

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** March 7, 2024

**CASE:** 2022-00736N

**Citation:** Kassir v. Metropolitan Toronto Condominium Corporation No. 607, 2024 ONCAT 34

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

**Member:** Michael Clifton, Vice-Chair

**The Applicant,**

Bashar Kassir

Self-Represented

**The Respondent,**

Metropolitan Toronto Condominium Corporation No. 607

Represented by Lidia Serebriakova, Agent

**Hearing:** Written Online Hearing – May 25, 2023 to March 2, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

[1] The Applicant is the owner of a unit of Metropolitan Toronto Condominium Plan No. 607. The condominium consists of seven buildings and includes both residential and commercial spaces.

[2] The Applicant alleges,

1. that the Respondent has not taken reasonable steps to prevent trespass onto the property by a person whom the Applicant characterizes as an “intruder” (which is how I will refer to this person throughout this decision) who enters into the condominium’s stairwells causing a variety of disturbances, particularly noise, smoke, and odour, and
2. that the Respondent has failed to properly maintain its make-up air unit (which serves to control air quality in the building), allowing the infiltration of smoke and odours from the intruder into the Applicant’s unit.

- [3] The Applicant cites subsection 117 (2) of the *Condominium Act, 1998* (the “Act”) and other provisions of the Act and its regulations as requiring the Respondent not to permit the activities of the intruder that give rise to such disturbances, which he defines as nuisances, annoyances, or disruptions.
- [4] Though the Applicant’s evidence relating to the intruder is primarily anecdotal, it is confirmed by the Respondent, whose evidence includes written testimonies by the condominium’s president, its operations manager, and its site security supervisor. Based on the evidence of both parties, I find there is an intruder who is the cause of unwanted noise, smoke, and odours that are bothersome for the Applicant and his family.

### **Preliminary Motion**

- [5] Although the Respondent’s evidence confirms the circumstances described by the Applicant with respect to the presence and conduct of the intruder, the Respondent sought to have the case dismissed. For the following reasons, I did not grant the Respondent’s request:
1. First, the Respondent submitted that the resolutions proposed by the Applicant – orders relating to enforcement of a trespass order and repair of the condominium’s make-up air unit – are outside the jurisdiction of the Tribunal. I agree that enforcement and interpretation of the *Trespass to Property Act* are outside the Tribunal’s jurisdiction. I also agree that, to the extent repair of the make-up air unit is purely a matter of considering the Respondent’s repair and maintenance obligations, it would not be a matter the Tribunal can deal with. However, while the particular resolutions proposed by the Applicant may be beyond the authority of the Tribunal to order, this does not mean that the case itself is not properly brought here. The Applicant is evidently experiencing noise, smoke, and odour, which this Tribunal has authority to address.
  2. Second, the Respondent submitted that the Applicant cited provisions of the Act that do not properly apply in this case, in addition to subsection 117 (2) of the Act. The Applicant’s materials overall have the appearance of someone trying too hard to present their case in a legalistic style, such that at times his submissions seem excessive and some citations were not relevant; however, these are not a basis for dismissing the case. The noise, smoke, and odour complained of by the Applicant clearly fall within the scope of concern covered by subsection 117 (2) of the Act, which the Applicant accurately cites.

[6] The Respondent also presented facts and arguments relating to the Applicant's emotional state and ongoing troubled relationship with the Respondent's board of directors, in order to question the Applicant's credibility and motivations in bringing this case. I found none of this line of argument to be relevant or applicable in this case, and it has had no bearing on the analyses, conclusions, or order set out in this decision.

### **Conclusions**

[7] After reviewing all the evidence and submissions of the parties, and for the reasons set out below, I find as follows:

1. The disturbances caused by the intruder do not amount to a nuisance, but are annoyances prohibited under subsection 117 (2) of the Act;
2. the Respondent has taken reasonable and appropriate steps to address those annoyances, but the problem remains unresolved and the Respondent must continue and increase, or improve, its efforts, and I so order;
3. there is no objective evidence that the Respondent's attention to the maintenance and repair of the air make-up unit is relevant to the degree of smoke and odour annoyances experienced by the Applicant and his family; and
4. although not entirely successful in obtaining the orders he was seeking, the Applicant was partially successful and it was not inappropriate for him to bring this case due to the ineffectiveness of the Respondent's efforts over a long period of time, and therefore I award costs reimbursing the Applicant for his Tribunal fees in the amount of \$200.

[8] I recognize these conclusions may not entirely satisfy the Applicant, who sought an array of declarations and orders from the Tribunal. I understand the Applicant's concerns are serious to him and to his family, and agree that he was entitled to bring this case before the Tribunal, but I find that none of the orders specifically requested by the Applicant are appropriate and all that appears necessary or appropriate for the Tribunal to order is that the Respondent increase its diligence in relation to its existing efforts and fully implement its other proposed steps to finally resolve the problem.

[9] In the interest of helping to ensure that the order in this case provides a concrete measure of effectiveness and accountability, the Respondent is also ordered to provide reports to the Applicant on a monthly basis for six months following from

the date of issuance of this order, informing the Applicant of the steps it is taking and their results.

## **B. EVIDENCE AND ANALYSIS**

### **The Intruder**

- [10] The Applicant describes the intruder as an “unwelcome visitor who has at least one host in our building”. He states he has observed the intruder through a small window in the doorway to the stairwell, and has also confronted him directly. Typically, he says, the intruder answers that he is “just waiting for [his] buddy”.
- [11] The Applicant submits that “an amount of smoke” entering the Applicant’s unit is caused by the intruder. This has included both regular cigarette smoke and “the odour of weed-smoking”. This issue has been ongoing since at least December 2018 but noticeably increased in 2021 and 2022. During this later period of time, the Applicant states he and his wife have discovered the intruder sitting by the heater next to their unit at the end of the condominium corridor, smoking. The Applicant states that when they first discovered this, the intruder seemed to “feel quite secure and tranquil,” and suggests this was due to the lack of any enforcement action on the part of the Respondent with respect to his presence in the building.
- [12] Although the Applicant has frequently called the condominium’s security staff for assistance, as he says he was instructed by the condominium manager to do, he states that the issue has not been resolved but is “exacerbated”. He submits that due to a lack of effective enforcement by the Respondent, “[t]he Unwelcomed Visitor made the stairway a safe place to smoke [and] watch cartoon porn movies” where he also “masturbates, yells, screams,” and harasses residents of the building who pass by. The Applicant states that he has communicated with police, building management, and security about the intruder, though none of this has resulted in the intruder’s removal or a cessation of his activities.
- [13] The Respondent’s evidence agrees with that of the Applicant with respect to the presence and general conduct of the intruder. The evidence of both parties further confirms that the Respondent knows both the intruder’s name and the name and unit of the resident whom he visits, or who has permitted him entry to the property. The dispute between the parties relates not to whether there is an intruder, but whether (a) the conduct of the intruder constitutes a nuisance, annoyance, or disruption for the purposes of subsection 117 (2) of the Act, and (b) whether the efforts of the Respondent to deal with the intruder are or have been reasonable and adequate.

## **Nuisance, Annoyance, or Disruption**

- [14] As noted, the Respondent does not disagree that the intruder exists, and it also agrees with the Applicant that the intruder can be a source of noise, smoke, and odour on the property. It argues, however, that the noise, smoke, and odour caused by the intruder do not amount to a nuisance, annoyance, or disruption, “as such terms are used in subsection 117 (2) of the Act and have been interpreted and applied by the Tribunal in its decisions.”
- [15] Despite that statement, the Respondent’s submissions only directly address the question of what constitutes a nuisance. Citing the Tribunal’s decisions in *Toronto Standard Condominium Corporation No. 2745 v. Kaur et al.* (2023 ONCAT 148) and *Toronto Standard Condominium Corporation No. 2745 v. Akinola* (2023 ONCAT 187), it argues that the number and timing of the complaints of the Applicant “over a period of five years” that specify concern about the intruder’s noise, smoke, and odour demonstrate that there are only infrequent events that do not rise to the level of a substantial interference and therefore do not meet the threshold to constitute a nuisance. The Respondent also suggests that the number and scale of incidents has declined over time, indicating that during 2023 the Applicant has made only one complaint relating to smoke and none relating to noise.
- [16] The apparent reduction in the number of recent, formal complaints by the Applicant does not persuade me that the issues of concern to the Applicant are substantially diminished. The Applicant continued to pursue this case with vigour throughout 2023, and the Applicant’s evidence suggests that after 2022 he may have merely come to the belief that no amount of complaining would obtain the results he is seeking. Tellingly, perhaps, the last of his exhibits containing email correspondence to the board, sent in October 2022, bears the resigned seeming title, “Final Emails to the Board Seeking Changes to No Avail.”
- [17] In any event, the frequency of incidents is only one consideration when determining whether they are substantial. The Applicant’s description of the intruder’s disturbances also speaks to their significance. He states that the intruder engaged in “shouting; screaming, or banging on doors... noises which were disturbing our life.” Regarding smoke and odour inside his unit, he says that these constituted an “unreasonable... disruption” to their “daily life... wellbeing and... mental and physical health.” He explained his family’s efforts to deal with the situation directly – including frequently monitoring the area around their unit, leaving windows open to clear the air regardless of outside temperatures, and placing damp towels at the base of the unit door to block smoke from coming in –

and also described the disruptive impact of the intruder's disturbances on the peace, comfort, and rest of his children.

[18] There is little basis for disagreement that regular and repeated interferences of this nature in and around one's home and impacting one's children, peace, and quiet comfort over a period of years, even if they are somewhat infrequent, are not reasonable. However, though significant and arguably intolerable, I agree with the Respondent that the incidents described by the Applicant may not be sufficiently substantial to be defined as nuisances under the law. However, I find that they could still qualify as annoyances for the purposes of subsection 117 (2) of the Act, and it is my conclusion that they do.

[19] Lastly, the Respondent suggested that some of the disturbances experienced by the Applicant – particularly the infiltration of smoke into the Applicant's unit – may not result exclusively from the intruder's conduct, but also may be caused by other residents of the condominium, which is a not a non-smoking complex. However, the Respondent provided no objective evidence to support this assertion, and, ultimately, it might only serve to demonstrate that there could be more than one cause of the annoyances experienced by the Applicant that the Respondent ought to address.

### **Respondent's Efforts to Resolve the Situation**

[20] The Applicant suggests that the ineffectiveness of the Respondent's efforts to date is proof that it has not yet done enough to resolve them and that it might not truly care to do so. To the contrary, the Respondent states that despite its belief that the incidents do not qualify as nuisances, annoyances, or disruptions for the purposes of the Act, it has made a reasonable effort and is doing all it can to deal with the intruder who causes them. In this regard, the Respondent states it has taken the following steps:

1. Issuing and attempting to enforce a trespass order against the intruder;
2. issuing warnings (including threats of legal action) to the particular unit resident who is known to grant entry to the intruder;
3. using security cameras monitored 24-hours per day to identify when the intruder enters the premises;
4. the hiring of an additional, on-call security guard to proactively patrol the property during periods of time when the intruder is known to be present; and
5. posting notices providing residents with updated images of the intruder from

time to time to aid in identifying and reporting his presence.

- [21] Despite all this, for the most part the Respondent's evidence agrees with the Applicant's basic assertion that all these efforts have ultimately been ineffective.
- [22] The Respondent's evidence suggests that its increased security and monitoring have resulted in some moderate successes. The Respondent's president stated that, thanks to such measures, the intruder is "typically spotted and removed from the premises within 5-15 minutes" of his appearance. This was supported by the testimony of the Respondent's security supervisor. However, this evidence also obviously confirms that the intruder continues to gain occasional access to the property for at least the lengths of time they specify.
- [23] The Respondent noted that the intruder is not continually on site, but admitted that he comes onto the property "in bunches," which I understand to mean that there are periods of time – a number of consecutive days – when the intruder will successfully enter into the property, and then other stretches of time when he simply does not seek to do so. The Respondent's witnesses also explained that the intruder frequently disguises his appearance in order to gain re-entry to the property. The Respondent has evidently not yet been able to address this aspect of the intruder's guise.
- [24] As noted above, the Respondent has demanded that the resident who permits the intruder onto the property no longer do so. According to the Respondent's security supervisor, after the most recent demand, "the resident has not allowed the trespasser access," however the condominium's president stated, "The corporation (management/board)... [r]ecognizes the unit/resident has, ultimately, not been heeding the warnings and there is a strong possibility legal action will be necessary." The Applicant's follow-up questions seeking clarity about these statements were not answered.
- [25] In regard to its trespass order, the Respondent admits to taking a conservative approach to its enforcement. It has investigated whether its right to arrest a trespasser under the *Trespass to Property Act* also grants it authority to detain the intruder when encountered on the property. The Respondent's security supervisor testified that physical confrontation or detainment of a trespasser are extraordinary remedies for which special conditions would need to be satisfied. If permitted at all, he advised it would only be available to the Respondent if the intruder was violent (which, so far, he has never been) and that, in any event, this measure is advised against by Toronto Police Services. Although it has issued a trespass order, it is evident that the Respondent is of the view, based on such advice, that it has limited ability to do anything other than to "encourage the trespasser to

leave...rather than arrest [him].”.

[26] In sum, the Respondent’s efforts have, overall, been ineffective, which is a valid concern for the Applicant. While this does not mean that the kind of efforts that have been undertaken were not reasonable or appropriate, it does mean that the condominium must continue its efforts, and increase them. For example, based on the evidence provided by both parties, but particularly that of the Respondent itself, it is evident that the Respondent can and should:

1. Increase its efforts to effectively enforce its trespass order against the intruder, including exploring further, and implementing, ways in which it could more effectively exercise its right to arrest rather than merely seeking to “encourage” the intruder to comply;
2. increase its various security measures, such as cameras, posters, and patrols, which have already improved its identification of the intruder and response time in removing him after entry, to more effectively prevent his entry onto the condominium premises in the first place, or at least to prevent him from loitering in the vicinity of the Applicant’s home; and
3. determine with greater certainty whether the resident it previously identified (or any other resident) continues to permit the intruder to have entry to the premises, and to consider and take more effective steps in accordance with its rights and obligations under the Act to require the resident to comply with the demand to cease permitting such entry.

[27] I will order the above measures be taken. Further, to help ensure accountability in relation to them, I will further order that for the six months following the issuance of this order, the Respondent must provide a detailed written report to the Applicant on a monthly basis to explain what it has done to implement the terms and intent of this order, as well as any other steps it undertakes in order to address the issues of the intruder and the annoyances caused by him, and what results have followed from those efforts.

### **Make-Up Air Unit**

[28] As noted above, in addition to concerns about the intruder himself, the Applicant asserts that a significant reason that he cannot prevent the odour and smoke caused by the intruder from entering into his unit is the malfunctioning of the condominium’s make-up air unit. The Respondent denies this.

[29] The Applicant’s evidence regarding the maintenance of the make-up air unit



consists of email correspondence between himself and representatives of the Respondent about periods of time when the unit was not functioning and the Respondent's efforts to correct it. It is evident from this correspondence and the other evidence provided by the Respondent that, indeed, there have been several times that the make-up air unit has malfunctioned.

- [30] It is also evident that the Respondent has regularly sought to maintain and repair the make-up air unit, although there were occasional delays, such as one time when a contractor had the wrong part delivered. However, a formal assessment of the Respondent's diligence in fulfilling its maintenance and repair obligations is not within the scope of the Tribunal's current jurisdiction.
- [31] What is relevant to this case is whether the occasional failures of the make-up air unit contributed significantly to the infiltration of smoke and odour into the Applicant's unit. The Applicant presented no objective evidence of this. There was also no evidence that showed any correspondence between the presence of the intruder and his related odours, and the malfunctioning of the make-up air unit. I find on a balance of probabilities that the occasional malfunctioning of the Respondent's make-up air unit is not a significant (if at all) contributing factor to the annoyances experienced by the Applicant and his family.

### **Costs**

- [32] The Applicant has obtained mixed results in this case. He has successfully established that the intruder is the cause of annoyances prohibited by subsection 117 (2) of the Act. He has been partly successful in his attempt to demonstrate that the Respondent has failed to address those annoyances, in so far as I have found that the Respondent's efforts have been reasonable and appropriate, but, as the parties both agree, they have also been insufficient and ineffective. Lastly, the Applicant was unsuccessful in demonstrating that the maintenance of the Respondent's make-up air unit is relevant to his concerns or their resolution.
- [33] Despite obtaining mixed results, I have also considered the number of years that have passed since the problems with the intruder began, making it seem both reasonable and likely necessary for the Applicant to bring this case to the Tribunal in order to ensure that his concerns were being dealt with. Given these facts, it is clear that the Applicant is entitled to a costs award reimbursing his \$200 Tribunal fees under Rule 48.1 of the Tribunal's Rules of Practice.
- [34] The Applicant further stated that he would gratefully receive an award of compensation "to address the mental agony caused to my family and myself" in relation to the issues of this case, but provided no evidence or other submissions

that could justify an award of that kind.

[35] Although it, too, was partly successful in this case, the Respondent did not seek any award for costs or compensation “whatever the outcome of the case.”

### **C. ORDER**

[36] The Tribunal orders:

1. Under paragraph 1.44 (1) 2 of the Act, that:
  - a. the Respondent shall make more diligent efforts to permanently restrict the intruder from entering onto the premises of the condominium and from causing noise, smoke, and odour annoyances for the Applicant or any other resident, including that the Respondent shall:
    1. Increase its efforts to effectively enforce its trespass order against the intruder, including exploring further, and implementing, ways in which it could more effectively exercise its right to arrest rather than merely seeking to “encourage” the intruder to comply; and
    2. increase its various security measures, such as cameras, posters, and patrols, which have already improved its identification of the intruder and response time in removing him after entry, to more effectively prevent his entry onto the condominium premises in the first place, or at least to prevent him from loitering in the vicinity of the Applicant’s home; and
    3. determine whether any resident is permitting the intruder to have entry to the premises, and consider and take more effective steps in accordance with its rights and obligations under the Act to require the resident to comply with the demand to cease permitting such entry; and
  - b. the Respondent shall provide a detailed, written report to the Applicant on the first day of each of the six months following the date of the issuance of this order, describing the actions it has taken to give effect to the foregoing terms of this order, and their intent, as well as whatever other steps it takes or continues to take to address the issues of the intruder and the annoyances caused by him, and the results of those efforts; and
2. under paragraph 1.44 (1) 4 of the Act, the Respondent shall pay costs in the amount of \$200 to the Applicant as reimbursement of the Applicant’s

Tribunal fees.

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Michael Clifton  
Vice-Chair, Condominium Authority Tribunal

Released on: March 7, 2024