

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 21, 2023

CASE: 2023-00189SA

Citation: Middlesex Condominium Corporation No. 337 v. 2447127 Ontario Inc. et al.,
2023 ONCAT 100

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Brian Cook, Member

The Applicant,

Middlesex Condominium Corporation No. 337

Represented by Megan Alexander, Paralegal

The Respondents,

2447127 Ontario Inc.

Represented by Thomas Schoenleber, Paralegal

Deborah DeGroot

Self-Represented

Marty Burke

Self-Represented

Hearing: Written Online Hearing – May 25, 2023 to July 14, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Middlesex Condominium Corporation No. 337 (MCC 337) alleges that the Respondents have contravened a Settlement Agreement reached between the parties on December 9, 2022.

[2] 2447127 Ontario Inc. (“the corporate respondent”) is the owner of a unit in MCC 337. Deborah DeGroot and Marty Burke are tenants in the unit (“the tenant respondents”).

B. THE SETTLEMENT

- [3] The settlement was reached in case 2022-00233N. That case was brought by MCC 337 and concerned complaints about dogs owned by Ms. DeGroot and Mr. Burke. For this decision, the relevant terms of the settlement are as follows:
1. Effective immediately, the Respondents shall not allow any dog under their care and control to be unleashed or otherwise left alone in the common elements.
 2. Effective immediately, the Respondents shall ensure that their guests and occupants shall not allow any dog under their care and control to be unleashed or otherwise left alone in the common elements.
- [4] The settlement also includes terms regarding cleaning up dog feces and monetary compensation. There is no allegation that those terms have not been complied with.
- [5] I find that MCC 337 has provided evidence to show that the tenant respondents' dog has, on several occasions, been outside on the common elements without a leash.

C. ANALYSIS

The contravention allegations

- [6] MCC 337 alleges that the tenant respondents have contravened the settlement by allowing dogs under their control to be unleashed while outside their unit. In support of this allegation, MCC 337 has provided a statement from a neighbour (referred to as "the neighbour" in this decision) and video taken from a home security camera belonging to the neighbour.
- [7] The statement from the neighbour includes complaints about excessive barking. This was not an issue that was addressed in the settlement agreement and so it is not an issue that I can deal with in this application.
- [8] MCC 337 has provided video evidence from the neighbour's home video and relies on this evidence to establish that the settlement has been contravened. I summarize the video evidence as follows:

January 21, 2023

- [9] This short video shows a person leaving the unit with a dog on a leash on two occasions. The video does not show the dog off leash.

February 14, 2023

- [10] This video shows a black and white dog running around two backyard spaces. The dog is not on a leash and is not under anyone's control. The video indicates that this went on for at least three minutes.
- [11] The tenant respondents concede that their dog was outside and not on a leash on this occasion. Their evidence is that the dog was on a leash that was tied to the back fence but the leash broke. When this was discovered, they attached a new leash to the fence.
- [12] In this incident, the dog was clearly not on a leash while outside. However, I accept the evidence of the tenant respondents that this was accidental and caused by the broken leash.

March 1, 2023

- [13] The short video for this date shows the black and white dog run out the front door of the unit to a car. This takes a few seconds. The dog is not leashed. A child chases the dog to the car, and it appears that the dog then entered the car.

March 24, 2023

- [14] There are two videos for this date. The first shows the dog running out of the front door. He runs about 8 meters to another dog that is being walked on a leash by a man. The man then leads the dog back to the unit and he goes inside.
- [15] The second video shows the dog run out the front door and then run back inside after a few seconds.

April 10, 2023

- [16] There are two videos for this date. The first shows the dog run out the front door of the unit towards a car. A person from the house quickly follows the dog, puts a leash on him, and takes him to the car.
- [17] The second video shows the dog run out the front door of the unit. A woman comes after him, puts a leash on him, and brings him back inside.
- [18] There is also some video surveillance of a visit by a municipal bylaw officer. It is not clear what happens in the interaction between the officer and the female tenant respondent, but the encounter does not last long and the officer leaves. This incident does not provide evidence of a contravention of the Settlement

Agreement.

Submissions

- [19] In submissions, MCC 337 argues that the tenant respondents have “blatantly” and “incessantly” violated the settlement agreement, and “have chosen to be non-compliant; even wilfully negligent, in their avoidance of pursuing compliance.” MCC 337 further submits that the contraventions continue to affect the reasonable enjoyment of other unit owners/occupants.
- [20] The corporate respondent agrees that the evidence produced by MCC 337 shows that the settlement agreement has been breached because it proves that the dog was outside and not on a leash. However, the corporate respondent submits that the dogs are under the control of the tenants and that it is the tenant respondents who have breached the agreement and who should be responsible for any cost consequences. The corporate respondent further advises that an application has been filed with the Landlord and Tenant Board, seeking an eviction of the tenant respondents. The reasons for this are the problems and expense that this case has caused.
- [21] The tenant respondents agree that the video evidence shows that their dog has been outside without a leash. They submit that these incidents happened by accident or were very brief situations that did not impact anyone. The tenant respondents submit that the neighbours who provided the statement and videos have been engaged in a course of harassment and that there are other legal proceedings underway related to this.

Conclusions

- [22] MCC 337 has produced evidence to show that the tenant respondents’ dog has been outside without a leash on several occasions between February and April 2023. This establishes a contravention of the settlement agreement.
- [23] I find that the occasions when the dog was outside and not on a leash happened accidentally - on February 14 because a leash broke and on the other occasions because the dog ran out of the house. The available evidence does not substantiate MCC 337’s submission that these occasions show blatant or wilful disregard for the settlement agreement. The evidence rather indicates that the dog is exuberant and sometimes escapes from the front door of the unit. In the videos, when the dog escapes, it is quickly brought under control, either by someone attaching a leash or by someone obviously known to the dog taking it in a car or bringing it back to the house.

- [24] On the basis of the available evidence, I find that these occurrences had no direct effect on anyone else. The one possible exception to this first March 24 video, where the dog runs out and interacts with another dog being walked by someone. From the video, it does not appear that this was an unwelcome interaction on the part of the other dog or its owner.
- [25] MCC 337 submits that these occurrences have a negative effect on a male resident in the neighbour's unit. He was bitten by a dog owned by the tenant respondents three years ago. That dog has not lived in the unit since that incident, but the male resident is triggered by seeing the tenant respondent's dog off leash. The statement from the neighbour does not suggest that either the neighbour or the male resident directly witnessed the occurrences. They were rather captured by security cameras that the neighbour has set up which also appear to function as a surveillance system.
- [26] Section 1.47 of the *Condominium Act, 1998* ("the Act") provides that if the parties agree to a settlement in writing, the settlement is binding on the parties. If one of the parties believes that another party has contravened the settlement, they may make an application to the Tribunal, as the Applicant in this case has done. Under section 1.47(6) of the Act, if the Tribunal determines that a party has contravened the settlement, "the Tribunal may make an order that it considers appropriate to remedy the contravention."
- [27] MCC 337 submits that the contravention of the settlement agreement should result in an order directing the removal of the dog and payment of significant costs. I do not agree that the circumstances of this case warrant those results. In my view, the circumstances warrant an order that the tenant respondents always ensure that any leash used is strong enough that it will not break and that they exercise greater caution when opening their front door, so the dog does not run out of the door unleashed.
- [28] Rule 48.1 of the Tribunal's Rules provides that the unsuccessful Party in a case will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise. Since MCC 337 was at least partially successful, I order the tenant respondents to pay to MCC 337 the amount of \$125, no later than 21 days of the date of this Decision.

D. ORDER

- [29] The Tribunal Orders that:

1. Within 21 days of the date of this decision, the tenant respondents shall pay to MCC 337 the amount of \$125, representing the Tribunal fees for filing the Application.
2. The tenant respondents shall abide by the terms of the settlement and in doing so they shall ensure that any leash used is strong enough that it will not break and will exercise greater caution when opening the door to their unit so that the dog does not run outside unleashed.

Brian Cook
Member, Condominium Authority Tribunal

Released on: July 21, 2023