

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 14, 2023

**CASE:** 2023-00066N

**Citation:** Toronto Standard Condominium Corporation No. 2696 v. Tewolde, 2023 ONCAT 79

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Toronto Standard Condominium Corporation No. 2696  
Represented by Darlene Mezzabotta, Paralegal

**The Respondent,**

Shewanesh Tewolde  
Self-Represented

**Submission Dates:** May 29, 2023, to June 5, 2023

### **DISMISSAL ORDER**

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 - Tribunal Decision on May 24, 2023.
- [2] Under Rule 43.1 of the CAT's Rules of Practice, the CAT can close a case in Stage 3 - Tribunal Decision if the CAT determines that that it has no legal power to hear or decide upon the dispute.
- [3] The Applicant, Toronto Standard Condominium Corporation No. 2696 ("TSCC 2696") filed this application alleging the Respondent has continually violated section 117(2) of the *Condominium Act, 1998* (the "Act") by causing nuisances stemming from hoarding, allowing infestation of various pests (fruit flies, cockroaches, and rodents) in her unit and on the common element balcony. These behaviours allegedly create fire risk and nuisance from pests and odour which are in contravention of the Act, and several provisions in the declaration and rules.
- [4] In response to these alleged nuisances, the Applicant is seeking a compliance order against the Respondent, namely that the Respondent comply with the requirements of the Act and TSCC 2696's governing documents. Specifically, the

Applicant seeks the following orders:

1. That the owner must cease and desist creating a nuisance under the Corporation's governing documents regarding hoarding, garbage, vermin as well as nuisance from odour (ss.117(2));
2. That owner shall clean the unit to abate this nuisance and shall keep the unit and balcony clean going forward;
3. Costs of previous and ongoing pest control;
4. Indemnification for its legal costs pursuant to sections 6, and 47, and Schedule E, part (o).; and
5. Any pest control or other cleaning costs for the unit, balcony, or common elements.

[5] The Stage 2 Summary and Order advised the parties that in Stage 3-Tribunal Decision, the Member may consider a preliminary matter, being, does the Tribunal have jurisdiction to hear this matter given the problem description set out in the application.

[6] On May 29, 2023, I raised the preliminary issue of the Tribunal's jurisdiction to hear this matter given the details set out in the application problem description; in particular, the allegation that the alleged nuisance created by the Respondent is a fire risk. Allegations that a person is creating a fire risk fall under section 117(1) of the Act, over which the Tribunal has no jurisdiction. Subsection 117(1) reads as follows:

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.

[7] Both parties were afforded an opportunity to provide submissions on the preliminary issue I raised. Only the Applicant provided submissions. The Respondent advised they would not be providing submissions on the issue but did upload a couple of documents in support of their position that they do not have a pest infestation in their unit.

[8] For the reasons set out below, I find the substance of this case is about health and safety issues, which is outside the scope of the Tribunal's jurisdiction as they are

subject to section 117(1) of the Act.

## **ANALYSIS**

[9] The Tribunal's Rule of Practice 19.1(c) states that the Tribunal can dismiss an application or case where a case is about issues that the CAT has no legal power to hear or decide.

[10] The application was filed under section 1(1)(d) (iii.2) of Ontario Regulation 179/17 ("O. Reg 179/17") which states the Tribunal may deal with disputes regarding:

Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[11] The Tribunal's jurisdiction's regarding nuisance, annoyance or disruption arises under section 117(2) of the Act which states:

(2) 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 or the assets, if any, of the corporation; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[12] Section 26 of Ontario Regulation 48/01 ("O. Reg 48/01") defines the "other prescribed nuisances" as odour, vapour, light, vibration, and smoke if they are "unreasonable".

[13] This application stems from TSCC 2696's concerns that the Respondent's alleged hoarding behaviour allows for fire risk, pest infestation and emanating odour. To address these issues, prior to filing an application with the Tribunal, the Applicant communicated their concerns with the Respondent. The Applicant and its legal counsel have written letters to the Respondent instructing them to clean the unit and remove the excess debris. Despite these communications, the Applicant states that the Respondent failed to bring the unit up to an acceptable standard of cleanliness.

[14] The Applicant also tried to perform pest control treatment in the Respondent's unit but was denied entry.

- [15] In reviewing the letters, the Applicant sent to the Respondent, I note, each letter cites sections 117(1), 117(2) and 92 of the Act. The letters also clearly identify the Respondent's unit as a fire risk requiring "URGENT FIRE SAFETY WORK" which includes clearing the unit of all hazardous materials and all causes of pest infestations. Of particular interest, in a legal letter sent to the Respondent on December 13, 2022, the Applicant included the outcome of a fire safety inspection that was completed on the Respondent's unit. The assessment is dated December 7, 2022, and identifies the Respondent's unit as a fire hazard due to hoarding and required service and repairs. The letters did not identify odour as an issue. The Respondent was only given notice of the nuisance of odour emanating from their unit when the Applicant filed this application. This is significant because it would appear the odour issue was non-existent or of little concern to the Applicant until the time that they decided to file an application with the Tribunal. Had odour not been identified as an issue in the application, it is likely the Tribunal would have raised the jurisdictional issue much earlier in its process.
- [16] The Applicant submits that the application falls within the Tribunal's jurisdiction as per section 117(2) of the Act as the nuisance is caused "by the Respondent's hoarding items and debris in the Unit and on the Unit's balcony thus allowing or creating conditions in the Unit and on the balcony for infestation by various pests (fruit flies, cockroaches, and rodents). The condition of the Unit and its balcony cause unreasonable odours and pests to emanate from the Unit and disturb the common elements and other units."
- [17] While I do not disagree that nuisances stemming from odour most times fall within the Tribunal's jurisdiction, not all do. To make a determination as to whether an application for nuisance caused by odour falls within the Tribunal's jurisdiction, I must determine whether the odour issue is not capable of being dealt with independently of also assessing and dealing with the matters that fall under section 117(1) of the Act. Often, the source of an odour is intertwined with another issue, such as in this case, alleged hoarding.
- [18] In this matter, based on the problem description in the application, the submissions of the Applicant's Representative and the documentary materials on file, I find the substance of this application is health and safety issues, namely fire risk and pest infestation which fall under section 117(1) of the Act. While there may be an odour emanating from the alleged hoarding behaviour in the unit and on the common element balcony, I find that I cannot address the odour issue without having to make determination about the health and safety issues as they are the alleged cause of the odour nuisance. As previously discussed in this decision, I do not have the jurisdiction to make such determinations. Further, I find the alleged odour

has not been of significant concern to the Applicant given it was never brought to the Respondent's attention until the filing of this application. If it was never addressed with the Respondent prior to filing this application, then how can the Applicant now suggest that the alleged odour constitutes a nuisance. For these reasons I find that this dispute is with respect to section 117(1) of the Act and cannot be characterized as an odour nuisance under section 117(2) of the Act.

[19] For the reasons set out above, I find that the issues raised by the Applicant are beyond the scope of the Tribunal's jurisdiction. While the Applicant may have other available avenues to address their concerns, it is not with this Tribunal. Accordingly, I order that this case be dismissed.

### **ORDER**

[20] The Tribunal orders that this case is dismissed.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: June 14, 2023