

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 14, 2024

CASE: 2023-00482N

Citation: Toronto Standard Condominium Corporation No. 2010 v. Johnson, 2024 ONCAT 22

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

Member: Roger Bilodeau, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2010

Represented by Bharat Kapoor, Counsel

The Respondent,

Andrew Johnson

Self-Represented

Hearing: Written Online Hearing – November 20, 2023 to January 20, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Toronto Standard Condominium Corporation No. 2010 (“TSCC 2010”) filed an application with the Condominium Authority Tribunal (“Tribunal”) against the Respondent, Andrew Johnson, a unit owner of TSCC 2010 (“Mr. Johnson”), for breach of its by-laws, declaration and rules (“governing documents”) and of the *Condominium Act, 1998* (the “Act”). TSCC 2010 alleges that Mr. Johnson is smoking cannabis in his unit and/or in the common elements, thereby creating a nuisance caused by the cannabis smoke and odour.

[2] Mr. Johnson joined the case but has failed to respond to any communications on the Tribunal’s ODR platform, nor has he provided any evidence or submissions, despite having been offered every opportunity to do so. Therefore, the hearing in this matter proceeded without Mr. Johnson’s participation and my decision is based solely on the evidence and submissions of TSCC 2010.

[3] For the reasons set out below, I have concluded that Mr. Johnson has acted in

violation of TSCC 2010's rule which prohibits the smoking of cannabis. I am ordering Mr. Johnson not to smoke cannabis in his unit and the common elements. I am also ordering Mr. Johnson to reimburse TSCC 2010 for the Tribunal fees of \$200, as well as to pay costs to TSCC 2010 in the amount of \$4,690.07.

B. BACKGROUND

- [4] On or about August 14, 2018, TSCC 2010 revised its governing documents by adopting explicit rules which forbid the smoking of cannabis within the units and in the common elements. These new rules came into force in September 2018.
- [5] Since August 14, 2021, TSCC 2010 has received, and continues to receive, numerous complaints regarding the cannabis smoke and odour emanating from Mr. Johnson's unit. Management issued warning letters to Mr. Johnson on at least three occasions. In addition, Mr. Johnson has received two warning letters from the legal counsel for TSCC 2010. Despite these multiple warnings, Mr. Johnson continues to smoke cannabis within his unit and/or the common elements.
- [6] In support of its application against Mr. Johnson, TSCC 2010 has filed copies of its governing documents and several incident reports, as well as the warning letters issued by its lawyers and an affidavit by its on-site manager.

C. ISSUES & ANALYSIS

- [7] The issues to be addressed in this matter are:
1. Is Mr. Johnson in breach of TSCC 2010's governing documents and the Act regarding the smoking of cannabis?
 2. What order(s) should the Tribunal make in this case, including on the matter of costs?
- [8] In deciding these issues, I have reviewed all the submissions and evidence provided to me by TSCC 2010, but only refer to those documents that are relevant and necessary to making my decision.

Issue 1: Is Mr. Johnson in breach of TSCC 2010's governing documents and the Act regarding the smoking of cannabis?

- [9] Section 15 of TSCC 2010's Rules reads as follows:

15. In addition to any legislative restrictions from time to time with respect to the use, growth and production of cannabis in any interior common areas or any units:

- (a) **no one shall smoke cannabis in the units or on the common elements**, including the exclusive use common elements. The term “smoke” for the purposes of this Rule shall include, but not limited to, the inhaling, exhaling, burning or carrying of ignited cannabis or substance that contains cannabis and the inhaling or exhaling of vapour containing cannabis; and
- (b) no one shall cultivate, produce, process or test on cannabis or substances that contain cannabis in the units or on the common elements, including the exclusive use common elements. (**my emphasis**)

[10] In addition, section 14 of TSCC 2010’s Declaration provides that no activity shall be carried on in any unit or on the common elements that unreasonably interferes with the use or enjoyment of other residents of the common elements or their units. That prohibition is echoed in TSCC 2010’s Rule 2 (a) which states that residents shall not permit the creation or continuation of any nuisance which, in the opinion of TSCC 2010’s board of directors, may or does disturb the comfort or enjoyment of the common elements or the units of other residents.

[11] Section 117 (2) of the Act provides that:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

...

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[12] Section 26 of Ontario Regulation 48/01, being a regulation under the Act, lists unreasonable odour and smoke among the prescribed nuisances.

[13] I accept the evidence submitted by TSCC 2010, as contained in the incident reports of December 23, 2022, January 17, 2023, and January 23, 2023; as well as the affidavit of Mr. Azeez sworn on December 7, 2023, in his capacity as TSCC 2010’s onsite condominium manager, that Mr. Johnson has in the past, and continues to this date, smoked cannabis in his unit and in the common elements. The evidence supports TSCC 2010’s claim that cannabis smoke is escaping from Mr. Johnson’s unit to the common hallways, as well as onto balconies and inside units which are in proximity to Mr. Johnson’s unit.

[14] Mr. Johnson has been given many opportunities to bring himself in compliance with section 15 of the Rules which prohibits the smoking of cannabis, but he has not done so. Pursuant to section 119 (1) of the Act, Mr. Johnson has a duty to comply with the Act and the governing documents of TSCC 2010.

[15] On a balance of probabilities, I find that the evidence establishes that Mr. Johnson has, since at least August 2021, breached the Act and the governing documents by the creation of a nuisance due to the smoke and odour emanating from his use of cannabis. Mr. Johnson is therefore ordered to not smoke cannabis in his unit and the common elements, in violation of TSCC 2010's rule on this topic.

Issue 2: What order(s) should the Tribunal make in this case, including on the matter of costs?

[16] TSCC 2010 is requesting costs totalling \$6,453.42, comprised of \$200 in Tribunal filing fees and \$6,253.42 in legal fees for all three (3) stages of this Tribunal proceeding, inclusive of HST. TSCC 2010 submits that it should be awarded the full amount of costs incurred, based on the following:

1. Mr. Johnson's failure to respond or comply with the compliance letters sent to him, as well as his refusal to cooperate and participate in this Tribunal hearing, thereby leaving it no alternative but to initiate this Tribunal application and to bear the resulting costs;
2. Mr. Johnson's non-compliant behaviour and non-participation leading to the escalation of this matter to a Stage 3 Tribunal hearing, which could have been resolved before reaching this stage;
3. TSCC 2010, as the innocent party, should not be responsible for legal expenses caused by Mr. Johnson's non-compliance;
4. For TSCC 2010 to bear these costs would unfairly burden all other unit owners, as they would have to collectively cover these expenses through their monthly common fees;
5. Section 36 of TSCC 2010's Declaration allows it to be indemnified for any costs incurred by it as a result of Mr. Johnson's actions, or non-actions; and
6. The costs incurred in this process are justifiable and reasonable.

[17] In sum, TSCC 2010 submits that it has acted reasonably and incrementally throughout this matter (both before and since the start of the Tribunal application), and that multiple notices were sent to Mr. Johnson which outlined the cost consequences of a continued breach of the governing documents as a result of smoking cannabis.

[18] As mentioned above, the evidence supports TSCC 2010's claim that Mr. Johnson is in breach of its governing documents as a result of smoking cannabis. Many attempts were made by TSCC 2010 to seek his compliance prior to engaging legal counsel. As a result of Mr. Johnson's failure to comply with TSCC 2010's notices

and requests, TSCC 2010 was left with no alternative but to retain legal counsel, who sent two letters to Mr. Johnson prior to starting this case. Mr. Johnson has ignored all notices and letters. The legal fees incurred by TSCC 2010 to conduct this case shall therefore be awarded as costs and assessed pursuant to the Tribunal's Rules of Practice.

[19] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44 (2) states that an order for costs "shall be determined in accordance with the rules of the Tribunal." The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 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.

48.2 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.

[20] TSCC 2010 was successful in this case and in accordance with Rule 48.1 of the Tribunal's Rules of Practice, I will therefore order a cost award of \$200 in respect of the Tribunal fees paid by it.

[21] With respect to the legal fees incurred by TSCC 2010 in relation to this proceeding, I am guided by the Tribunal's "Practice Direction: Approach to Ordering Costs" which includes, among other factors to be considered, whether a party had a clear understanding of the potential consequences for contravening the rules, whether a party's conduct was unreasonable or caused delay or expense, as well as the potential impact which an order for costs would have on the parties.

[22] As noted in the case of *Peel Condominium Corporation No. 96 v. Psifimis*, 2021 ONCAT 48, this Tribunal awarded the applicant's costs because there was persistent misconduct by the respondent with respect to compliance. The Tribunal noted that the corporation was required to request an order from the Tribunal "only because Mr. Psifimis deliberately and repeatedly ignored the condominium's numerous attempts to request his voluntary compliance. He disregarded notices, emails and letters ...".

[23] In this case, Mr. Johnson received multiple notices and letters which notified him

that failure to comply with the rule which prohibits the smoking of cannabis would lead to further legal action, including being held responsible for costs, as are now being claimed. Mr. Johnson had full knowledge of this case and chose to not participate at all stages. According to the evidence, Mr. Johnson continues to smoke in breach of the governing documents. His actions demonstrate that he has little regard for his obligations as a condominium owner.

[24] The total number of hours billed by TSCC 2010's law firm is approximately 16 hours. I find that the requested fees are reasonable for this type of default proceeding. It would be neither reasonable nor fair if the owners were to be liable for all of TSCC 2010's cost of obtaining compliance by Mr. Johnson. On the other hand, the proceeding was shortened by the non-participation of Mr. Johnson and the case was not complex. I also note that cases where a 100% indemnity for costs was awarded usually involve a situation where there was a full hearing on the substantive issues (see *Durham Condominium Corporation No. 80 v. Occleston*, 2022 ONCAT 103 at paragraph 21). Based on the foregoing considerations and upon reviewing the legal fees incurred by TSCC 2010 in this particular case, I am ordering Mr. Johnson to pay costs in the total amount of \$4,690.07, being 75% of the amount claimed by TSCC 2010, plus the Tribunal filing fees of \$200.00.

D. CONCLUSION

[25] I have concluded that Mr. Johnson acted in contravention of TSCC 2010's rule which prohibits the smoking of cannabis. TSCC 2010 provided Mr. Johnson with many opportunities to bring his conduct into compliance prior to taking legal action. I am therefore ordering Mr. Johnson to cease smoking cannabis in his unit and in the common elements and to pay costs to TSCC 2010.

E. ORDER

[26] The Tribunal Orders that:

1. Under section 1.44 (1) 2 of the Act, Mr. Johnson must immediately stop smoking cannabis in his unit and the common elements of TSCC 2010;
2. Under section 1.44 (1) 4 of the Act, Mr. Johnson shall pay costs of \$4,890.07 to TSCC 2010 within 30 days of this Order, consisting of Tribunal fees of \$200 and a portion of its legal expenses in the amount of \$4,690.07.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: February 14, 2024