

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 4, 2023

CASE: 2022-00641N

Citation: Jennison v. Pinkus. 2023 ONCAT 55

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

Member: Dawn Wickett, Member

The Applicant,

Kate Jennison

Self-Represented

The Respondent,

Brenda Pinkus

Self-Represented

The Intervenor,

Halton Condominium Corporation No. 28

Represented by Lori Saroli, Agent

MOTION ORDER

- [1] The Applicant is a unit owner in Halton Condominium Corporation No. 28 ("HCC 28"). The Respondent is also a unit owner in HCC 28. The Respondent does not live in her unit and rents it to her son, Adam Pinkus (the "Tenant").
- [2] The Applicant, the Respondent and the Intervenor joined the case which is currently in Stage 2-Mediation.
- [3] When the Applicant filed her application with the Tribunal, she did not include the Tenant as a party to the proceeding.
- [4] The Applicant filed this case with the Tribunal alleging unreasonable nuisance, annoyance, or disruption by way of odor/smoke created by the Tenant. Part of the remedy the Applicant is seeking, is an order/agreement that the Tenant will refrain from the behaviour allegedly causing the problem.
- [5] As part of the remedy the Applicant is seeking, potentially affects the rights of the Tenant, and the Tenant is not a party to the proceeding. Given the possible impact on the Tenant, I found it appropriate to bring a motion forward to determine if the Tenant should be made a party to this proceeding.
- [6] The motion was brought forward on March 28, 2023. The Applicant, the

Respondent and the Intervenor were given until March 31, 2023, to make submissions on the issue. The Applicant and the Respondent provided their submissions. The Intervenor did not provide any submissions and they were notified on April 3, 2023, that I would render a decision in the absence of their submission.

- [7] Subsection 1.38(3) of the *Condominium Act, 1998* (the “Act”) states that the “Tribunal may add or remove a person as a party if the Tribunal considers it appropriate.” Subsection 1.39(1) of the Act requires the Tribunal to ensure that all “persons directly affected by the proceeding” have an opportunity to know the issues and to be heard.
- [8] The Applicant submits that she understands why the Tenant should be part of the proceeding, however she feels uncomfortable having any direct interaction with the Tenant based on conversations she overheard, which were, in her opinion “confrontational”. The Applicant further submitted that her elderly parents who live with her in her unit should be added as parties to the proceeding as they are directly impacted by the nuisance allegedly caused by the Tenant.
- [9] The Respondent submitted that she does not believe it would be beneficial to include the Tenant in the proceeding given he experiences some daily challenges. The Respondent further submitted that if the Tenant is ordered to be a party to the proceeding, she will have to seek legal representation.
- [10] Having considered the submissions of the Applicant and the Respondent, as well as the provisions of the Act, I find it appropriate to order that the Tenant be made a party to the proceeding. In making this finding, I considered the fact that the application makes allegations against the Tenant, and as part of her remedy, the Applicant is seeking an order/agreement that the Tenant refrain from engaging in the behaviour which leads to the alleged nuisance, annoyance, or unreasonable disruption. For the Tribunal to consider granting the Applicant’s requested remedy to have the Tenant refrain from the alleged offending behaviour, then, the Tenant must be party to the proceeding, and have an opportunity to respond to the allegations made against him. My finding is not only in keeping with the provisions of subsection 1.38(3) and 1.39(1) of the Act, but also with the rules of natural justice. Further, while the Applicant submits, she is not comfortable dealing directly with the Tenant, this does not mitigate the issue of him having the right to know about the allegation made against him and the possibility of an order being made which may impact his rights.
- [11] With respect to the Applicant’s position that her elderly parents be made a party to the proceeding, I decline to make this order. The Applicant’s parents live with her in her unit, and the impact of the alleged nuisance, annoyance or unreasonable disruption created by the Tenant can be considered during the proceeding by way of witness testimony or statements. They do not need to be a party to the proceeding for the Tribunal to understand or have knowledge of the impact.

- [12] Regarding the Respondent's claim that if the Tenant is ordered to be a party to this proceeding, she will need to seek legal representation, I remind all parties that legal representation for the Tribunal proceedings is always an available option. Should the Respondent feel the need to obtain legal representation, she is free to do so. In saying that, if the Respondent wants legal representation, she is encouraged to obtain this service as soon as reasonably possible to prevent delay in the Tribunal's proceeding.
- [13] Adding a party to the proceeding in Stage 2 Mediation requires some administrative support from a Tribunal staff member. In essence, the file will be closed and re-opened with a new file number. This is an administrative process. The Applicant can communicate with a Tribunal clerk for more information on this process by emailing catinfo@condoauthorityontario.ca.

ORDER

- [14] Under the authority of subsection 1.38 (3), the Tribunal adds the Tenant, Adam Pinkus as a party to this proceeding.
- [15] Upon receipt of this order, the Applicant is directed to contact catinfo@condoauthorityontario.ca for support on adding the Tenant as a party to the proceeding as ordered in paragraph 14.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: April 4, 2023