

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 21, 2023

**CASE:** 2023-00091N

**Citation:** Cumming v. York Condominium Corporation No. 116. 2023 ONCAT 44

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Ian Darling, Chair

**The Applicant,**  
Carol Cumming  
Self-Represented

**The Respondent,**  
York Condominium Corporation No. 116

### **DISMISSAL ORDER**

- [1] The Applicant submitted an application to the Condominium Authority Tribunal (CAT) on February 15, 2023. The CAT reviewed, but did not accept the application. Under Rule 19 of the CAT's Rules of Practice, the CAT can close a case if the CAT determines that that it has no legal power to hear or decide the dispute.
- [2] The CAT proposed to dismiss this application for the following reasons:
1. The CAT's jurisdiction is established by the Ontario Government. Ontario Regulation 179/17 contains the specific wording of the CAT's jurisdiction. The CAT does not have the legal authority to decide issues that are outside its jurisdiction.
  2. The application was filed as a dispute about a nuisance, annoyance or disruption that is prohibited, restricted or otherwise governed under the Condominium Act, 1998 (the "Act") or the condominium corporation's declaration, by-laws or rules (the "governing documents").
  3. In the Applicant's description of the issues in dispute, the Applicant alleges that bed bugs have regularly infested their unit. They specify that these bed bugs come from a neighbour's unit, and they have filed against their condominium corporation for not responding to this issue.
  4. For the CAT to accept this type of application, the issues in dispute must relate to a type of nuisance, annoyance or disruption that is prohibited, restricted, or governed under the condominium's governing documents.

5. The Applicant identified provisions in their by-laws that relate to: The duties of the condominium corporation; and the condominium's mediation process.
  6. While the CAT has jurisdiction to deal with disputes that relate to one or more provisions in a condominium corporation's governing documents that prohibit, restrict, or otherwise govern any type of nuisance, it did not appear that any infestation related provisions were been identified.
  7. Accordingly, as the Applicant has not yet identified any provisions of their governing documents that prohibit, restrict, or govern infestation issues, the issues in this application appear to be outside of the CAT's jurisdiction.
- [3] The CAT issued a Notice of Intent to Dismiss ("the Notice") the case. The submissions period for the Notice was February 28 – March 17, 2023. The Applicant responded to the Notice. The Respondent did not.
- [4] The Applicant provided evidence in the form of photographs of bites consistent with bed bugs to demonstrate that it was a real issue. The Applicant referred to section 117(1) of the Act, stating that "Section 117 of the Condo Act prohibits anyone from allowing or causing any condition to exist, or carry on with any activity in a unit or in the common elements, that are likely to damage the property, or to injure someone." The Applicant correctly cites section 117(1) of the Act – however, the CAT only has jurisdiction to deal with issues that fall under section 117 (2) of the Act.
- [5] I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

## **ORDER**

1. The Tribunal orders the Application dismissed.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: March 21, 2023