

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 27, 2023

CASE: 2023-00198N

Citation: Metropolitan Toronto Condominium Corporation No. 584 v. Kakish, 2023 ONCAT 201

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

Member: Dawn Wickett, Member

The Applicant,

Metropolitan Toronto Condominium Corporation No. 584
Represented by Michael Daniel Pascu, Counsel

The Respondent,

Firyal Hanna Kakish
Represented by Norma Priday, Counsel

Hearing: Written Online Hearing – November 29, 2023 to December 22, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Metropolitan Toronto Condominium Corporation No. 584 (“MTCC 584”) filed an application with the Tribunal seeking an order to have the Respondent’s dog (“Rocky”) permanently removed from its premises pursuant to section 1.44 (1) 2 of the *Condominium Act, 1998* (the “Act”) and its governing documents. It also seeks orders requiring the Respondent to reimburse it for the fee paid to file this application, costs incurred for enforcement action, and legal costs incurred in the Tribunal proceedings.
- [2] The Respondent is 70 years old and resides in her unit with her spouse, her adult son and Rocky. The Respondent submits that Rocky is her emotional support dog (“ESA”) and is required to live with her in support of her mental health disability. As such, she has not complied with MTCC 584’s request to remove Rocky from the premises.
- [3] Article III, subsection (1) (e) of MTCC 584’s declaration and its rule 14 prohibits pets living in the unit. Prior to March 29, 2019, MTCC 584 did not enforce its no pet provisions. On March 29, 2019, MTCC 584 decided to amend its rules and enforce its prohibition of pets living in the units. Part of the amendments to the rules included “grandfathering” the existing pets living in the building. The Respondent got Rocky after March 29, 2019, and alleges that she was not aware

of the rule changes. Despite MTCC 584's decision to enforce its prohibition on pets, the Respondent asserts that Rocky should be allowed to live with her in her unit as an accommodation under the *Ontario Human Right Code* (the "Code").

- [4] For the reasons that follow, I find the Respondent is entitled to keep Rocky living with her on the condominium property as an accommodation in relation to her disability. I do not make any order for costs.

B. EVIDENCE & ANALYSIS

- [5] In early 2022, MTCC 584 became aware that the Respondent was keeping Rocky in her unit. Rocky was not registered as a "grandfathered" pet. MTCC 584's condominium manager, Laverna Woodcock, provided a witness statement. In this statement, Ms. Woodcock stated that MTCC 584 sent demand letters to the Respondent on March 16 and March 25, 2022. I have reviewed the letters. Each letter sets out MTCC 584's Rule 14 and advises the Respondent that she is in breach of this rule by keeping a dog in her unit. The letters also instruct the Respondent to remove the dog from the premises.
- [6] When the Respondent failed to remove Rocky from the premises, MTCC 584 instructed its counsel to send another demand letter. On October 21, 2022, MTCC 584's counsel sent a letter to the Respondent demanding that Rocky be removed from the premises by November 30, 2022. On October 28, 2022, the Respondent's daughter sent a letter to MTCC 584's counsel requesting that Rocky be allowed to stay living in the unit with the Respondent because he is a therapy dog who is "vital" to the Respondent's mental health. This letter set out the Respondent's mental health concerns, along with an offer to meet with the board to discuss the issue, and to provide whatever would be necessary to prove Rocky needs to stay living in the unit.
- [7] In response to the Respondent's daughter's letter, MTCC 584 instructed its counsel to send another letter requesting supporting medical information, or in the alternative, the removal of Rocky from its premises. On January 23, 2023, MTCC 584's counsel sent a letter to the Respondent setting out the medical information required in support of her claim for a Code accommodation. Specifically, the letter advised the Respondent that the medical information required was "a doctor's note that provides a diagnosis of your medical condition, with confirmation that your medical condition constitutes a mental disability within the meaning of the Code, and further, confirmation that the use of a dog has been prescribed as a therapy for the medical condition". The letter advised the Respondent that she had until February 3, 2023, to permanently remove Rocky from the premises, unless she provided the supporting medical information for her claim of accommodation.
- [8] In response to the January 23, 2023, letter, the Respondent provided MTCC 584 with a medical letter from her doctor. The letter is dated January 26, 2023, and reads as follows:

Ms. Kakish informed me she has been told she can no longer keep her dog. However, her dog is a necessary part of her life. Since your informing her of the above, she has developed anxiety and insomnia. Her dog acts as a service dog for her.

[9] Ms. Woodcock stated that the medical letter was not sufficient to support the Respondent's request for accommodation because it did not indicate she "suffered from a condition amounting to a mental disability". As such, she instructed MTCC 584's counsel to proceed with enforcement of MTCC 584's governing documents. On April 12, 2023, MTCC 584 filed this application with the Tribunal.

[10] After the application was filed, the Respondent provided MTCC 584 with another medical letter dated May 17, 2023. This medical letter states the following:

...she has developed significant anxiety and depression. She has difficulty sleeping. She has difficulty carrying out her activities of daily life. The thought of losing her dog has led to a severe impact on her mental health. She has been started on medication because of the above. Medication can have side effects. It is much safer to allow her dog to remain with her. Removing her dog is significantly detrimental to her mental well being.

[11] After considering the second medical letter, MTCC 584 again denied the Respondent's request for accommodation to keep Rocky living in her unit. MTCC 584 takes the position that the second medical letter "does not state the Respondent has a mental disability nor that the dog was prescribed as part of a therapy for the medical condition".

[12] In response to MTCC 584 having again refused to accept the medical information for her request for accommodation, the Respondent provided a third letter from her doctor. This letter dated October 5, 2023, states:

Ms. Kakish suffers from anxiety and depression. Her dog is a recognized support animal which helps to decrease her anxiety and depression. Her mental health problems have been exacerbated by threats to make her give up her support animal.

She did not require medication until she began to be harassed by the condominium board and lawyers.

..... I have also referred her to a psychiatrist....

[13] In relation to the third medical letter, MTCC 584 again takes the position that it is like the previous two letters and does not support the Respondent's request for accommodation under the Code.

[14] Counsel for MTCC 584 provided several cases which he submits support his position that "medical notes indicating that a person has 'anxiety', 'stress' or 'depression' are not a sufficient basis upon which one can conclude that the person has a disability".

[15] The Respondent provided a witness statement. In this statement she stated that Rocky "has rescued me from the darkness which overwhelmed me even before

Covid, and then worsened to the point where I was almost incapable". The Respondent explained that it's her position that the medical evidence she provided to MTCC 584 supports her need to have Rocky live with her as an ESA.

- [16] Because MTCC 584 did not accept the three medical letters she provided in support of her request for accommodation, the Respondent also provided a letter from her treating psychiatrist. This letter was provided during the hearing and is dated November 22, 2023. In this letter, the treating psychiatrist indicated he has diagnosed the Respondent with multiple mental health disorders. The psychiatrist also set out the impact of the mental health disorders, along with the Respondent's need to have Rocky live with her. Below is an excerpt from this letter:

..... a concrete stressor that she has been struggling with for a year now. She had mild existing anxiety which was alleviated by her small dog quite well for the last 3 yrs, and having to remove her pet from her premises has heightened anxiety quite a bit and has deteriorated her quality of life.

She would benefit from resolution of her stress factor - maintaining her therapeutic pet, as it has proven to stabilize her anxiety and maintain her quality of life.

- [17] MTCC 584's response to the psychiatrist's letter is that it "also does not state that the respondent has a disability within the meaning of the Code".

- [18] Counsel for the Respondent also provided various cases in support of her position that the Respondent is a person with a disability under the Code and entitled to the accommodation of having Rocky live with her in her unit. Counsel further submitted that the medical evidence provided to MTCC 584 was more than what is required under the Code because a person seeking an accommodation is not required to provide a medical diagnosis. Rather the Respondent was only required to provide evidence that her "medical condition constituted a mental disability within the meaning of the Human Rights Code". Counsel submits that as the Respondent has provided sufficient medical evidence to establish that she has a mental disability under the Code, MTCC 584 must provide her with the accommodation.

- [19] I have considered the evidence before me and find that the Respondent is entitled to have her ESA, Rocky, live with her in her unit as an accommodation under the Code. While the case law presented by both parties is relevant to the issues in dispute, I am most persuaded by the definition of disability found in section 10 (1) of the Code. This section of the Code clearly defines what disability means when determining who is entitled to accommodation(s). While the Applicant takes the position that the medical letters provided by the Respondent do not specifically state she has a disability, I disagree. Section 10 (1) (b) and (d) state:

"disability" means,

(b) a condition of mental impairment or a developmental disability,...

(d) a mental disorder, or...

- [20] In the medical letters provided, the treating doctor and psychiatrist set out the Respondent's mental health conditions and diagnosis. They also described how the mental health conditions/diagnosis impair the Respondent's functioning, and how Rocky is a vital in managing her mental health. In my view, it cannot be said, as submitted by the Applicant, that the Respondent has failed to establish that she has a disability within the meaning of the Code.
- [21] In my view, the Applicant is quibbling over semantics when asserting its position that the wording in the medical letter does not establish the Respondent's disability. I say this because the Applicant insists that the medical evidence does not specifically state the words "disability", "mental impairment", or "mental disorder", nor does it specifically prescribe Rocky as an ESA. Yet, it is a common understanding that anxiety, depression, and adjustment disorder are mental health disorders, or in the very least, mental health impairments which impact a person's functioning. The Code is clear that disability is defined by these very factors. I am satisfied based on the evidence, and in the context of section 10 (1) of the Code, it is a reasonable inference that the Respondent has a disability.
- [22] Further, the Applicant's assertion that the medical information does not prescribe Rocky as an ESA, again is an example of it quibbling over semantics of the wording contained in the medical letters. The treating doctor and the psychiatrist have clearly indicated the benefits of having Rocky live with the Respondent, and how his removal could/would have a detrimental impact on her mental health. Again, while the word "prescribe(d)" is not explicitly stated in the medical evidence, the substantive meaning is such.
- [23] For these reasons, I find that the Respondent is entitled to keep Rocky living with her in her unit as an accommodation under the Code.
- [24] The Applicant took a narrow approach when assessing the Respondent's request for accommodation. I refer the Applicant to the Ontario Human Rights Commission's policy 13.7 which provides guidance about the duty to accommodate. For ease of reference, I am including a portion of policy 13.7.

..... the person seeking accommodation is generally required to advise the accommodation provider that they have a disability, and the accommodation provider is required to take requests for accommodation in good faith.^[216] In employment, a person with a mental health disability does not have to meet an onerous standard for initially communicating that a disability exists to trigger the organization's duty to accommodate. Organizations should limit requests for information to those reasonably related to the nature of the limitation or restriction, to assess needs and make the accommodation.

The type of information that accommodation seekers may generally be expected to provide to support an accommodation includes:

- that the person has a disability or a medical condition
- the limitations or needs associated with the disability
- whether the person can perform the essential duties or requirements of the job, of being a tenant, or of being a service user, with or without accommodation (this is more likely to be relevant in employment)
- the type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the job, of being a tenant, or of being a service user, *etc.*

C. COSTS

[25] The Applicant has requested an order requiring the Respondent to reimburse it the fee (\$200) it paid to file this application.

[26] The Tribunal's Rule 48.1 states:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

[27] The Applicant was not successful in this matter. As such, there is no basis for an order requiring the Respondent to reimburse it for the fee paid to file this application.

[28] MTCC 584 also seeks an order for costs requiring the Respondent to reimburse it for the legal fees (amount not disclosed) incurred during the Tribunal proceedings, as well as compensation for the legal fees incurred for attempting to enforce the provisions of its governing documents.

[29] The Tribunal's Rule 48.2, provides:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[30] I am satisfied that there is no basis for me to deviate from the Tribunal's general practice set out above. The Applicant was not successful and therefore in the normal course does not recover its costs. I decline to make an order for costs and/or compensation.

D. ORDER

[31] The Tribunal Orders that:

1. The Respondent may keep her dog, Rocky, living with her on the premises of Metropolitan Toronto Condominium Corporation No. 584 as an accommodation in relation to her disability.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: December 27, 2023