

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 8, 2023

CASE: 2023-00115N

Citation: Toronto Standard Condominium Corporation No. 1984 v. Blais et al., 2023 ONCAT 194

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

Member: Dawn Wickett, Member

The Applicant,

Toronto Standard Condominium Corporation No. 1984
Represented by Natalia Polis, Counsel

The Respondents,

JP Blais (did not appear)

Neeraj Makim
Self-Represented

Hearing: Written Online Hearing October 30, 2023, to November 27, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Toronto Standard Condominium Corporation No. 1984 (“TSCC 1984”) filed this application alleging the Respondents are in breach of its governing documents, namely article 3.4 (a) of the declaration and section 8.3 of the rules. In the application’s problem description, TSCC 1984 states that the Respondents’ breach stems from the placement of a bamboo fence placed on the common elements’ balcony.

[2] Article 3.4 (a) of TSCC 1984’s declaration and rule 8.3 read as follows,

Declaration-Section 3.4(a):

No Owner shall make any change or alteration to the Common Elements whatsoever, including any installation(s) thereon, nor alter, decorate, renovate, maintain or repair any part of the Common Elements (except for maintaining those parts....) without obtaining the prior written approval of the Board and having entered into an agreement with the Corporation in accordance with Section 98 of the Act.

Rule 8.3:

Only seasonal furniture, as defined by the Board from time to time, is allowed on balconies, terraces and patios. Exclusive use common elements shall not be used for the general storage of any goods or materials that are not deemed to be seasonal.

- [3] The Respondents in this matter are JP Blais (“Owner”) who is the unit owner and Neeraj Makim (“Tenant”) who is the tenant living in the unit. The Tenant actively participated in the proceeding. The Owner did not. In the Stage 2 Summary and Order, it is indicated that the Owner was advised that even if he does not participate in the Stage 3 proceedings, an order could be made against him.

B. BACKGROUND

- [4] This dispute stems from the Tenant having affixed a bamboo privacy fence to the railing of his common elements’ balcony. In 2018, the Tenant and the condominium manager entered into a verbal agreement that the Tenant could affix the bamboo fence to the railing of his balcony to allow for more privacy. As time passed, the fence deteriorated and TSCC 1984 received complaints about the “unsightly” appearance. In response to the complaints, the Tenant removed the bamboo fence and replaced it with a new one.
- [5] In response to the Tenant having erected the new bamboo fence, TSCC 1984 sent him a letter advising that he was in breach of its governing documents (set out above) and demanded that the fence be removed. To date, the Tenant has not removed the bamboo fence and it appears that the Owner has not required the Tenant to remove it.

C. PRELIMINARY ISSUE

- [6] At the commencement of the hearing, in opening submissions, the Tenant raised a preliminary issue regarding the Tribunal’s jurisdiction to hear this matter. The Tenant submits that the scope of the Tribunal’s jurisdiction does not include disputes related to section 98 of the *Condominium Act, 1998* (the “Act”). Section 98 of the Act addresses issues related unit owners making alterations to common elements. The Tenant submits that since the beginning of this dispute, TSCC 1984 has communicated to him that he is in breach of its declaration because the parties do not have a section 98 agreement in relation to the bamboo fence.
- [7] Given the submissions of the Tenant, and the issues identified by TSCC 1984 in the problem description of the application, I requested submissions from both parties on the issue of the Tribunal’s jurisdiction over this dispute.

Does the Tribunal have jurisdiction to hear this application?

- [8] In its submissions, TSCC 1984 stated that section 98 of the Act does not apply to this application, contrary to the information provided in the problem description. Rather, TSCC 1984 submits that the application is within the Tribunal’s jurisdiction because it is based on compliance with governing documents related to storage,

which is within the Tribunal's jurisdiction.

[9] TSCC 1984 submits that this application is within the scope of the Tribunal's jurisdiction as it is a dispute related to storage of items on its common elements. TSCC 1984 cited section 1 (1) (iii) of the Ontario Regulation 179/17 ("O. Reg 179/17") which sets out the scope of the Tribunal's jurisdiction. Section 1 (1) (iii) of the O. Reg 179/17 states:

(1) The prescribed disputes for the purposes of subsections 1.36 (1) and (2) of the Act are,

(iii) Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.

[10] TSCC 1984 submits that the Tenant's bamboo fence which is affixed to the common elements' balcony is a breach of its rules; specifically, rules 1.1, 5.13, 6.6, 6.11, 8.3 and 8.7 which read as follows:

1.1 Use of the Common Elements, Exclusive Use Common Elements and Units shall be subject to these Rules and any additional rules which the Board may make from time to time to promote the safety, security or welfare of the Owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the Common Elements, Units and assets of the Corporation.

5.13 Nothing shall be placed or hung on the outside of windowsills, building projections, or outside any balcony or terrace railings.

6.6 Nothing shall be placed, located, kept, installed or maintained on the Common Elements by any person other than the Corporation. Any goods or chattels placed, left or stored on the Common Elements in contravention of these Rules may be removed, stored or disposed of by the Corporation at the expense and risk of the Owner/Resident.

6.11 No building or structure or tent shall be erected, placed, located, kept or maintained on the Common Elements and no tent or trailer, either with or without living, sleeping or eating accommodations shall be placed, located, kept or maintained on the Common Elements, including the parking garage and the Exclusive Use Common Elements.

8.3 Only seasonal furniture, as defined by the Board from time to time, is allowed on balconies, terraces and patios. Exclusive Use Common Elements shall not be used for the general storage of any goods or materials that are not deemed to be seasonal.

8.7 No awnings or shades shall be erected over or outside of balconies, terraces or patios without the prior written consent of the Board. The Board shall have the right to prescribe the shape, colour and/or material of such awnings or shades to be erected at its sole discretion.

- [11] TSCC 1984 submits that the Applicant is storing the bamboo fence on the common elements balcony which is contrary to the above noted rules.
- [12] The Tenant submits that the Tribunal does not have jurisdiction because the substance of the dispute is based on issues related to section 98 of the Act. In support of his position, he provided copies of letters sent to him by TSCC 1984 and its counsel. The letters are dated May 28, 2021, July 9, 2021, August 3, 2021, October 19, 2021, November 4, 2022. In the letters, TSCC 1984 advises the Respondents that they are in violation of TSCC 1984's declaration and rules, and demand that the bamboo fence be removed. Further, TSCC 1984 also states in the letters that should the Respondents want to erect another fence on the balcony, they can make a request to TSCC 1984, and that the fence must comply with the requirements set out in section 98 of the Act, which would require them to enter into a section 98 agreement with TSCC1984.
- [13] For this matter to be within the scope of the Tribunal's jurisdiction, I must determine whether the Tenant is using his common elements balcony for storage of his bamboo fence, which would be contrary to TSCC 1984's rules.
- [14] In making my determination as to whether the bamboo fence is being stored on the balcony, I considered the definition of the word "storage". The word "storage" has been defined as follows:

Oxford Dictionary:

- the action or method of storing something for future use.

Merriam-Webster Dictionary:

- the act of storing: the state of being stored
especially: the safekeeping of goods in a depository (such as a warehouse)

Cambridge Dictionary:

- the putting and keeping of things in a special place for use in the future

- [15] From the definitions above, I conclude that storage, as defined and generally understood in common usage means the action of putting something away for use in the future.
- [16] Based on the meaning of the word "storage", I find that the Tenant is not storing his bamboo fence on the common elements' balcony. In making this finding, I considered the purpose of the bamboo fence and the fact the Tenant uses it daily to increase the privacy. If he were storing the fence, by definition, he would not be using the fence daily and it would not be affixed to the railing of his balcony, but likely dismantled and located elsewhere on the balcony.

[17] Given I have found that the Tenant is not storing his bamboo fence on the common elements' balcony, I find the issues in dispute in this application are beyond the scope of the Tribunal's jurisdiction.

[18] For the reasons set out above, I find this application is not within the Tribunal's jurisdiction and it must be dismissed.

D. ORDER

[19] The Tribunal Orders that:

1. This application is dismissed.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: December 8, 2023