

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 4, 2024

CASE: 2023-00328N

Citation: Kwok v. Man et al., 2024 ONCAT 2

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

Member: Anna Boudria, Member

The Applicant,

Holly Kwok

Self-Represented

The Respondents,

Siu Wai Man

Self-Represented

Junny Lo

Self-Represented

The Intervenor,

York Region Standard Condominium Corporation No. 1331

Represented by Ramesh Prasai, Agent

Submission Dates: December 18, 2023 to December 22, 2023

MOTION ORDER

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT) about noise emanating from an upstairs unit. The case proceeded to Stage 2 - Mediation on September 12, 2023. The Respondents named are landlord and tenant to the unit above the Applicant.
- [2] Under Rule 34.3 of the CAT's Rules of Practice, the CAT can close a case in Stage 2 - Mediation if the CAT determines that the Applicant has abandoned their case.
- [3] During mediation, the parties agreed to an acoustic testing and retained HGC Engineering to complete the investigation. The testing was completed on October 26, 2023.

- [4] On November 15, 2023, HGC Engineering sent their report to the property manager, who forwarded a copy to all concerned parties.
- [5] On November 30, 2023, I sent a message to the Applicant outlining options, seeking what steps she would like to take next. She was also provided with a link to past noise decisions to assist her in the decision-making process.
- [6] The Applicant responded the same day that she was disappointed with the results and that there was nothing left for her to do. She ended her message by indicating "I have nothing further to say. You can feel free to close your case, I will not be withdrawing the case to give them this closure."
- [7] She was given until December 8, 2023 and advised of the next steps within the process once the time had lapsed. She was also informed that if she chose not to respond, that a Notice of Intent to Dismiss (NOID) would follow. She was encouraged to consider her options as she had time to do so.
- [8] On November 30, 2023, was the last time the Applicant had participated or was heard from in the mediation process.
- [9] On December 18, 2023, a NOID was posted on the CAT-ODR platform due to lack of any communication from the Applicant. The parties were given an opportunity to provide submissions on why they believed the case should or should not be dismissed. The Applicant and Respondents were invited to make submissions by December 22, 2023.
- [10] I have received submissions from all of the parties.
- [11] The Applicant submits that despite the acoustic testing results, she continues to experience daily noise. She also submitted that property management has been notified to attend both units with management to investigate the noise. She wishes to not close this case until a solution [sic] is resolved.
- [12] The tenant respondent submitted that the complaint lacks scientific and objective evidence. He also pointed out that the acoustic testing indicated that the soundproofing level of the building is above the industry standard. Furthermore, that management has investigated both units and found no evidence of excessive sound levels. Finally, he suggests that the parties should not invest any more time in this matter. He believes that if the matter is allowed to continue, it would lead to unwarranted accusation and harassment.
- [13] The unit owner respondent submits that the acoustic testing conducted by HGC Engineering provided a detail report. The report revealed that the laminate flooring

has good impact isolation. As the results of the testing are valid since they were conducted by professionals. She further states that the results were communicated with all parties. Adding that this matter has been under investigation since last year.

- [14] York Region Standard Condominium Corporation No. 1331 as Intervenor submitted that the property management and security team had conducted several investigations and assessments regarding both units. However, they had not found any evidence of noise. Moreover, management conducted several inquiries with other residents who live above, below and on the same floor as the Applicant and Respondent. However, no other owners reported any noise that affected their daily living.

Analysis

- [15] Section 1.41 of the *Condominium Act, 1988* (the “Act”) states that:

The Tribunal may refuse to allow a person to make an application or may dismiss an application without holding a hearing if the Tribunal is of the opinion that the subject matter of the application is frivolous or vexatious or that the application has not been initiated in good faith or discloses no reasonable cause of action. 2015, c. 28, Sched. 1, s. 6.

- [16] The Rules of Practice allows for the CAT to close a case due to inactivity and to dismiss cases that are submitted for an improper purpose.
- [17] Specifically, Rule 11.2 states that every party must check the CAT- ODR system and their email for communication at least once every weekday, or as directed by the CAT.
- [18] Based on CAT’s jurisprudence, active participation is essential for a fair, focused, and efficient process. Parties are expected to be aware of their responsibilities, as failure to participate may lead to their application being deemed abandoned.
- [19] Given the Applicant’s inactivity on the platform since November 30, 2023, raises concerns about her commitment and genuine effort towards the process. This prolonged silence could suggest a lack of genuine effort or good faith on her part.
- [20] However, after receiving the NOID, the Applicant requested to keep her application open without providing any further explanation other than she continues to experience noise.
- [21] It is critical to acknowledge the challenges faced by self-represented parties, who

lack the benefit of the experience from legal representation. Navigating an unfamiliar legal system, compounded with heightened emotions can present significant difficulties and hinder one's ability to defend an application effectively. A fair and equitable process is essential.

[22] While she might not have responded after November 30, 2023, I am not of the opinion that she has abandoned her position. Instead, her inaction would be consistent to someone not familiar on how to navigate the process and dealing with emotions to the situation one is experiencing in their daily living.

[23] The Applicant has indicated that she continues to experience noise. While she is not required to present any evidence in mediation, she must be prepared to bring evidence if she proceeds to Stage 3, in which she is entitled to an opportunity to present her evidence before Member.

[24] The Applicant has 15 days (see [Rule 6 in the Tribunal's Rules of Practice](#)) to pay to go to Stage 3, and the time will commence on the day of the release of this order. The Applicant is to go to the Questions and Request tab on the CAT-ODR platform and follow the directions to move forward. If the time lapses and the Applicant has not taken any action, her application will be closed, as a result.

[25] Accordingly, I order that the Applicant should be allowed to keep her application open.

ORDER

[26] The Tribunal orders that:

1. The Applicant will have 15 days to go to Stage 3, which will commence on the date of this order.

Anna Boudria
Member, Condominium Authority Tribunal

Released on: January 4, 2024