

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 21, 2023

CASE: 2023-00048N

Citation: MacQuarrie et al. v. Leeds Condominium Corporation No. 3, 2023 ONCAT 47

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

Member: Keegan Ferreira, Vice-Chair

The Applicants,

Gay MacQuarrie

Christine Hesketh

Bob Gaylord

Rod and Tina Cacciato

2383655 Ontario Limited

Tina Field

Represented by Gay MacQuarrie

The Respondent,

Leeds Condominium Corporation No. 3

Submission Dates: February 17, 2023 to March 3, 2023

DISMISSAL ORDER

- [1] The Applicants are unit owners in the Respondent condominium corporation. They submitted an application to the Condominium Authority Tribunal (CAT) on February 9, 2023. This application was filed as a dispute about an unreasonable odour nuisance, and about provisions in the condominium corporation's governing documents that govern other types of nuisances, annoyance or disruptions.
- [2] The application relates to damage caused by a flood that occurred in the condominium complex on July 24, 2022, which forced a number of residents to evacuate. The Applicants allege that for several weeks after the flood, there was an odour of sewage throughout the first floor of the building and that it is unclear if there are bacteria in the ventilation system which may adversely affect the health of residents who remain in the building. The Applicants submitted that they were seeking redress and assistance to resolve the fact that they have been deprived of a habitable home.
- [3] When filing their application, the Applicants cited two provisions of the corporation's governing documents which they contend are relevant to these

issues. The first is Article III of the corporation's by-laws, which requires that the corporation repair and restore the common elements after damage. The second is Section VII of the corporation's declaration, which requires that the corporation send a notice to the owners if the board determines that there has been substantial damage to 25% of the building. The Applicants argue that the corporation has not adequately performed these responsibilities, and that they have consequently been deprived of safe habitation of their units.

- [4] On February 17, 2023, I issued a notice of intent to dismiss the application at application intake as it appeared to relate to issues that fall outside the Tribunal's jurisdiction. In that notice, I stated that while the CAT does have jurisdiction to deal with odour nuisances and 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 other type of nuisance, it did not appear that any of the issues raised by the Applicants directly related to such a provision. Accordingly, I advised the parties that it appeared that the issues raised by the Applicants fall outside of the Tribunal's jurisdiction.
- [5] I invited submissions from both the Applicants and from the Respondent on whether the case should be dismissed. The Applicants provided a submission, but the Respondent did not.
- [6] In their submission, the Applicants contend that the July 24, 2022, flood has not been treated with the urgency it deserves and that no substantive work has been done to restore the affected units. They submit that one of the owners have begun to repair and restore their units at their own expense. The Applicants also submit that there has been a lack of adequate communication from the board about the flood and about the corporation's plans to remedy the damage. The Applicants also provided photographs showing the extent of the damage caused by the flood.
- [7] While I appreciate that the Applicants are dealing with very real flood damage issues, I find that this case must be dismissed for three reasons.
- [8] First, while it is true that the Tribunal has jurisdiction to deal with odour nuisances, it is plain from both the from the Applicants' application and submission that the fundamental issue in this case is the flood damage and the corporation's steps to remedy it. While both their application and submission refer extensively to the damage, and to the condo corporation's alleged failings in repairing the damage and communicating with owners, their application includes only a single passing reference to odour, and their submission makes no reference to odour at all. The Applicants' submission also included an excerpt from a letter the owners had recently sent to their board that included a bulleted list of nine steps they expected

their board to take – all nine of these steps relate to the flood damage, its remediation, and to expectations about communications that will be given to owners. None of the nine relate directly to odours or to similar nuisances.

[9] Second, the two provisions identified by the Applicants do not relate to nuisances, annoyances or disruptions – they relate to the corporation’s obligation to repair after damage, and to the corporation’s obligation to notify the owners. The Applicants did not identify any other provision in the condominium corporation’s governing documents that would suggest that the issues they are experiencing do fall within the Tribunal’s nuisance jurisdiction. I therefore conclude that this application is an attempt to shoehorn the flood damage issue into the CAT’s nuisance jurisdiction.

[10] Third, pursuant to Ontario Regulation 179/17, the Tribunal does not have jurisdiction over a dispute that is also with respect to s. 117 (1) of the *Condominium Act, 1998*, which I have excerpted in full below:

117 (1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

[11] The Tribunal has previously ruled on what factors might contribute to a determination that a dispute is “also with respect to section 117 of the Act” in *Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 1*, where the Tribunal stated at paragraph 11 that:

... a dispute in a case before this Tribunal should be viewed as “*also with respect to section 117 of the Act*,” where the considerations under that section cannot reasonably or easily be divorced from analysis of the dispute in question or, more particularly, where a correct determination of the central issues in dispute cannot be made without also addressing such considerations.

[12] I find that such is the case here. The odour nuisance cited by the Applicants cannot be reasonably divorced or separated from the underlying flood damage issue. In both their application and submissions, the Applicants clearly identify the damage caused by the flood as the central issue they are seeking to address. They repeatedly refer to the damage the flood has caused and cite the potential that there is harmful bacteria that may pose a health risk to residents, the fact that many units have been rendered uninhabitable, and that the building amenities including the laundry room, storage lockers, and workout room have been rendered unusable. For these reasons, I find that this dispute is also a dispute with respect to section 117 of the Act, and cannot be characterized as a simple odour

nuisance dispute.

[13] For these reasons, I find that the issues raised by the Applicants fall outside the CAT's jurisdiction. While the Applicants may have other avenues available to them to address their concerns, the issues they have raised and the remedies sought fall outside of the CAT's jurisdiction. Accordingly, I order that this case be dismissed.

ORDER

[14] The Tribunal orders that this case is closed.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: March 21, 2023