

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 13, 2023

CASE: 2023-00200N

Citation: Toronto Standard Condominium Corporation No. 2745 v. Kaur et al., 2023 ONCAT 148

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Laurie Sanford, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2745

Represented by Victor Yee, President

The Respondents,

Simrat Kaur

Represented by Kristen Netta, Paralegal

Faruk Ahmed

Not appearing

Hearing: Written Online Hearing – June 20, 2023 to September 13, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] Simrat Kaur owns a unit in Toronto Standard Condominium Corporation No. 2745 (“TSCC 2745”) and has rented the unit to Faruk Ahmed since December 2, 2022. Beginning in January 2023 and continuing after this hearing began, complaints have been made by TSCC 2745 and its residents about Mr. Ahmed’s conduct. The complaints have escalated from complaints about noise and smoking to complaints of disputes, including injuries requiring police and medical intervention, and culminating in Mr. Ahmed threatening members of TSCC 2745’s security.

[2] TSCC 2745 is seeking an Order declaring that Mr. Ahmed has violated provisions of the *Condominium Act, 1998* (the “Act”) and provisions of TSCC 2745’s governing documents. TSCC 2745 also seeks an Order directing Mr. Ahmed to comply with the relevant provisions of the Act and TSCC 2745 governing documents. Further, TSCC 2745 wants an Order directing Ms. Kaur to take all

reasonable steps to ensure that Mr. Ahmed and all his guests comply with the Act and governing documents. TSCC 2745 also wants to be reimbursed for its \$200 fees paid to the Tribunal for filing this application.

- [3] Ms. Kaur does not deny the conduct of Mr. Ahmed or the validity of the complaints about his behaviour. She submits that she has taken all reasonable steps to secure his compliance with the Act and the governing documents of TSCC 2745. Specifically, she submits that she was delayed in bringing an application to evict Mr. Ahmed before the Landlord and Tenant Board (“LTB”) because TSCC 2745 had not provided her with detailed incident reports of the various conduct complained of. Ms. Kaur submits that this level of detail is required in an eviction application. Ms. Kaur also seeks her costs of this application, together with other costs incurred by her, from Mr. Ahmed.
- [4] For the reasons set out below, I find that activities of Mr. Ahmed and his guests are in violation of the noise nuisance provisions of the Act. These actions and the incidents of smoking also violate the governing documents of TSCC 2745. The remaining conduct complained of falls outside the Tribunal’s jurisdiction to address.
- [5] While Ms. Kaur has recently taken steps to have Mr. Ahmed’s lease terminated, including obtaining an order for an expedited hearing before the LTB, she was late starting this process. Ms. Kaur also continued sending Mr. Ahmed copies of correspondence from TSCC 2745 and its lawyer after it was apparent that this was not effective in changing Mr. Ahmed’s behaviour. I will grant TSCC 2745 the Order it seeks. Ms. Kaur did not provide sufficient detail to support her request for costs.

B. BACKGROUND

- [6] TSCC 2745’s President, Victor Yee, gave a Witness Statement under affirmation and provided copies of the various communications between TSCC 2745 and Mr. Ahmed and Ms. Kaur. Given that the evidence is uncontested and is consistent and credible, I accept the testimony and evidence.
- [7] Mr. Ahmed apparently became a resident of TSCC 2745 on December 2, 2022. In late January 2023, TSCC 2745 began receiving complaints of noise coming from Mr. Ahmed’s unit. Also in late January, complaints were made about smoking in the gym, with cigarette butts being left there. TSCC 2745 investigated and determined that the perpetrators were either residents of or guests of Mr. Ahmed’s unit. Sometime in early February TSCC 2745 telephoned Ms. Kaur about these complaints. According to Mr. Yee, Ms. Kaur advised the management of TSCC 2745 that the residents of her unit were new tenants and she wanted to give them

time to adapt. The President of TSCC 2745 testified that during this call Ms. Kaur was reminded of her responsibility to obtain compliance from her tenants. It should be noted that the only tenant involved in these proceedings is Mr. Ahmed.

- [8] Complaints of noise continued into February and included a complaint of harassment by people who were living in or visiting Mr. Ahmed's unit. On February 15, 2023, in response to a complaint, TSCC 2745 security went to Mr. Ahmed's unit and found a knife and blood on the floor and one person in the unit with a bloody shoulder. In response to the ongoing complaints and the seriousness of the February 15th incident, TSCC 2745 instructed its counsel to issue a legal enforcement letter to both Ms. Kaur and Mr. Ahmed, which was done on February 26, 2023.
- [9] The following day, TSCC 2745 security received a complaint about fighting in the hallway and found residents of the unit or guests of Mr. Ahmed in an argument. On March 14th there were multiple complaints of noise, which resulted in a second legal enforcement letter to Ms. Kaur and Mr. Ahmed. A further noise complaint was made on March 24th. On March 29th around 4:00 am, emergency medical services ("EMS") entered Mr. Ahmed's unit and left with a female on a stretcher and another person who was apparently ambulatory. The complaints continued and TSCC 2745 brought this application.
- [10] The complaints continued after the application was brought and appeared to escalate. On April 7th, Toronto Police Service officers ("TPS") entered Mr. Ahmed's unit and left the unit with a male. On April 11th, both the TPS and the EMS went to the unit. The EMS left with a female and the TPS left with a male in handcuffs. Noise complaints and a further smoking and odour complaint were made in April. On April 26th, the TPS and EMS attended the unit and left with Mr. Ahmed on a stretcher. On April 30th, there was a report of Mr. Ahmed harassing security staff at the concierge desk. Mr. Ahmed reportedly physically assaulted a security guard, which resulted in the TPS, EMS and Toronto Fire Services attending.
- [11] On May 21, 2023, Mr. Ahmed was naked and walking around the indoor common elements. Complaints continued and on at least two occasions Mr. Ahmed threatened the security staff. The most serious of these occurred on July 7th around 6:15 pm. After noise complaints were investigated and a fight involving Mr. Ahmed was broken up, Mr. Ahmed visited the security desk, showing signs of intoxication. Mr. Ahmed became angry on being denied the use of the security telephone, swore at the staff and threatened to bring a gun and "shoot you all guys". The TPS were called and investigated and took Mr. Ahmed away. It is not clear whether any further action was taken by the TPS.

[12] In all, eighteen incident reports were filed against Mr. Ahmed and his guests from January 2023 to July 2023. Most of these complaints related to noise, including the noise of arguments and fighting. Only two complaints, on January 30th and April 17th, were of the odour of smoking.

C. ISSUES & ANALYSIS

[13] The issues in this case may be summarised as follows:

1. Is Mr. Ahmed in violation of the Act by engaging in activities that created multiple types of nuisances?
2. Is Mr. Ahmed in violation of TSCC 2745's governing documents by engaging in activities that created multiple types of nuisances?
3. Is Ms. Kaur in violation of subsection 119(2) of the Act by failing to take all reasonable steps to ensure that Mr. Ahmed, his invitees, agents and employees, complied with the Act and the governing documents of TSCC 2745?
4. What remedies should follow from these findings?

Issue 1 – Is Mr. Ahmed in violation of the Act by engaging in activities that created multiple types of nuisances?

Noise Nuisance

[14] TSCC 2745 alleges that Mr. Ahmed's conduct, or the conduct of his guests, created several types of nuisances. Considering first the allegations of noise nuisance, section 117(2) of the Act prohibits activity that results in any unreasonable noise that is a nuisance, annoyance or disruption in a condominium unit or in the common elements.

[15] The question becomes when does a noise become both unreasonable and a nuisance, annoyance or disruption? There is no definition of nuisance in the Act. The Tribunal considered what criteria should be used in the absence of a definition in the case of *Carleton Condominium Corporation No. 132 v Evans*, 2022 ONCAT 97. In that case, the Tribunal found that:

. . . . it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

[16] In this case, most of the 18 complaints made against Mr. Ahmed and his guests in the seven months from January to July relate to noise and the incidents appear to be escalating. This number and frequency of complaints is evidence that the noise that Mr. Ahmed and his guests are making is non-trivial. Most of the complaints appear to relate to noise in the evening or at night, when the disturbance would be most substantial. I find that the activities of Mr. Ahmed and his guests have caused a noise nuisance.

Smoke and Odour

[17] Section 26 of Ontario Regulation 48/01 to the Act sets out other heads of prescribed nuisance that the Act prohibits if it is unreasonable. These include odour and smoke.

[18] There were two complaints about the odour of smoking that were traced by TSCC 2745 and found to be caused by Mr. Ahmed or his guests. One of the two complaints concerned smoking in the common area and leaving cigarette butts there and one other complaint was made about the odour of smoke. There were also two earlier incidences of smoking investigated by TSCC 2745, but they were reported in the fall of 2022 and involved tenants other than Mr. Ahmed. While undoubtedly irritating, I find that these complaints are isolated and do not rise to the level of a substantial interference. There is no smoking or odour nuisance under the Act.

Other Nuisance

[19] TSCC 2745 is properly concerned about the escalating level of violence in the conduct of Mr. Ahmed and his guests. There have been a number of incidents involving injury and which required the police to attend. No condominium resident would want that in their home. Of particular concern are the threats made by Mr. Ahmed against the TSCC 2745 security staff, which are also escalating. This conduct is addressed in subsection 117(1) of the Act, which reads:

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.

[20] The incident of Mr. Ahmed's public nudity may also be considered a matter to be dealt with under subsection 117(1) of the Act as it may be said to have risked injury to Mr. Ahmed or mental distress to others.

[21] Section 1 of Ontario Regulation 179/17 to the Act sets out certain prescribed areas of the Tribunal's jurisdiction. Included in these areas are nuisances as set out in subsection 117(2) of the Act or in section 26 of Ontario Regulation 48/01. However, subsection 1(3) of Ontario Regulation 179/17 specifically excludes from the jurisdiction of the Tribunal a dispute "which is also in respect of" subsection 117(1) of the Act. The effect of this provision is to reserve to the courts the jurisdiction to deal with matters arising under subsection 117(1) of the Act. In this case, this includes the alleged incidents of injury, threats and violence involving Mr. Ahmed or his guests. Therefore, the Tribunal lacks the jurisdiction to address these issues.

Issue 2 - Is Mr. Ahmed in violation of TSCC 2745's governing documents by engaging in activities that created multiple types of nuisances?

[22] Article 3.1, 3.1(a) and 3.1(c) of TSCC 2745's Declaration prohibits the use of common elements if it would result in the obstruction of any rights of another party or the contravention of the Act or TSCC 2745's governing documents. Article 3.1(b) prohibits the use of common elements if it would result in damage to the property of TSCC 2745 or personal injury.

[23] Article 4.1(a) of the TSCC 2745's Declaration prohibits the use of a unit in a way that is likely to cause property damage or personal injury or in a way that unreasonably interferes with the use and enjoyment of property by other owners.

[24] Section 2(a) of TSCC 2745's Rules provides that no tenant "shall create or permit the creation or continuation of any noise or nuisance which may or does disturb the comfort or quiet enjoyment of the units or the common elements." A related section 2(c) prohibits noise being transmitted from one unit to another or to the common elements between 11:00 pm and 7:00 am.

[25] Section 4(h) prohibits smoking in the unit or the common elements, except on the balcony or on an exterior designated smoking unit. Section 4(i) prohibits the discarding of cigarette butts anywhere on the premises other than inside a smoking receptacle. Section 2(b) prohibits the transmission of noise or odours from one unit to another.

[26] Section 20(a) provides that no tenant may act in a manner that is "unmanageable, rude, disruptive, aggressive, abusive, anti-social, threatening or harassing towards Security or other owners or residents." A related section, section 20(b) provides that no tenant may interfere with, hinder or impede Security from carrying out their duties and obligations.

- [27] Here again the provisions of section 1 of Ontario Regulation 179/17 to the Act apply. As noted above, this section sets out certain prescribed areas of the Tribunal's jurisdiction. Of relevance to this issue is clause (d)(iii.1) of section 1 which gives the Tribunal jurisdiction to deal with a dispute over provisions in a condominium's governing documents that "prohibit, restrict or otherwise govern the activities described in subsection 117(2) of the Act or section 26 of Ontario Regulation 48/01". This provision is subject to subsection 1(3) of Ontario Regulation 179/17 which provides that this jurisdiction does not extend to a dispute which is "also with respect to subsection 117(1) of the Act"
- [28] Based on the facts of this case, I find that Mr. Ahmed is in violation of Sections 2(a) and 2(c) of TSCC 2745's rules by creating a noise nuisance and by transmitting noise from one unit to another or to the common elements between 11:00 pm and 7:00 am. Mr. Ahmed also violated Article 3.1, 3.1(a) and 3.1(c) of TSCC 2745's Declaration by using the common elements in a way which obstructed the rights of other parties. The noise and presence of arguing people in the hallway would constrain others from going there.
- [29] While the smoking and odours created by the activities of Mr. Ahmed and his guests do not constitute a nuisance, they are a breach of the no smoking provisions of Section 2(b), Section 4(h) and Section 4(i) of the Rules of TSCC 2745.
- [30] Mr. Ahmed's aggressive and threatening conduct is addressed in the Article 3.1(b) and Article 4.1(a) of TSCC 2745's declaration and Sections 20(a) and 20(b) of the rules of TSCC 2745. However, these sections deal with matters which are also with respect of subsection 117(1) of the Act. Therefore subsection 1(3) of Ontario Regulation 179/17 applies to remove a dispute regarding this conduct from the jurisdiction of the Tribunal.

Issue 3 - Is Ms. Kaur in violation of subsection 119(2) of the Act by failing to take all reasonable steps to ensure that Mr. Ahmed, his invitees, agents and employees, complied with the Act and the governing documents of TSCC 2745?

- [31] Subsection 119(2) of the Act states that an owner of a unit "shall take all reasonable steps" to ensure that a tenant or the guest of a tenant complies with the Act and the governing documents of a condominium corporation.
- [32] Ms. Kaur submits that she has fulfilled this obligation. She points to the fact that she served Mr. Ahmed with an N5: Notice to End Your Tenancy for Interfering with Others, Damage or Overcrowding under the *Residential Tenancies Act, 2006* on February 27, 2023. At the same time, she retained legal representation to pursue

her action before the LTB to evict Mr. Achmed. In her submission, it was TSCC 2745 who delayed matters by not providing her with the various incident reports until after she had written requesting them on April 17th. According to TSCC 2745, the incident reports were provided to Ms. Kaur on April 28th. Ms. Kaur submits that the detailed incident reports were essential for pursuing her action before the LTB. On August 8, 2023, she was successful in obtaining an Order for an expedited hearing before the LTB which, at the date of this hearing, had not yet taken place.

- [33] Ms. Kaur submits that she took all reasonable steps to make Mr. Ahmed aware of the rules and his violations of them. She did this by forwarding to Mr. Ahmed copies of all communications she received from TSCC 2745 concerning his conduct and asked him to cease his complained-of behaviour. She also served Mr. Ahmed regularly with N5 Notices. After Ms. Kaur began receiving detailed incident reports, she attached these to the N5 Notices. Mr. Ahmed failed to respond to any of her communications and blocked her telephone number. She submits that Mr. Ahmed's continued non-compliant behaviour was beyond her control.
- [34] Ms. Kaur submits that the test for determining whether all reasonable steps have been taken is not whether the steps were effective in deterring Mr. Ahmed's behaviour. Rather, the test is whether she objectively took steps to make Mr. Ahmed aware of the prohibited behaviour and the consequence of its continuance and whether she requested its immediate cessation. This, she submits, was done. She also submits that there has not been any deliberate actions or omissions by her that directly or indirectly contributed to Mr. Ahmed's actions.
- [35] Ms. Kaur is correct in saying that the measure of whether an owner has taken all reasonable steps to ensure that a tenant or guest complies with the Act is not whether the actions taken are effective or successful. In this case, there is some evidence that Mr. Ahmed is ungovernable. However, the phrase "all reasonable steps" is a high standard to be met. On the first complaint being reported to Ms. Kaur, she told TSCC 2745 that her tenant was new to the building, and she wanted to give him a chance to adapt. While that may have been a reasonable position, there is no evidence before me that Ms. Kaur advised Mr. Ahmed of the conversation or of her expectations that he would bring himself into compliance with the Act and with TSCC 2745's governing documents.
- [36] Ms. Kaur submits that it was TSCC 2745's delay in providing her with the Incident Reports that delayed her application to the LTB to evict Mr. Ahmed. TSCC 2745 was under no obligation to volunteer the Incident Reports. It did advise Ms. Kaur of her tenant's conduct and of her obligation to bring him into compliance. It was up to Ms. Kaur to request the supporting documentation she needed to bring her

application to the LTB.

[37] Ms. Kaur submits that she fulfilled her obligations by forwarding copies of TSCC 2745's correspondence to her and to Mr. Ahmed advising of his misconduct and its possible consequences. There are two problems with this submission. First, Mr. Ahmed was already receiving this correspondence directly from TSCC 2745. Second, the obligation to use all reasonable efforts to enforce compliance includes the obligation to verify that the steps being taken are having an effect and to adjust them if they are not. There is no evidence that Ms. Kaur explored any other possible action, including any joint action with TSCC 2745, to ensure Mr. Ahmed's compliance.

[38] Ms. Kaur is to be commended for obtaining an order for an expedited hearing before the LTB. However, the course of her conduct overall falls short of the obligation to use all reasonable efforts to enforce Mr. Ahmed's compliance. I find that Ms. Kaur is in violation of her obligation under subsection 119(2) of the Act.

Issue 4 – What Remedy should follow from these findings?

[39] TSCC 2745 requested a declaration that Mr. Ahmed is in violation of certain provisions of the Act and its governing documents and a direction that Mr. Ahmed bring himself into compliance. Considering those provisions that are within the jurisdiction of the Tribunal to address, I have found violations of certain provisions of the Act and TSCC 2745's governing documents and I will direct that Mr. Ahmed immediately bring himself into compliance with those provisions.

[40] TSCC 2745 also requested a finding that Mr. Ahmed had violated Article 4.2(e) of TSCC 2745's Declaration and subsection 2(b) of its rules. Article 4.2(e) of TSCC 2745's Declaration allows for the costs of abatement of any noise, nuisance or offensive action to be borne by the owner. Similarly, section 2(b) of TSCC 2745's rules deals with the costs of abatement of noise and odours. TSCC 2745 led no evidence about the costs of abatement or about how these provisions were violated. Accordingly, I make no finding on the subject.

[41] TSCC 2745 requested an order directing Ms. Kaur to take all reasonable steps to ensure that "any occupier" of her unit, together with that person's "invitees, agents, and employees" complies with the Act and TSCC 2745's governing documents. I am prepared to direct that Ms. Kaur bring herself into compliance with her obligations under subsection 119(2) of the Act with respect to Mr. Ahmed and his guests. However, Ms. Kaur's obligations with respect to any future tenant are set out in the Act and it is not necessary to re-state that obligation in the form of a direction.

[42] TSCC 2745 requested an order directing Ms. Kaur to reimburse it \$200 for the fees it paid to the Tribunal for filing its application. Under Rule 48.1 of the Condominium Authority Tribunal Rules of Practice, effective January 1, 2022 (the “CAT Rules”), TSCC 2745 is entitled to a reimbursement of these fees. In this case it is appropriate that the obligation to reimburse these fees be joint and several between Ms. Kaur and Mr. Ahmed. TSCC 2745 has advised that it will accept this obligation being made joint and several and provided the Tribunal with provisions of its governing documents which permit such a joint and several liability.

[43] Ms. Kaur requests her costs in the amount of \$3,281.51 from Mr. Ahmed. She advises that she has incurred these costs in unpaid utility bills and unpaid rent. She also advises that she has paid this amount to TSCC 2745 for the actions of Mr. Ahmed. These submissions are contradictory. She also submits that she has incurred costs in her LTB application. It is not clear if these costs are also included in her claim. Ms. Kaur has provided no substantiation for any costs incurred, including her legal costs of this application. While I am sympathetic to Ms. Kaur’s claim for some expenses and costs, there is simply not enough cogent evidence before me to support an award. For example, I cannot determine what proportion of these costs are properly the subject of the action before the LTB, what amount was paid to TSCC 2745 on account of her failure to meet her obligations under the Act and what amount represents her legal costs in this application. I will make no order of costs in favour of Ms. Kaur.

D. ORDER

[44] By the authority of section 1.44 of the Act, the Tribunal Orders that:

1. Mr. Ahmed and his guests will immediately refrain from making unreasonable noise.
2. Mr. Ahmed will immediately bring himself into compliance with the following provisions of the Act and of TSCC 2745’s governing documents:
 - a. Subsection 117(2) of the Act;
 - b. Article 3.1, 3.1(a) and 3.1(c) of TSCC 2745’s Declaration;
 - c. Section 2(a), 2(b), 2(c) of TSCC 2745’s Rules; and
 - d. Section 4(h) and 4(i) of TSCC 2745’s Rules.
3. Ms. Kaur will bring herself into compliance with subsection 119(2) of the Act with respect to Mr. Ahmed and his guests.

4. Within 30 days of the date of this decision, Ms. Kaur and Mr. Ahmed will jointly and severally pay to TSCC 2745 the amount of \$200 in reimbursement of TSCC 2745's filing fees with the Tribunal.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: October 13, 2023