

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 13, 2023

CASE: 2023-00307N

Citation: Peel Condominium Corporation No. 94 v. Cooper, 2023 ONCAT 193

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

Member: Anne Gottlieb, Member

The Applicant,

Peel Condominium Corporation No. 94

Mohiminol Khandaker, Counsel

The Respondent,

Alana-Marie Lisa Cooper

Self-represented

Hearing: Written Online Hearing – September 6, 2023 to November 21, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Peel Condominium Corporation No. 94 (“PCC 94”) is a 161-unit residential condominium complex. The Respondent, Ms. Cooper is an owner of a unit within the condominium. PCC 94 asks that this Tribunal (“Tribunal” or the “CAT”) order Ms. Cooper to permanently remove her dog from the condominium unit and property. PCC 94’s position is that the Respondent has breached the condominium’s declaration and rules by allowing her dog to urinate and defecate inside her unit and on the exclusive-use balcony of her unit. The dog waste drips from the balcony onto the balconies of the units below and causes odours originating from Ms. Cooper’s unit and balcony. PCC 94 also requests an order regarding legal fees and costs related to this application.
- [2] Ms. Cooper did not participate in Stage 1 - Negotiation or Stage 2 - Mediation of this tribunal process. This case proceeded to Stage 3 - Tribunal Decision (“Stage 3”) as a default proceeding.
- [3] At my request, a member of tribunal staff contacted the Respondent. I was advised by tribunal staff that the voicemail for the phone number provided by the Respondent was full. On September 14, 2023, tribunal staff sent an email to Ms.

Cooper, to advise her to join the case and to let her know that a decision could be made without her participation.

- [4] Ms. Cooper did join Stage 3 on or about September 27, 2023. She asked for and was granted an adjournment until October 13, 2023, to obtain legal advice and seek representation. On October 11, 2023, Ms. Cooper asked for additional time, and with the consent of Counsel for the Applicant, she was granted an additional adjournment until October 20, 2023. I advised Ms. Cooper that the Tribunal regularly has unrepresented parties before it, and I encouraged her to participate in the hearing. She did not engage further in the process. I am satisfied that she was aware of this hearing and had access to the case.
- [5] For the reasons outlined below, I find that Ms. Cooper has not complied with PCC 94's rules and declaration. I order her to permanently remove the dog from her unit and the property, within fourteen (14) days of the date of this order. I order Ms. Cooper to pay PCC 94 the Tribunal filing fee of \$125. I order Ms. Cooper to pay pre-CAT costs in the amount of \$1,988.80 and legal costs of this proceeding in the amount of \$3,741.43 to PCC 94.

B. BACKGROUND

- [6] The only evidence before me is evidence provided by PCC 94. The manager for PCC 94 wrote to the Respondent on June 15, 2021, to alert her about complaints of dog waste and drippings from her balcony.
- [7] On February 7, 2022, management wrote to the Respondent to indicate that there were "continued reports of incidents where there has been a failure to clean up after your pet." Management cited the PCC 94's rules and regulations and quoted the following rules:
- 2.7 An owner shall not permit anything to fall from the balcony or patio of the unit nor shall any resident, visitor or other having business with them, sweep, throw, drop from their premises any dirt, water, cigarette butts, or other substances upon the common elements or other balconies and patios.
- ...if pets are seen mutilating, destroying or littering a landscaped property, whether it be common element or belonging to the Owners and/or Tenants, will be held financially responsible. [...]
- [8] On April 5, 2022, PCC 94's legal counsel wrote to the Respondent regarding various repeated breaches of the *Condominium Act, 1998* (the "Act") and the condominium's declaration and rules by the Respondent and/or guests/invitees of the unit. Among other things, the letter reminded the Respondent that the

presence of dog waste on her balcony breaches the condominium's rules. The letter referred to Article X of the declaration regarding costs that could be charged back to a unit.

- [9] On February 9, 2023, PCC 94's legal counsel wrote again to the Respondent advising her that despite prior warnings, the condominium continues to receive complaints about "allowing her dog to relieve itself on the balcony", causing urine to drip onto the balconies of the units below. The letter quoted PCC 94's Rule 2.7, referred to above, and cited Rules 1.4 and 1.5 as follows:

1.4 [...] Pets are not allowed to foul on any of the common and/or exclusive use common elements

1.5 Owners must immediately clean up after the pet should the pet foul on any of the common and/or exclusive use common elements. The enactment of this provision does not condone the fouling of the common and/or exclusive use common elements. [...]

- [10] The February 9, 2023 letter specified that this was a final warning and that if there were further complaints, the condominium's board of directors would consider deeming the pet to be a nuisance and order the removal of the dog from the property. This was in accordance with Rule 1.6 which stated that a pet that is deemed by the board in its absolute discretion to be a nuisance must be removed from the Unit within two weeks. The letter again referenced Article X of the declaration with respect to charge backs of costs to her unit.

- [11] By letter dated April 18, 2023, counsel for the condominium advised Ms. Cooper that her dog was deemed a nuisance by the board of directors and that it must be permanently removed from the property within two weeks. The letter also indicated that the condominium would be conducting a clean-up of the balconies of the units affected by the dog waste, and that all costs incurred would be charged back to her unit, pursuant to Article X of the PCC 94's declaration.

C. ISSUES & ANALYSIS

- [12] The issues to be decided in this case are summarized as follows:

1. Has the Respondent violated PCC 94's rules related to pets, and if so, should the dog be permanently removed from the unit and the property of PCC 94?
2. Is PCC 94 entitled to an award of costs, and if so, in what amount?

Issue no. 1 – Has the Respondent violated PCC 94’s rules related to pets, and if so, should the dog be removed from the unit and the property of PCC 94?

[13] The condominium manager provided evidence including photographs. The pictures were submitted to the management office, at different times and by various people. The photos show: yellow snow and ice from the unit below the Respondent’s unit, from February 7, 2023; dog droppings from a photograph taken by a neighbour in April 2023; pictures of dog excrement taken by the superintendent on or about July 4, 2023; and pictures taken by contractors on October 4, 2023. The manager also testified that neighbours visited the management office with a bucket of dog excrement which had landed on their balcony from the Respondent’s balcony.

[14] I have considered the uncontested evidence before me and particularly the numerous complaints made about the dog urine and dog excrement and smell. I find that PCC 94’s decision to deem the Respondent’s dog a nuisance, in accordance with its rules, is reasonable. I have considered that the complaints received by management from various neighbours were accompanied by photographs and other evidence. In one instance these were confirmed by the building superintendent and in another, it was complained of by contractors on the premises. Further, PCC 94 sent warning letters, and legal letters to the Respondent and asked her to comply with the condominium’s rules. She continued to disregard her obligations as a unit owner. She has not complied with PCC 94’s Rules 1.4, 1.5 and 2.7, and has offered no explanation. The letter of April 18, 2023 from counsel advised the Respondent that her dog was to be permanently removed from the condominium corporation’s premises. I order that Ms. Cooper permanently remove the dog from her unit and the property, within fourteen (14) days of the date of this decision.

Issue no. 2 – Is PCC 94 entitled to an award of costs, and if so, in what amount?

[15] The bill of costs submitted by PCC 94 included pre-CAT legal fees of \$1,760, legal costs of \$8,277.50, and disbursements including filing fees of \$125 (plus HST for each category). PCC 94 asks that the Respondent fully indemnify the condominium corporation for the costs in this matter. Given that PCC 94 has been successful before this Tribunal, I order Ms. Cooper to pay the \$125 fee that the condominium corporation paid to file this application. I make this order pursuant to Rule 48.1 of the Tribunal’s Rules of Practice (the “Tribunal’s Rules”).

[16] The bill of costs identifies the work of the lawyer who wrote three letters to the Respondent. I find that the charge for the three letters written by counsel is reasonable. I order the Respondent to pay \$1,760 plus HST for a total of

\$1,988.80 to PCC 94 under s. 1.44 (1) of the Act, as compensation for damages incurred because of the non-compliance of Ms. Cooper.

[17] As to the costs for the lawyer with carriage of this file before the Tribunal, and the work performed by a law clerk, it is apparent to me that PCC 94 saw no alternative but to have this matter addressed through the Tribunal. There is no evidence of any effort by Ms. Cooper to come into compliance with governing condominium documents. In assessing the costs, I must consider the Tribunal's Rules and particularly Rule 48.2 which states:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[18] The Tribunal's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, outlines some of the factors to be considered in deciding whether to award costs under Rule 48. These include the conduct of a party, and whether the parties attempted to resolve the issues before filing the case. The concept of proportionality is also a factor to consider in determining the appropriate amount of costs to be awarded.

[19] The condominium corporation cited the case of *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48. I am not persuaded that the case before me is an exceptional case in which full costs should be awarded. I note that the Respondent in this case did not provide submissions or testimony, and in that respect, the proceeding was straightforward and uncomplicated. I recognize that other unit owners should not bear costs incurred in relation to someone's unreasonable conduct; however, I do not find that the number of hours reflected in the bill of costs is proportional to the nature and complexity of the matters decided in this hearing. I have taken the relevant factors into consideration, and award the amount of \$3,311 plus HST (being approximately 40% of the legal costs) for a total of \$3,741.43. Ms. Cooper is ordered to pay this amount to PCC 94.

D. ORDER

[20] Under s. 1.44 of the Act, the Tribunal orders that:

1. Within fourteen (14) days from the date of this Order, the Respondent, Ms. Cooper, is to permanently remove her dog from her unit and the property of Peel Condominium Corporation No. 94.

2. Within thirty (30) days from the date of this Order, the Respondent, Ms. Cooper, shall pay compensation in the amount of \$1,988.80 to Peel Condominium Corporation No. 94.
3. Within thirty (30) days from the date of this Order, the Respondent, Ms. Cooper, shall pay Tribunal fees of \$125 and costs of \$3,741.43 to Peel Condominium Corporation No. 94.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: December 13, 2023