, he nevertheless undertook to reduce the volume of the noise when asked to do so by TSCC 1754's security.
- [36] Mr. Convrey testified, without supporting evidence, that Mr. Hovagimian is "unreasonably sensitive to noise" and that some of his complaints were unfounded. He testified that Mr. Hovagimian was "persistently demanding, unreasonable and abusive in his dealings with TSCC 1754's security personnel. He cited several examples of this, none of which he apparently witnessed. His source appears to be the Incident Reports, which he has reviewed.
- [37] Mr. Convrey testified, without supporting evidence, that TSCC 1754's "standard for what constitutes nuisance-level noises is, at times, overly sensitive." He notes that security would ask him to keep down the volume of noise in his unit because it was audible in the adjoining corridor but that he often hears noises from inside units as he walks down the corridor and that does not amount to a nuisance.
- [38] Mr. Convrey testified that around May, 2020 Mr. Hovagimian called the police to his unit "in the middle of the night". His testimony was that he was awoken by six police officers despite the fact that he was not having a party but was asleep at the time. His testimony was that the police apologised but that he was left significantly

unnerved.

- [39] Mr. Convrey also testified to various run-ins with Mr. Hovagimian in which he testified that Mr. Hovagimian treated him rudely or aggressively. Mr. Hovagimian's conduct will be considered below.
- [40] Witness testimony must be the truth as the witness understands it, not the argument which they believe might carry the greatest weight. In the case of Mr. Convrey, his "testimony" was, with few exceptions, little more than a set of submissions.
- [41] Mr. Convrey did offer testimony about an incident which he says occurred in or around May of 2020 when six police showed up at his door in the middle of the night. I have several concerns about this testimony. There is no Incident Report around May, 2020 which makes any reference to police entering TSCC 1754. There is an extensive Incident Report in July 2018 detailing Mr. Hovagimian's ultimately unsuccessful attempts to have the police attend at Mr. Convrey's unit on that night. It seems implausible, especially in light of the July, 2018 report, that the security guards would not have created an Incident Report for their management about the police presence on the property "in the middle of the night". It also strains credulity to think that the police would dispatch six police officers to deal with a noise complaint.
- [42] Mr. Convrey argues that the noise from his unit is normal and the type of noise he regularly hears while he is walking down the corridors of the condominium. There is a material difference between noise that is heard during the day and noise that penetrates into the hallway in the small hours of the morning. I do not find Mr. Convrey's testimony credible and I am not persuaded by his submissions.
- [43] Mr. Hovagimian did not offer testimony. He submits that his sleep has been repeatedly interrupted over the past four years and that submission is corroborated by the Incident Reports and rule enforcement letters.
- [44] TSCC 1754 moderated their position in their Reply Closing Submissions. They acknowledge that Mr. Convrey has on occasion caused excessive noise which "may have disturbed the comfort and quiet enjoyment" of Mr. Hovagimian. However, they submit that the disturbances were sporadic and ceased in March, 2022 and do not rise to the level of a "nuisance" under the Act. TSCC 1754 submits that it has responded appropriately to Mr. Hovagimian's complaints. TSCC 1754 notes that Mr. Convrey has responded "in a timely manner" to security requests to stop or turn down the volume of noise in his unit. Given that the noise stopped in March, 2022, TSCC 1754 submits, Mr. Hovagimian had no legitimate

reason to bring this application. They want the application to be dismissed and an award of their costs to be made.

- [45] Mr. Convrey, in his submissions, repeats his assertion that there was no noise from his unit but if there was, it did not rise to the level of a nuisance.
- [46] Subsection 117 (2) of the Act prohibits an activity that results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit. The rules of TSCC 1754 also address noise and I will address the rules first since the correspondence from TSCC 1754 to Mr. Convrey since June, 2017 refers to them.
- [47] On ten separate occasions, the management of TSCC 1754 has found Mr. Convrey to be in violation of one or more of its rules in connection with the noise coming from his unit. Two early rule enforcement letters refer to Rule 15.15, noted above, which prohibits disruptive conduct. It is the board of TSCC 1754 or its management that determines whether this threshold has been met. Subsequent rule enforcement letters refer to Rule 5.11, quoted above, which enjoins residents from creating any noise or nuisance which may or does disturb the comfort or quiet enjoyment of their units by other residents. Again, it is the board or management who decide whether the threshold for this rule has been reached.
- [48] Both TSCC 1754 and Mr. Convrey framed the issue in this case as whether or not the noise from Mr. Convrey's unit constituted a nuisance. Rule 15.15 does not use the word "nuisance". The clear wording of the Rule 5.11 is that it may be breached not only by noise that is a nuisance but also by noise which may or does disturb the comfort or quiet enjoyment of other residents. I conclude that these two TSCC 1754 Rules may be violated whether or not the noise amounts to a nuisance.
- [49] In three letters to Mr. Convrey in 2017 and early 2018, the management warned Mr. Convrey that he made excessive noise and two of these letters advise that he has breached its Rule 15.15. The letters are supported by Incident Reports. There is no evidence that Mr. Convrey contested the warnings in these letters. Mr. Hovagimian submits that his sleep has been repeatedly disrupted by noise from Mr. Convrey's unit. Rule 15.15 deals more with conduct than with noise. However, one might argue that Mr. Convrey's conduct in hosting loud parties and in not controlling them led directly to the creation of the disruptive noise. On this basis, I agree with the management of TSCC 1754 that Mr. Convrey's conduct violated Rule 15.15 on these occasions.
- [50] The remaining rule enforcement letters, including the one written by TSCC 1754's solicitors in April, 2022, also warn of excessive noise and many of them refer to

breaches of Rule 5.11 against noise which may or does disturb the comfort or quiet enjoyment of the other residents. These rule enforcement letters are in most cases supported by Incident Reports substantiating the noise. While Mr. Convrey wrote to management in December, 2020 and January, 2021 requesting a meeting, there is no evidence before me that Mr. Convrey contested any rule enforcement letter until this hearing commenced. I conclude that Mr. Convrey has repeatedly breached Rule 5.11 of TSCC 1754 against noise which constitutes a disturbance of the comfort or quiet enjoyment of other residents. In light of the finding that Mr. Convrey breached both Rules 15.15 and 5.11 of TSCC 1754, it is not necessary for me to decide whether he was also in breach of subsection 117 (2) of the Act.

[51] The inconvenience to Mr. Hovagimian from these breaches is not trivial. I find that he has been repeatedly awoken from his sleep, sometimes several times a night. These interruptions have occurred intermittently over four years. Moreover, there is no evidence that Mr. Convrey has ever notified Mr. Hovagimian that he was planning a party. Mr. Hovagimian had no way of knowing when his sleep was to be disrupted. He was also given no way to prepare from possible nocturnal noises.

**Issue 2 – What responsibility does TSCC 1754 have for dealing with the noise?
Has TSCC 1754 taken the required steps to deal with the noise?**

[52] Under subsection 17 (3) of the Act, TSCC 1754 has “a duty to take all reasonable steps” to ensure that the owners and the occupiers of units, among others, comply with the Act and with the Rules of, in this case, TSCC 1754. The question is whether TSCC 1754 has complied with this duty.

[53] There is nothing objectionable about TSCC 1754’s procedure for responding to noise complaints. Security was dispatched to investigate and file an internal Incident Report. In management’s discretion, a rule enforcement letter would be issued based on these Incident Reports. Mr. Convrey was repeatedly advised that the protocol would be that he would receive a second warning letter after which the matter would be referred to TSCC 1754’s solicitors. Mr. Convrey was advised that he would bear any legal costs incurred and that those costs could be enforced by a lien on his unit. This was a reasonable escalation practice. The problem was that TSCC 1754 did not escalate in accordance with its stated protocol. It issued two second warning letters and one third warning letter but it was not until April, 2022 that TSCC 1754’s solicitors were engaged to write a “final warning”. This was almost four years after the first noise complaint against Mr. Convrey and after this application was brought.

[54] It appears that when there was a lengthy pause in the noise complaints, TSCC

1754 would reset its escalation procedure and start again with a first rule enforcement letter. Whether as a result of this or by coincidence, Mr. Convrey's transgressions of the rules accelerated in late 2021 and early 2022. It cannot be said that TSCC 1754 had taken all reasonable steps to ensure that Mr. Convrey complied with its rules against noise and disruption.

[55] TSCC 1754 submits that Mr. Convrey has responded "in a timely manner" to security requests to stop or turn down the volume of noise in his unit. Yet the evidence shows that has not always been the case. On July 28, 2018, the Incident Report refers to two separate occasions of excessive noise. On December 5, 2021, the security guard investigates two separate complaints and notes that the "noise seemed to get louder as the night went on". On December 18, 2021 the security guard noted excessive noise at 1:21 a.m. and again at 1:30 a.m. I conclude that a response which depends on Mr. Convrey lowering the volume voluntarily in response to a security request will not solve the problem and does not constitute taking the reasonable steps required by the Act.

[56] The fact that there have been no further complaints of noise from Mr. Convrey's unit since March, 2022 is not definitive for two reasons. First, Mr. Convrey was out of the unit for part of the summer, returning in September, 2022. Second, Mr. Convrey has demonstrated that he is capable of self-restraint, sometimes for over a year. But when he has parties, disruptive noises eventually start again.

Issue 3 – Does Mr. Convrey have a responsibility for dealing with the noise and, if so, what is it?

[57] Under subsection 119 (1) of the Act, Mr. Convrey has an obligation to comply with the Act and with TSCC 1754's governing documents, including its rules. Mr. Convrey testified that he is now taking several actions to deal with Mr. Hovagimian's complaints. His testimony is that he is now constantly "walking on eggshells" in his unit. He has stopped listening to music, in his testimony, and has ceased entertaining and socialising with friends in his home.

[58] While these measures may seem draconian, if ceasing to socialise and host parties in his unit is the only way he can avoid creating disruptive noise, then that is what he must do. Whether Mr. Convrey will be able to listen to music in his unit is entirely a function of whether he is able to keep the volume of the music within acceptable limits.

Issue 4 – Is TSCC 1754 entitled to be reimbursed for legal costs incurred in addressing Mr. Hovagimian's conduct?

[59] Part 2, Section 12 of TSCC 1754's Declaration provides in part, "any losses, costs or damages incurred by the Corporation by reason of a breach of any provision of the Declaration or in any by-laws or rules of the Corporation shall be borne and paid for by [the offending owner], and may be recovered by the Corporation against such owner in the same manner as common expenses". I read this provision as including the reimbursement of legal costs incurred in enforcing compliance with TSCC 1754's governing documents.

[60] Rule 1.3 also deals with reimbursement of legal costs of compliance. Mr. Hovagimian has been advised of this rule, which states:

Any losses, costs, damages or expenses incurred by the Corporation by reason of a breach of any rules by an Occupant shall be the responsibility of and shall be paid for by the owner and/or Occupant on a joint and several basis and may be recovered by the Corporation against such owner in the same manner as common expenses.

[61] Mr. Hovagimian has had a tumultuous history with TSCC 1754 and with Mr. Convrey. Mr. Hovagimian has received multiple rule enforcement letters, including multiple letters from TSCC 1754's solicitors, for his harassing and disruptive behaviour towards TSCC 1754 management and staff. Mr. Convrey also reports at least one incident in which Mr. Hovagimian accosted him in what Mr. Convrey characterised as a rude and aggressive way. On several occasions Mr. Hovagimian wrote to the management of TSCC 1754 about the noise from Mr. Convrey's unit. Some of these letters were civil. For example, in one he asks that the matter be referred to TSCC 1754's lawyers for a warning letter, arguing that "it is time". At another point, he requested a meeting with TSCC 1754 to discuss the matter. However, as time wore on without a permanent cessation of the noise, Mr. Hovagimian began to issue threats that he would take matters into his own hands. Things came to a head when, in early 2022, Mr. Hovagimian threatened that, the next time he was awoken by the noise during the night, he would knock on the doors of the board members so they could understand "what it feels like". On one occasion, Mr. Hovagimian did knock on Mr. Hollinger's door in the early hours of the morning. Fortunately, Mr. Hollinger was not there at the time.

[62] In response to these threats, solicitors for TSCC 1754 issued a warning letter on March 16, 2022. The letter states that Mr. Hovagimian is in breach of several rules, including rule 3.4 which prohibits doing anything that will "obstruct or interfere with the rights of other Occupants or in any way injure or annoy them". The letter also refers to rule 15.15, set out above, against "rude, disruptive, aggressive, abusive, threatening or harassing" actions towards any resident, manager or board member. TSCC 1754 has charged Mr. Hovagimian \$533.70 for the cost of

preparing this letter and proposes to enforce the charge as though it were a common expense, including obtaining a lien on Mr. Hovagimian's unit if the amount is not paid. Mr. Hovagimian contests this and wants a direction to TSCC 1754 to stop charging this amount and to not take any action to enforce the collection of the charge.

[63] TSCC 1754 argues that it is not appropriate for the Tribunal to consider whether or not it is entitled to be reimbursed for the costs of compliance it has incurred in enforcing Mr. Hovagimian's compliance with its rules against disruptive conduct. In this case, Mr. Hovagimian has requested a specific relief and it is in this context that I have reviewed the events which led up to the issuance of the solicitor's letter to him.

[64] Mr. Hovagimian repeatedly spoke aggressively to TSCC 1754 staff and incurred a number of rule enforcement letters as a result. The security staff was enjoined at one point to carefully record any dealings it had with Mr. Hovagimian given his verbal aggression. While it is possible to empathize with Mr. Hovagimian for the sleep disruption he has endured, there is no excuse for the course of action he threatened and the action he took in knocking on Mr. Hollinger's door in the early hours on one morning. What is even more troubling is that during this hearing, Mr. Hovagimian expressed no remorse for his threats and action and no understanding that what he did was wrong. He excused his actions as the only way to get the board's attention. I find that Mr. Hovagimian acted in violation of rule 15.15 of TSCC 1754 and was also in violation of rule 3.4.

[65] Living in a condominium has its challenges. Communal living requires civility, compromise and patience. Far too often, the parties before this Tribunal have notably failed to demonstrate one or more of these attributes. All people or organisations involved in the management or regulation of condominiums must speak with one voice against aggression, verbal or physical, within a condominium. TSCC 1754 was within its rights to retain a solicitor to write a warning letter to Mr. Hovagimian and within its rights to charge him the cost, which is reasonable, for the preparation of the letter. Under Part 2, Section 12 of its Declaration, it is also within its rights to enforce the charge as a common expense, including, if unpaid, by way of lien on Mr. Hovagimian's unit.

Issue 5 – What results flow from the decisions on the above issues?

[66] I find that Mr. Convrey repeatedly violated TSCC 1754 Rules 15.15 and 5.11 against disruptive noise. I will order him to bring himself into compliance with these rules. In the ordinary case, that would be sufficient and it could be left to TSCC 1754 to take reasonable steps to enforce Mr. Convrey's compliance. However, in

this case, I am troubled by Mr. Hollinger's testimony. He has displayed a lack of good faith in his testimony that causes me concern about TSCC 1754's response to Mr. Hovagimian's legitimate grievances. To address this concern, I will direct TSCC 1754 to post or publish this decision and Order prominently within TSCC 1754, wherever it usually posts or publishes important notices to the unit owners. My hopeful expectation is that the unit owners will hold their management and board of directors accountable for the enforcement of this Order.

[67] Mr. Hovagimian requested a "penalty" against TSCC 1754 of \$4,000 for its failure to take effective action to stop the nocturnal noises that disrupted his sleep. He also requested \$4,000, presumably in damages, against Mr. Convrey. Under the Act, the Tribunal has no jurisdiction to order a "penalty" for a condominium's failure to enforce its rules. Given that Mr. Hovagimian is self-represented, I considered the substance of his request and conclude that what he wishes are damages against both TSCC 1754 and Mr. Convrey. Under subsection 1.44 (1) 3 of the Act, the Tribunal may make:

An order directing a party to a proceeding to pay compensation for damages incurred by another party to a proceeding as a result of an action of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.

[68] The action of non-compliance referred to may be non-compliance with the Act or a direction of the Tribunal or other act of non-compliance. In this case, both TSCC 1754 and Mr. Convrey have not complied with the Act. TSCC 1754 has violated subsection 17 (3) and Mr. Convrey has been in violation of subsection 119 (1). Mr. Hovagimian has suffered disruption as a result.

[69] In determining whether or not damages are appropriate, it is necessary to consider all the circumstances of the case. Here, there is no question that Mr. Hovagimian has suffered as a result of Mr. Convrey's actions and TSCC 1754's lack of effective action. However, I am concerned that any award of damages against either party might be seen by Mr. Hovagimian as an endorsement of the aggressive course of action he chose to deal with the problem. In weighing the relative benefit to him of awarding any damages and the possible harm of appearing to condone his aggression, I conclude that it is not appropriate to award Mr. Hovagimian damages against either TSCC 1754 or Mr. Convrey.

[70] Mr. Hovagimian has succeeded in this action. Under Rule 48.1 of the Tribunal's Rules of Practice, effective January 1, 2022, an unsuccessful party will ordinarily reimburse the successful party of fees paid to the Tribunal. Under this rule, I will direct TSCC 1754 to reimburse Mr. Hovagimian's fees in the amount of \$200.

[71] Concerning the legal costs claimed by the other parties, Rule 48.2 of the Tribunal's Rules of Practice, legal costs are generally not awarded. These costs may be ordered if they are "directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense." In this case, no conduct by Mr. Hovagimian rose to this level and therefore, I make no order as to legal costs.

D. ORDER

[72] Under the authority of section 1.44 of the Act, the Tribunal Orders that:

1. Mr. Convrey will bring himself into compliance with the Rules of TSCC 1754, in particular Rule 15.15 against disruptive conduct and Rule 5.11 against noise which disturbs the comfort or quiet enjoyment of other unit owners.
2. TSCC 1754 will publish or post this decision and Order wherever it normally publishes or posts important notices to its unit owners.
3. TSCC 1754 will pay Mr. Hovagimian \$200 to reimburse him for his filing fees in this proceeding.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: January 13, 2023