

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 1, 2023

**CASE:** 2022-00574N

**Citation:** Matic v. Miller, 2023 ONCAT 32

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

**Member:** Jennifer Webster, Member

**The Applicant,**

Kathy Matic

Self-Represented

**The Respondent,**

Ericka Miller

Self-Represented

**The Intervenor,**

Peel Condominium Corporation No. 351

Represented by Christopher Poland, Agent

**Hearing:** Written Online Hearing – October 25, 2022 to February 1, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Kathy Matic (the “Applicant”) is the owner of a unit of Peel Condominium Corporation No. 351 (“PCC 351”). Ericka Miller (the “Respondent”) is the owner and occupant of the unit adjoining the Applicant’s unit. In particular, the two units share a wall between their respective bedrooms. The Applicant complains that she is experiencing unreasonable noise from the Respondent’s unit, consisting of a series of bangs, booms, knocks, and drawer or door slamming throughout the night. She states that the noise coming from the Respondent’s unit disrupts her sleep multiple times every night as well as the sleep of her mother, who lives with her in the unit.
- [2] The Applicant further submits that, despite her repeated complaints to PCC 351, the condominium corporation has failed to take reasonable steps to investigate the noise and to ensure that the Respondent complies with her obligations under PCC 351’s governing documents and the *Condominium Act, 1998* (the “Act”).
- [3] The Applicant requests that the Tribunal order Ms. Miller to comply with the Act and PCC 351’s rules by ceasing and desisting from creating unreasonable noise in

her unit. She also asks the Tribunal to order PCC 351 to improve its security reporting system and to perform remedial soundproofing in her unit. Finally, the Applicant seeks an order requiring Ms. Miller or PCC 351 to reimburse her Tribunal fees and expenses incurred by her related to sound cancelling devices and dental work.

- [4] Ms. Miller did not join this case and it proceeded directly to Stage 3 – Tribunal Decision pursuant to Rule 28 of the Tribunal’s Rules of Practice. Before I started the hearing, I asked the Tribunal staff to contact Ms. Miller to confirm that she was aware of the case. PCC 351’s representative, Christopher Poland, advised me on October 27, 2022, that he had a conversation with Ms. Miller about the telephone messages from the Tribunal staff about the case. He further stated that he encouraged her to join the case. Although Ms. Miller did join the case after her conversation with Mr. Poland, she participated in only a limited way. Ms. Miller provided a witness statement but did not respond to the Applicant’s cross-examination questions or provide any further submissions. After several weeks passed, she sent a message on the CAT-ODR system to advise me that she had some difficulty uploading material in the system, but after that she provided no answers to my reply or to any of my instructions.
- [5] In her closing submissions, the Applicant requested that I temporarily suspend the hearing because she had decided to perform soundproofing work in her bedroom to address the noises. The Applicant explained that she had been injured in a motor vehicle accident and needed to complete the soundproofing in order to support her medical recovery. I decided not to suspend the hearing in these circumstances given my conclusion, as outlined below, that the evidence does not establish that the sounds in the Applicant’s bedroom are a nuisance or that Ms. Miller is responsible for the sounds.
- [6] For the reasons that follow, I find that, although the Applicant has demonstrated that there is a regular pattern of sounds in her unit, the evidence does not show, on a balance of probabilities, that these sounds are caused by the Respondent or that the sounds amount to a nuisance of unreasonable noise. I also find that PCC 351 has taken reasonable steps to investigate the sounds reported by the Applicant. I make no orders with respect to the Applicant’s filing fees and expenses.

## **B. BACKGROUND**

- [7] The Applicant bought her unit in February of 2020. Soon after moving in, she started experiencing difficulties in sleeping through the night. She and her mother noticed that the neighbour in the adjoining unit was active in the night, having her lights on and making occasional loud noises. The Applicant first contacted PCC 351’s security about noise from the Respondent’s unit in 2020. She complained about loud late-night TV watching, and after this complaint, the volume of television was no longer an issue in the Applicant’s unit.

- [8] The Applicant also experienced a series of sounds and vibration in her unit that she described as bangs, booms, knocks, and whacks during the night. She believed that these noises were being transmitted from the Respondent's unit through the wall shared between their bedrooms. She wrote to Ms. Miller about the noises in June 2021 with a request to discuss how to resolve the issue. She sent a second letter to Ms. Miller on July 8, 2021 and provided her with noise-absorbing stickers for her furniture. The Applicant also explained to Ms. Miller in this letter that she was experiencing sleep disruption due to the loud sudden noises that she believed were coming from Ms. Miller's unit. Ms. Miller did not respond to the Applicant's letters.
- [9] On September 10, 2021, the Applicant complained to PCC 351's security about noises in her unit between 4:00 and 5:00 am. The security guard completed an incident report in relation to this complaint, noting that they were unable to confirm any noise in their investigation. The Applicant also exchanged emails with Mr. Poland, PCC 351's condominium manager, about the noises in September 2021. Mr. Poland advised her to report the noise issues to security when they were happening and that security would investigate the complaints.
- [10] The Applicant continued to experience the sounds and vibration and, in May 2022, she began making audio recordings of the sounds in her bedroom throughout the night using her iPhone.
- [11] On June 9, 2022, she provided a letter to Ms. Miller telling her that the noises along the shared wall were continuing. She also indicated that she intended to file an application with the Tribunal about the noises.
- [12] On June 30, 2022, PCC 351 sent a letter to the Applicant asking her to cease and desist from harassing Ms. Miller by placing letters under her door. In this letter, PCC 351 directed the Applicant to report any concerns directly to security for them to investigate.
- [13] The Applicant wrote to PCC 351's security on July 5, 2022 with a description of the sounds that were being heard in her unit. She claimed that the source of the noise was Ms. Miller's unit and explained that she assumed "that the noise comes from her use (with differing use of force) of various pieces of furniture like drawers, chests, hampers and closets and their locking mechanisms, especially along the party wall." The Applicant described that the noises could be loud, sharp and sudden with varying intensity. She further identified that the noise occurred throughout the day but that she was only complaining about the noises during the quiet hours of 11:00 pm to 7:00 am.
- [14] The Applicant called security regularly with noise complaints, starting in early July 2022. Security prepared incident reports about the Applicant's complaints on July 3, 10 and 11, 2022. In each report, the security guard noted that they heard no noise when they investigated in the hallway outside Ms. Miller's unit.

- [15] On July 11, 2022, Mr. Poland wrote to the Applicant to advise that security had investigated her complaints and had been unable to hear any excessive noise coming from Ms. Miller's unit. He encouraged the Applicant to continue to inform security of any future noise complaints and noted that security would investigate. In this letter, Mr. Poland also notified the Applicant that PCC 351 had sent a letter to Ms. Miller to ask her to be respectful of her neighbours and to ensure that noise did not emanate from her unit.
- [16] PCC 351's security also prepared an incident report for July 19, 2022 about a noise complaint from the Applicant. On this report, the security guard noted that they asked the Applicant if they could enter her unit to listen to the noise. The Applicant declined this request. The security guard further wrote that they stood in the hallway outside the Respondent's unit and could not hear any noise. There is an additional note on this incident report related to a noise complaint received from the Applicant on July 23, 2022. In this note, the security guard wrote that they waited in the hallway outside Ms. Miller's unit for about seven minutes and heard no noise.
- [17] On July 25, 2022, Mr. Poland emailed the Applicant about her noise complaints and stated that security had not been able to confirm any noise. He also noted that the Applicant had indicated that she had recordings of the sounds and he asked her to provide him with the recordings. The Applicant did not provide the audio recordings to PCC 351.
- [18] The Applicant commenced this application with the Tribunal after her complaints to Ms. Miller and PCC 351 did not resolve her concerns about noises and vibration in her unit.

### **C. ISSUES & ANALYSIS**

- [19] The issues to be determined in this case may be summarized as follows:
1. Is the Respondent causing unreasonable noise that interferes with the Applicant's quiet enjoyment of her unit?
  2. If there is unreasonable noise, what is the obligation of PCC 351 or Ms. Miller to address the noise?
  3. What orders, if any, should the Tribunal make?

#### **Issue 1: Is the Respondent causing unreasonable noise that interferes with the Applicant's quiet enjoyment of her unit?**

- [20] 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 of the assets, if any, or the corporation.

[21] The Tribunal has jurisdiction under section 1(1)(c.1) of Ontario Regulation 179/17 over disputes with respect to subsection 117(2) of the Act as well as jurisdiction over disputes relating to the provisions of a condominium corporation's governing documents that "prohibit, restrict or otherwise govern the activities described in subsection 117(2) of the Act."

[22] PCC 351 has enacted rules related to quiet enjoyment. Rule 4.1 prohibits the creation or continuation of any noise that, in the opinion of the Board or manager, does or may disturb the quiet enjoyment. Rule 4.2 states that no noise "which is an annoyance, nuisance or disruption to the Owner or Residents" shall be permitted to be transmitted from one unit to another or from one common element to another."

[23] The Applicant argues that Ms. Miller is making unreasonable noise contrary to the Act and PCC 351's rules. In support of her claim of unreasonable noise, she submits the following evidence:

- Her own witness statement with supporting emails and letters;
- Her mother's witness statement;
- Witness statements from the two occupants of the unit below the Applicant's unit; and
- A series of audio recordings made by the Applicant on her iPhone between May 31 and October 27, 2022

[24] The Applicant described the noises in her bedroom as a variety of sounds, with different levels of amplitude, with some sounds accompanied by vibrations. The Applicant's mother testified that she has never heard the sounds but that she is frequently awake during the night.

[25] In the witness statements from the two occupants of the unit below the Applicant's unit, they stated that they had heard sounds that they believed were coming from upstairs. However, as neither witness was able to identify the source of the sounds, I find that these witness statements do not corroborate the Applicant's complaint of noises being made by Ms. Miller. Moreover, although the Applicant stated that these witnesses had made noise complaints, Mr. Poland confirmed that no noise complaints had been received from them.

[26] The Applicant provided audio recordings of the sounds from May 31, June 1, June 14, October 24 and October 27, 2022. She stated that she made the audio recordings on her iPhone usually starting around midnight and ending in the early morning. At my request, the Applicant submitted a list of the sounds on the

recordings with time stamps to facilitate my use of the recordings. Although I can generally hear sounds on the recordings at the times the Applicant has noted, I am unable to determine the volume of any of the noises. There are also times at which the Applicant has described a loud noise that I am unable to hear any sound on the recording.

[27] It is, however, apparent from the recordings that there are sounds being transmitted into the Applicant's bedroom and that she is frequently awake during the night. The Applicant believes that both she and her mother are waking from sleep in response to these sounds. She also asserts that the sounds are being made by Ms. Miller. In her witness statement, Ms. Miller denied making the sounds complained of by the Applicant and further noted that, in relation to two of the noise complaints, she was not in her unit at the relevant time.

[28] In deciding whether the sounds are unreasonable noises and whether the sounds are being made by Ms. Miller, I must make a determination based on the weighing of the evidence on a balance of probabilities. Having considered all the evidence, I find that there is insufficient evidence to determine whether the sounds in the Applicant's bedroom amount to an unreasonable noise despite her description of the pattern, frequency, and impact of these sounds. The Applicant has made regular complaints to security about the noises and has clearly described the sounds in her testimony at this hearing. However, her subjective complaints are not supported by the other witness statements or by her audio recordings.

[29] I also find that there is insufficient evidence for me to make a conclusion about the source of the sounds. The Applicant stated that she knows that Ms. Miller is making the noise because, on one occasion, the Applicant knocked on the shared wall in response to a noise and she heard a gasp on the other side of the wall. I cannot conclude from this gasp that Ms. Miller is the source of the sounds. I accept that the Applicant is experiencing sleep disruption and related concerns, and that she sincerely believes Ms. Miller is causing noises and that these are the cause of those concerns. However, the evidence is not sufficient to support this conclusion. Based on the evidence provided, I cannot find on a balance of probabilities that the noise is either unreasonable, or that it is the cause of the Applicant's disrupted sleep, or that the noise in question is necessarily caused by the activities of Ms. Miller in her unit.

[30] In *Toronto Standard Condominium Corporation No. 2048 v. Mortavazi*, 2023 ONCAT 17, the Tribunal considered an application by the condominium corporation for an order directing a unit owner to comply with its rules regarding noises. The condominium corporation had received a series of noise complaints from residents and, in response to the complaints, it hired acoustical engineers to conduct an investigation. The investigation included questionnaires to the residents and three rounds of acoustical testing to determine the source and nature of the noises. The Tribunal found that the engineers provided a thorough and detailed report in relation to the acoustical testing that objectively supported the subjective observations of the residents about the noises.

[31] In this case, the Applicant's audio recordings provide evidence of sounds being transmitted into her bedroom, but they do not confirm the Applicant's description of either the types of sounds or the source of these sounds. I find that the evidence does not establish that Ms. Miller is making unreasonable noise that is interfering with the Applicant's quiet enjoyment of her unit.

**Issue 2: If there is unreasonable noise, what is the obligation of PCC 351 or Ms. Miller to address the noise?**

[32] The Applicant argues that Ms. Miller and PCC 351 have failed to take appropriate steps in response to her complaints.

[33] Ms. Miller is required to refrain from activities that create or continue a noise nuisance under subsection 117(2) of the Act and PCC 351's rules. I have found, however, that the evidence does not establish that the sounds are unreasonable noises or that she is the source of the sounds. Therefore, I do not find that Ms. Miller has a responsibility to address the Applicant's noise complaints.

[34] PCC 351 has the duty pursuant to subsection 17(3) of the Act to take all reasonable steps to ensure that owners and occupiers comply with the Act and its governing documents. It also has the right under subsection 119(3) of the Act to require an owner to comply with the Act and its governing documents.

[35] The Applicant submits that PCC 351 failed to meet its obligation under subsection 17(3) of the Act by not documenting and investigating her noise complaints in a meaningful way. She notes that, although she made numerous phone calls to security, there are only four incident reports related to her noise complaints. I note that the incident reports often reported on noise complaints from more than one day. For example, the incident report of July 3, 2022 detailed complaints on July 3, 4 and 5, 2022 made by the Applicant. Therefore, the four incident reports provide reporting about more than four individual complaints.

[36] When the Applicant complained to PCC 351's security about noise, the security guard would attend in the hallway outside Ms. Miller's unit for a number of minutes. On each occasion, the security guard noted that no excessive noise was detected. On July 10 and 11, 2022, the security guard knocked on Ms. Miller's door as part of the investigation into the noise complaint and received no answer.

[37] The Applicant had clearly identified to PCC 351's security and Mr. Poland in her phone calls, emails and letters that the sounds were being heard in her bedroom. By limiting the investigation of the sounds to the hallway, the security guards were not engaging in a full investigation of the Applicant's noise complaints. PCC 351 reported to the Applicant that its security was never able to find excessive noise in the hallway. The Applicant has never, however, described that the sounds were in the hallway.

[38] I find that PCC 351 investigated the nature and source of the noises identified by the Applicant, although not in as fulsome a manner as the Applicant desired. PCC

351 responded to the complaints, listened for noises, and asked to enter the Applicant's unit to hear the actual noises complained of. The Applicant's conduct has, however, contributed to limiting PCC 351's investigation. When the head of security asked to enter her unit to listen to the noise, the Applicant did not agree to this. She also advised Mr. Poland and PCC 351's security that she had audio recordings of the sounds, but she did not provide the recordings until she produced them in evidence in this hearing.

- [39] In his submissions on behalf of PCC 351, Mr. Poland stated that it had investigated the noises and sent a letter to Ms. Miller advising her of her obligations to respect the quiet enjoyment of all owners and occupants of the condominium. He further submitted that the next step in the investigation would be to attempt to substantiate the noise from inside the Applicant's unit. He explained that this step had not been taken by PCC 351 because the Applicant had not provided access to her unit.
- [40] Having considered all the evidence and submissions, conclude that PCC 351 took all reasonable steps to ensure compliance with its noise rule and section 117(2) of the Act. Although its investigation was less than fulsome, it was prevented from engaging in a full investigation into the nature and source of the sounds by the Applicant's refusal to provide access to her unit and to provide her audio recordings.

### **Issue 3: What orders, if any, should the Tribunal make?**

- [41] The Tribunal has the authority to make a range of orders at the conclusion of a hearing, as set out in subsection 1.44 (1) of the Act. These orders include "an order directing one or more parties to a proceeding to comply with anything for which a person may make an application to the Tribunal" under 1.44 (1) 1 and "an order directing whatever other relief the Tribunal considers fair in the circumstances" under 1.44(1) 7.
- [42] The Applicant seeks an order from the Tribunal requiring PCC 351 to perform soundproofing of the shared wall between her unit and Ms. Miller's unit. She also seeks an order to direct PCC 351 to improve its security reporting system. Given that I have concluded that the evidence does not demonstrate unreasonable noise, I decline to make either order.
- [43] The Applicant asks the Tribunal to order the reimbursement of her Tribunal fees. She has not been successful in this case and, therefore, I do not order any party to pay her Tribunal fees. The Applicant also seeks reimbursement of expenses incurred as a result of the sounds. These expenses include the cost of ear plugs, sound cancelling devices, and additional storage on her iPhone for the audio recordings, as well as dental fees related teeth grinding at night that she believes was caused by the sleep issues she has experienced due to the sounds in her bedroom. Given my conclusion that the evidence is insufficient to demonstrate unreasonable noise or the source of the noise, I make no order with respect to the



Applicant's request for reimbursement of these expenses.

**D. ORDER**

[44] The Tribunal dismisses the application and makes no orders.

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Jennifer Webster  
Member, Condominium Authority Tribunal

Released on: March 1, 2023