

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 2, 2023

CASE: 2023-00092N

Citation: Jones v. Metropolitan Toronto Condominium Corporation No. 1173, 2023 ONCAT 162

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

Member: Ian Darling, Chair

The Applicant,

Russell Jones

Self-Represented

The Respondent,

Metropolitan Toronto Condominium Corporation No. 1173

Represented by Inderpreet Suri, Counsel

Submission Dates: October 20, 2023 to October 25, 2023

DISMISSAL ORDER

[1] This case is dismissed in Stage 2 – Mediation:

1. under Rule 34.3 of the CAT's Rules of Practice because the CAT does not have jurisdiction over / has no legal power to decide the issues in dispute.
2. under Rule 34.3 of the CAT's Rules of Practice because the issues in dispute are so minor that it would be unfair to require the Respondent go through the CAT process to address them.

[2] At the conclusion of the Mediation, I proposed to dismiss the case for the following reasons:

1. This case was filed under section 117 (2) of the *Condominium Act, 1998* (the "Act"). This section deals with prohibited activities. It reads:
 - (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;

2. The Tribunal has authority under Ontario Regulation 179/17 (O. Reg 179/17) to hear disputes related to section 117 (2) of the Act. These disputes relate specifically to “activities” that result in the creation or continuation of a nuisance.
3. There is no dispute that there is noise. The parties have identified that the noise and vibration in question is caused by heat pumps in the mechanical suite located close to the unit. The parties are working with an acoustical engineer to reduce the noise.
4. There is no “activity” that is causing the noise. The mechanical noise is caused by the heat pumps. This noise falls under the repair and maintenance obligations of the corporation. The Tribunal has no jurisdiction to deal with repair and maintenance disputes. The Tribunal does not have jurisdiction to make orders related to this dispute.
5. Although the Tribunal does not have the legal power to make an order in this case, the parties have identified a plan to identify the cause of the noise, and to affect repairs.

[3] The Tribunal issued a Notice of Intent to Dismiss the Case on October 11, 2023. The parties responded to the Notice. The Respondent argued in support of the motion. The Respondent asserted that even though they agree that the Tribunal does not have jurisdiction to deal with the issue, they are committed to finding a resolution to the issue.

[4] The Applicant disagreed with the Notice – arguing that the CAT did not have the legal authority to dismiss the case. They further asserted that the remediation measures were not repair obligations but part of the Corporation’s responsibility to address the problems.

[5] I understand the Applicant’s frustration. They have been living with unacceptable noise for a prolonged time. The engineering report demonstrates that the heat pump creates a noise and vibration. The parties agree that this is affecting the Applicant’s ability to use the unit as their home. However, the tribunal does not have the authority to extend its jurisdiction beyond what is established in the Regulation.

[6] I find that the issues that make up this dispute are not within the jurisdiction of the CAT. Accordingly, I order that this case be dismissed.

ORDER

[7] The Tribunal orders that:

1. This case is closed in Stage 2 - Mediation under Rule 34.3 of the CAT's Rules of Practice.
2. Any documents and messages that have been shared for this Case in Stage 1 - Negotiation and / or Stage 2 - Mediation are private and confidential. That means that the Users cannot share, or tell anyone about, messages or documents they received from other Users during these stages without the permission of the other User.
3. The Users may share a copy of any document they received during the course of this case if required by law, such as to a government organization or a court.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: November 2, 2023