CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 1, 2023
CASE: 2023-00103N
Citation: Ottawa-Carleton Standard Condominium Corporation No. 907 v. Williams, et al., 2023 ONCAT 185

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Ottawa-Carleton Standard Condominium Corporation No. 907
Represented by Mitchell Robinson and David Lu, Counsel

The Respondents,
Lynda Williams
Self-Represented

Kaylee Williams-McKay
Not represented

Hearing: Written Online Hearing – May 3, 2023 to November 6, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ottawa-Carleton Standard Condominium Corporation No. 907, has raised numerous complaints relating to noise and other nuisance-creating conduct by the Respondent, Kaylee Williams-McKay, who is the occupant of a unit of the condominium that is owned by the other Respondent, Lynda Williams, who is also Ms. Williams-McKay's grandmother.

[2] Based upon the submissions and evidence of the Applicant, this appears to be yet another case of an allegedly troubled tenant in a condominium unit causing disturbances relating to noise, pets, and odours that impact the quiet enjoyment of the property by other residents, and where the landlord unit owner has been either unable or unwilling to resolve the issue. However, I find that the situation is a bit more nuanced than this.

[3] Taking into account the submissions and evidence of both parties, a more accurate description of the most troubling or significant issues in this case – surrounding significantly noisy disturbances within the unit – appears to be that of a young woman (Ms. Williams-McKay) who has been subjected to the controlling conduct of certain men who were, in fact, the actual disruptors of peace in the condominium, and of a unit owner/landlord (Ms. Williams) who prioritized concerns about her tenant/granddaughter's safety and well-being over her neighbours' comfort and quiet enjoyment.

[4] This characterization is not presented to absolve the Respondents of responsibility for those persons' conduct. A condominium unit's owners and residents bear responsibility for the behaviour of their guests and other occupants of their unit. As a result, while it is credible that Ms. Williams-McKay did not personally cause the most disruptive disturbances that have affected her neighbours' peace, and that she did not willingly allow them to occur or continue, I cannot find her or Ms. Williams to be entirely faultless or without a duty of accountability; but I find that to some measure they have complied with that duty by their eventually successful efforts to remove and bar the offending visitors from the unit.

[5] In regard to other concerns, such as the alleged nuisances or annoyances of improperly stored garbage, discarded items in the common elements, and the mishandling of pets residing in or visiting the unit, I find the Applicant's claims likely, on a balance of probabilities, to be true, and that the Respondents are wholly responsible for them.

[6] Therefore, for the reasons set out below, I order that the Respondents must take all reasonable steps to ensure that they cease and correct all offending conduct, and that for the future they comply strictly with the condominium's rules. I order that the Respondents reimburse the Applicant its Tribunal filing fees, and a portion of the Applicant's requested additional legal expenses.

B. PARTIES & PROCEEDINGS

[7] The Applicant presented copies of several complaints from other owners or residents of units in the condominium, redacted to protect the identities of the persons submitting them, along with the witness statement of the Applicant's condominium manager, Angela Del Giudice.

[8] Ms. Williams-McKay neither joined the case nor was she represented, so she provided no evidence or submissions.

[9] Ms. Williams did participate, but in a manner that was not consistently helpful to

the Tribunal, providing minimal written submissions and no documentary evidence to support them. She was given the opportunity and my encouragement to seek legal counsel, but declined to do so stating an erroneous belief that any condominium lawyer who represents condominium corporations could not also represent a unit owner.

[10] Ms. Williams' submissions were also hampered by her desire to maintain confidentiality with respect to some facts that were important to have disclosed for the purposes of this case. She initially requested a confidentiality order but did not provide sufficient information to allow me to understand the basis for the request and decide whether such an order was necessary or appropriate, though given opportunities to do so. No such order was ever made; however, in the end, Ms. Williams achieved a measure of the confidentiality she desired by simply not disclosing information that she felt should not be publicly disclosed.

[11] As a result of repeated requests for explanation, I was able to understand the substance of Ms. Williams' position, assess the issues, and make the following decision.

C. ISSUES & ANALYSIS

[12] The Applicant states that, since about October 2021, its condominium manager received numerous complaints from other residents of the condominium about excessive noise from Ms. Williams' unit including:

1. Frequent loud parties continuing overnight and well into the early morning hours, involving shouting, yelling, and excessively loud music ("blasting… at all hours of the night"), and

2. Incessant barking, howling, and whining of one of more dogs, as well as the sounds of scratching and banging on the unit doors and walls that are also attributed to the dog or dogs.

[13] The Applicant also cited a variety of concerns relating to littering (contrary to the Applicant's rules), garbage storage on the unit terrace and front entranceway (also contrary to the condominium's rules) along with resulting odour issues (contrary to subsection 117 (2) (b) of the *Condominium Act, 1998*, (the "Act") and the Applicant's rules). They also cited the occasional incident of a guest parking their motorcycle in front of the building entrance rather than in a designated parking space (also contrary to the condominium's rules).

[14] Based on the Applicant's evidence, it appeared that the most significant noise

issues relating to parties, yelling, and loud music, ceased well prior to the commencement of this hearing. When asked, the Applicant confirmed that there have been no complaints about this sort of conduct since January 2023. The Applicant also confirmed that a state of “relative” cleanliness on the unit terrace had been achieved, potentially resolving the significant garbage odour issues complained of, at least during the time that this hearing was in process. However, issues relating to some littering, storing or placing garbage, the care and treatment of the Respondent’s dogs, and a few issues identified by the Applicant but in respect of which the Tribunal has no jurisdiction (such as misuse of the condominium’s water supply or use of common element spaces for cleaning and drying carpets) have persisted.

[15] Although the occurrence of long, noisy parties in the unit appears to have ceased, it is necessary in this decision to review some of the facts relating to them. The evidence shows that such incidents were common since at least October 2021 until early this year, and that Ms. Williams was regularly and fully informed of all complaints and communicated about them to Ms. Williams-McKay. This did not result in their immediate cessation and, in fact, the complaints seemed to add fuel to the fire, so to speak, prompting the escalation of bad behaviour, as suggested by an incident at a party reported to have lasted from the evening of February 5, 2022, until about 10 a.m. on February 6, 2022, in which Ms. Williams-McKay’s guests were heard to be chanting loudly, “wake them up, wake them up,” beneath one of the neighbour’s bedrooms.

[16] As indicated in the introduction to this decision, however, Ms. Williams’ submissions suggest that “guests” might not be the most appropriate term to describe the individuals who allegedly carried out such conduct. Ms. Williams describes those whom she says “were responsible for making all the noise being addressed at this time,” as “dangerous” and “thugs” who seriously intimidated Ms. Williams-McKay to the point that the young woman had no control over them. She says that Ms. Williams-McKay did not initially tell Ms. Williams or her husband about what was happening out of fear for their safety and her own.

[17] Eventually, Ms. Williams says that she and her husband were informed about it, presumably because she inquired into the condominium’s complaints. They immediately sought advice from a lawyer which she says resulted in them obtaining twelve restraining orders against those individuals. Thereafter, it appears that at least some of the individuals continued to attend at the unit from time to time, breaching those orders. As a result, she advised me that at least two of them were recently criminally charged.

[18] Despite the minimal evidence provided by Ms. Williams, based on her submissions relating to these matters and also based on the Applicant's evidence that there have been no further incidents complained of since about the time that Ms. Williams indicates their efforts to legally restrain the persons she describes as "dangerous…thugs" began to be successful, I find it credible, on a balance of probabilities, that Ms. Williams-McKay was not the primary cause of the noisy disturbances suffered by her neighbours.

[19] While it appears that the resolution of the loud party noise issue might also have helped to resolve or reduce other issues – such as the improper parking of a guest's motorcycle on the common elements –, not all of the Applicant's complaints are satisfactorily answered by the same facts. For example, the Applicant notes that even during this hearing and well after the period of time that Ms. Williams' restraining orders and other efforts appeared to achieve some success it continued to receive complaints relating to the following matters:

1. Improper storage or placement of garbage outside the entrance to the unit and on the unit balcony, terrace, or deck, (all such terms were used in the parties' submissions) and other locations (stated in at least one letter from the Applicant's counsel to the Respondents to be "causing unbearable odours and… attracting rodents and insects");

2. Littering on the common elements (including garbage being seen to be thrown from the unit's balcony);

3. Ms. Williams-McKay's dogs being unattended and/or running loose on the property (on one occasion allegedly "attacking" another resident and, on another, chasing one of the Applicant's board members); and

4. Ms. Williams-McKay failing to clean up her dogs' feces on the common elements.

[20] Rules 9, 13, 16 and 26 of the Applicant's rules specifically prohibit the dumping of garbage, litter, and debris of any kind on the common elements, also specifying unit balconies as prohibited locations other than in a designated screened enclosure that may be located on them. Rule 13 prohibits throwing anything off a unit balcony. Rule 24 of the Applicant's rules, and clauses 3.01 (g) and 4.06 of the Applicant's declaration, not only prohibit pets from being let loose in the common elements, but also impose a "stoop and scoop" obligation on pet owners on the property.

[21] Breaches of the Applicant's rules and declaration provisions relating to pets do not

need to be shown to constitute a nuisance, annoyance, or disruption in order to come within the Tribunal's jurisdiction. Breaches relating to dumping garbage, litter, and debris do. I find that the rules in question do aim at preventing nuisance, annoyances, and disruptions on the condominium property. Further, based on the nature and number of incidents described in other unit residents' complaints and the Applicant's counsel's letters to the Respondents, while I do not conclude that the Respondents' breaches represent a nuisance, in the legal sense, I do find that they constitute an annoyance or disruption, being frequent or even continuous in their occurrence, involving a non-trivial amount of garbage and other debris resulting in uncleanliness, strong odours, and apparent or potential infestations, and creating significant interference with the enjoyment and use by other residents of the condominium property.

[22] Ms. Williams' submissions do not specifically address any of these other complaints. However, she stated that, overall, "[i]t seems that whatever happens in the condo area, [Ms. Williams-McKay] is automatically blamed so the condo will continue until she moves which I now believe is their objective." While I am sure Ms. Williams is sincere in feeling this way, the facts do not suggest that this impression is a reasonable one. The evidence of other residents' complaints and the various reported incidents of misconduct and inconsiderate behaviour show that it is very likely that Ms. Williams-McKay has not been a considerate or thoughtful neighbour and has caused or permitted the complained of annoyances that she and Ms. Williams must now ensure are permanently stopped or corrected.

D. COSTS & COMPENSATION

[23] The Applicant has been successful in demonstrating the Respondents' breaches of the condominium's rules and the Act including in relation to cited nuisances, disruptions, or annoyances, and is therefore entitled to reimbursement of its Tribunal fees in the amount of $150.

[24] The Applicant has also requested the following monetary awards:

1. As compensation, $983.10 in administrative fees incurred for condominium management services relating to the Respondent's conduct; and

2. As costs, $11,623.14 in legal fees and disbursements incurred in relation to these Tribunal proceedings.

[25] I note that prior to the Tribunal proceedings, the Applicant had already collected from the Respondents the amount of $2,409.62 as compensation for legal fees and management expenses related to its compliance efforts. These amounts were

demanded directly from the Respondents based upon the indemnity provisions included in the Applicant's declaration. The appropriateness of these demands is addressed below in this decision. At this point, I note only that the Applicant clarified that such amounts are not included in their request for costs or compensation in this case.

[26] In addition, during the course of these proceedings, the Applicant directly demanded that the Respondent pay an additional $786.50 (over and above its earlier demands and its claims for costs and compensation in this case) for garbage disposal costs ($165) and legal fees associated with preparation and delivery of their demand letter ($621.50). I am not aware of whether this amount has been paid by the Respondent. Based on the details provided in the Applicant's bill of costs, it does appear that at least some or all of the legal fees included in this demand might also be included in the Applicant's claim for costs and compensation in this case. Again, the appropriateness of this demand, made during the course of these proceedings, is addressed below.

[27] I also note that each of the Applicant's demands for payment contains language along the following lines:

> Should you fail to pay the aforementioned costs by the deadline outlined above, OCSCC 907 will have no choice but to add such amounts to the common expenses of the Unit and take steps to recover the amounts owing which can include steps such as the attornment of rent and/or condominium lien.

Compensation for Administrative Fees

[28] The evidence and submissions of the parties in this case strongly suggest that Ms. Williams-McKay was not personally responsible for all the issues complained of, and that Ms. Williams sought to take relatively immediate remedial action once she knew the actual nature of the most disruptive matters and was ultimately successful.

[29] Further, the evidence of both parties indicates that Ms. Williams sought the condominium's understanding and support when seeking to address the issues relating to the persons causing the noisy disturbances in the unit, but the condominium chose not to be involved in helping them resolve such matters, preferring to take the position that it was not their responsibility to assist.

[30] As a result, I am not inclined to award compensation to the Applicant for its administrative expenses related to these matters.

Costs of the Proceedings

[31] In determining whether additional legal costs over and above reimbursement of Tribunal fees should be awarded, Tribunal members may consider factors such as those set out in the Tribunal's Practice Direction, "Approach to Ordering Costs," including:

1. The conduct of all parties and representatives, including the party requesting costs;

2. Whether the parties attempted to resolve the issues in dispute before the case was filed;

3. The potential impact an order for costs would have on the parties; and

4. The provisions of the condominium corporation's governing documents, including its indemnity provisions, and whether the parties understood their requirements.

[32] In determining what amount of costs should be awarded, the Tribunal may also consider such factors as:

1. Whether the costs incurred by the parties are appropriate and proportional to the nature and complexity of the issues in dispute; and

2. Whether the costs are reasonable and were reasonably incurred.

[33] I also take note that although Ms. Williams complied with and paid the Applicant's pre-Tribunal demands for payment, she questioned the validity of those demands in the course of these proceedings. She asked the Tribunal to "explain the issue of charge back needing a court order" and referred to *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 13 ("Rahman"). Although I informed Ms. Williams that the Tribunal cannot offer such advice, her reference to Rahman does have relevance to this analysis.

[34] It is evident, based on its earlier demands to the Respondents and its demand made during the course of these proceedings, that the Applicant believes it has a clear and unmitigated entitlement to demand payment of compliance-related costs and other expenses upon threat of a lien without relying on any authority other than the indemnity provisions contained in its declaration. This position does not appear to be supported by current law.

[35] In Rahman, the Tribunal affirmed the decision in *Amlani v. York Condominium*

Corporation No. 473, 2020 ONSC 194, ("Amlani") that a condominium may not seek to enforce indemnification for compliance-related costs without an order supporting the same. Amlani has since been upheld on an appeal to the Divisional Court (*Amlani v. YYC 473*, 2020 ONSC 5090 (CanLII)) and the Tribunal's application and interpretation of Amlani in Rahman has also been upheld. In Peel Standard Condominium Corp. No. 779 v. Rahman, 2023 ONSC 3758, the Court stated,

> [36] The Tribunal considered *Amlani v. York Condominium Corporation No. 473*, 2020 ONSC 5090 (Div. Ct.), and determined that it did not apply to the circumstances of this case. I agree with the Tribunal's analysis of this point. At paragraphs 44 and 45 of the Decision, the Tribunal quotes from *Amlani* as follows:
>
> The *Amlani* case deals with the interpretation of an indemnification clause and the operation of section 134 of the Act. However, the case does not stand for the proposition that, through deft wording of an indemnification clause, a condominium corporation can deprive an owner of his or her day in court as provided for in subsection 134(5) of the Act. In fact, the Court says, at paragraph 34,
>
> It is one thing to allow the corporation to enforce, by way of lien, common expenses that are applicable to all unit holders and that a majority of unitholders have approved. It is entirely another to allow a condominium corporation the unfettered, unilateral right to impose whatever costs it wants on a unitholder, refer to them as common expenses and thereby acquire the right to sell the unitholder's apartment.
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> Another way of considering the matter is to determine if PSCC779's interpretation of its indemnification clauses is reasonable. Here again, reference may be had to the *Amlani* case, where the Court wrote, at paragraph 46:
>
> Finally, the interpretation the Corporation advances contravenes section 134(5) of the *Act* because the costs it claims related to compliance and enforcement costs without being embodied in a court order. An interpretation that contravenes a statutory provision is, by definition, unreasonable….
>
> [37] I see no error in the Tribunal's interpretation and application of principles stated in *Amlani*.

[36] Based on the foregoing, it would have been more appropriate for the Applicant to have included all compliance-related expenses in its claim before this Tribunal rather than to have demanded payment directly from the Respondent. This is

particularly the case with respect to its demand for payment that was made during these proceedings. I take these facts into account when assessing whether or what amount of costs should be paid by the Respondents in this case.

[37] In regard to the Respondents, their conduct during this case was not ideal. As noted, Ms. Williams-McKay did not participate at all, and Ms. Williams' participation was limited. However, such issues had greater impact upon the Tribunal itself than upon the work that the Applicant's counsel was required to do. Though the period of time over which the case took place was several months, this was not indicative of a significant or unusual number of events requiring submissions, witness examination or other steps that might increase the costs of a party's participation.

[38] Further, the issues in this case were not complex. The Respondents did not deny the conduct that was complained of, and the excuses or explanations given for them were already known to the Applicant. There was not a significant amount of material (submissions or evidence) to be analyzed. In view of the foregoing, I do not think that, for the purposes of determining an award of costs, an award exceeding eleven thousand dollars is reasonably proportionate to the issues or the proceedings.

[39] The only basis I find for awarding costs in excess of reimbursement of Tribunal fees are the indemnity provisions of the Applicant's declaration. Those provisions state:

> Each owner shall indemnify and save harmless the Corporation from and against any loss, cost, damage, injury or liability whatsoever which the Corporation may suffer or incur resulting from, or caused by, an act or omission of such owner, his or her family or any member thereof, and any other resident of his or her Unit or any guests, invitees or licensees of such owner or resident (including costs associated with damage to the property and any costs incurred by the Corporation in preparation for or pursuance of Court proceedings relating to any such act or omission) except for any loss, costs, damages, injury or liability caused by an insured (as defined in any policy or policies of insurance) and covered by the insurance arrange by the Corporation.
>
> All payments pursuant to this Article are deemed to be additional contributions toward the common expenses of the particular Unit owner and will be recoverable as such.

[40] However, while these provisions justify a demand for indemnity, Rahman and Amlani appear to mean that, regardless of the wording of its governing documents, a condominium corporation is not entitled to enforce a demand for indemnification

of compliance-related expenses by way of condominium lien other than that proportion of those expenses that has been awarded to it by a court or this Tribunal. Additionally, a condominium should not expect a court or this Tribunal to grant it total (one-hundred percent) indemnity of its compliance-related expenses, but only reimbursement of that proportion that it determines is fair and reasonable based on the application of its usual principles of analysis.

[41] The default position in this Tribunal, as in most administrative tribunals in Ontario, is not to award any costs other than in accordance with the principles cited above. As noted, I do not find any principles that support an award in this case other than the existence of the Applicant's indemnity provisions, of which I am aware the Respondents have both knowledge and understanding of the expectation that they should pay.

[42] In these circumstances and given that it has already sought and obtained full indemnity of some of its legal costs and other expenses, I conclude that the Applicant is entitled to partial indemnity of its claimed legal expenses for these proceedings in the amount of $3,835.64, being about one-third of the legal expenses claimed in this case.

E. ORDER

[43] For the reasons set out above, the Tribunal orders that:

1. The Respondents, Ms. Williams-McKay and Ms. Williams:

    a. Shall ensure that they and every other person residing in or visiting their unit of the condominium, from this time forward, cease and desist from holding or permitting unreasonably loud yelling, music, and other unreasonable noise emanating from their unit that disturbs the quiet enjoyment of their neighbours and other residents of the condominium, as prohibited by subsection 117 (2) (a) of the *Condominium Act, 1998*, and the rules of the condominium;

    b. Shall not place, store, or leave any debris, refuse, or garbage on the common elements, including the balcony, terrace, or deck of their unit, in any manner or for any length of time that gives rise to disturbing odours, infestation, or any other nuisance, annoyance, or disruption contrary to subsection 117 (2) (b) of the *Condominium Act, 1998*, and the rules of the condominium;

c. Shall not permit any dogs or any other pets of theirs or their guests from time to time to be unleashed or without supervision on the common elements, contrary to the declaration and rules of the condominium;

d. Shall not permit any dogs or any other pets of theirs or their guests from time to time to create significant noise amounting to a nuisance, annoyance, or disruption contrary to subsection 117 (2) (a) of the *Condominium Act, 1998*, and the declaration and rules of the condominium;

e. Shall immediately clean up the feces deposited on the common elements or any other part of the condominium property by their or their guests' dogs or any other pets from time to time, in accordance with the declaration and rules of the condominium; and

f. Are jointly and severally required to pay to the Applicant, as costs, pursuant to clause 1.44 (1) 4 of the *Condominium Act, 1998*:

   i. The amount of $150 for the Tribunal fees incurred by the Applicant; and

   ii. The amount of $3,835.64 as partial indemnification of the Applicant's other legal expenses incurred in relation to these proceedings.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: December 1, 2023