

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 9, 2024

CASE: 2023-00615SA

Citation: Halton Condominium Corporation No. 77 v. Wilson, 2024 ONCAT 56

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Dawn Wickett, Member

The Applicant,

Halton Condominium Corporation No. 77

Represented by Graeme Macpherson, Counsel

The Respondent,

Maureen Wilson

Represented by Christopher Dilts, Counsel

Hearing: Written Online Hearing – December 19, 2023 to March 22, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Respondent is a unit owner in Halton Condominium Corporation No. 77 (“HCC 77”). This is not the first time the parties have been before the Tribunal. The last time was in 2023, when the issues in dispute in case 2023-00273N were resolved by way of a settlement agreement, dated September 19, 2023. The substance of the settlement agreement is that the Respondent agreed to abide by HCC 77’s rules regarding smoking.
- [2] HCC 77 brought this application alleging the Respondent breached term 4 (a) of the settlement agreement. Term 4 (a) reads as follows:
 - a. The Respondent agrees that she shall abide by the Corporation’s Rules regarding smoking, as amended, and that she will not smoke in her unit, in the building, or on any part of the common elements unless specifically permitted by the Rules.
- [3] HCC 77 seeks an order enforcing the above term of the settlement agreement, and its rules pertaining to smoking. It also seeks an order recovering the costs it incurred for this application, and the previous application (2023-00237N).
- [4] The Respondent refutes the allegations that she smoked inside her unit after the date of the settlement agreement. The Respondent requested that this application be dismissed with costs payable to her.

B. CONCLUSION

- [5] For the reasons that follow, I find that the Respondent has breached term 4 (a) of the settlement agreement 2023-00237N by smoking in her unit. I will order the Respondent to comply with HCC 77's Rule 8.2, by not smoking in her unit, on the exclusive use common elements, common elements, or anywhere on the HCC 77's property. The Respondent may only smoke outdoors, at least 9 meters away from building and/or entrances.
- [6] I will also order that the Respondent reimburse HCC 77 for the fee it paid to file this application.

C. ISSUES & ANALYSIS

Issue No. 1 - Has the Respondent breached terms of the settlement agreement? If so, what order should the Tribunal make?

- [7] There has been a lot of evidence filed in relation to this application. Some of the evidence is relevant, and some is not. I have reviewed all the evidence and will only address that which is relevant to this decision.
- [8] HCC 77 alleges that the Respondent breached term 4 (a) of the settlement agreement on the same day (September 19, 2023) it was issued by the Tribunal. From that day forward, HCC 77 submits that it has received numerous complaints from other unit owners and condominium management employees regarding the Respondent continuing to smoke in her unit.
- [9] In response to the complaints, on September 25, 2023, HCC 77's counsel sent a letter to the Respondent's counsel advising of the concerns and requested that he reinforce with his client that she cannot smoke inside her unit.
- [10] HCC 77 submits that despite the reminder not to smoke inside her unit, the Respondent has continued to do so. In support of these allegations, HCC 77 provided five witness statements and five incident reports alleging the Respondent smokes in her unit.
- [11] Initially, the Respondent's position was that after the settlement agreement, she never smoked inside her unit. She stated that she had medical issues in October 2023 that have impacted her mobility and independence. Since then, she has not been able to leave her unit independently to purchase cigarettes and her caregivers have not brought her any. Therefore, she does not smoke in her unit. Later in her witness statement, the Respondent stated that she did smoke inside her unit on one occasion in November 2023. It is the Respondent's position that this is a minor breach, and an isolated incident. In support of her position, the Respondent provided four witness statements from friends and family. Three of the witnesses indicate they have not seen the Respondent smoke inside her unit. The fourth witness statement indicates that they did see the Respondent smoke one time in her unit, and that this smoking incident occurred sometime in November.

[12] The question for me to determine is whether the Respondent breached the terms of the settlement agreement by smoking inside her unit? The answer to this question is yes. There is no doubt the Respondent breached the terms of the settlement agreement because she confirmed having smoked inside the unit on at least one occasion in November 2023, which is after the date the settlement agreement was entered into by both parties. Even if I accept that the Respondent only smoked one time in her unit after the date of the settlement agreement, one time does amount to a breach. There are no provisions in the settlement agreement affording the Respondent a one-time allowance of smoking in her unit before it being considered a breach.

[13] While the Respondent minimizes the breach, the fact remains that she did breach the terms of the settlement agreement. Therefore, I will order the Respondent to comply with the provisions of HCC 77's governing document pertaining to smoking. Specifically, the Respondent shall comply with HCC 77's Rule 8.2 which reads as follows:

Except as otherwise grandfathered by these Rules (as defined further below), no one shall smoke or hold a lighted smoking product in any unit, any common-elements, on any exclusive-use common elements (including any balcony, patio or terrace) or anywhere on the Corporation's property, unless outside and at least 9 meters away from the building and from any entrances.

Issue No. 2 – Should there be an order for costs?

[14] HCC 77 seeks an order to have the Respondent reimburse it the costs it incurred for this application, and that of the previous application (2023-00237N) resulting in the settlement agreement. HCC 77 did not provide an amount, breakdown or details about the costs it seeks to recover, despite having been given the opportunity to do so.

[15] In relation to HCC 77's claim for costs for the previous application (2023-00237N), I note that the issue of costs was resolved in the settlement agreement. At paragraph 4 (e), the parties agreed that the Respondent would pay a set amount to HCC 77 for legal costs incurred. During this proceeding, there were no allegations that the Respondent never paid the agreed upon amount. As such, I find the Respondent is not able to make another claim for costs incurred for application 2023-00237N as costs relating to that application were resolved in the settlement agreement.

[16] Regarding HCC 77's claim for costs incurred for this application (2024-00615SA), I am ordering that the Respondent reimburse it for the application filing fee (\$125). This order is in keeping with the Tribunal's Rule 48.1 which states that the unsuccessful party will be required to pay the successful party's CAT fee, unless the CAT member decides otherwise. As I have no evidence about the other costs, that HCC 77 incurred because of this proceeding, I make no further orders on costs.

[17] The Respondent has requested an order for the Applicant to reimburse her legal costs for this proceeding. The Respondent was unsuccessful in this matter and therefore in the normal course, she does not recover her costs. I decline to make such an order.

D. ORDER

[18] The Tribunal Orders that:

1. The Respondent, Maureen Wilson shall comply with Halton Condominium Corporation No. 77's Rule 8.2, by not smoking or holding a lit smoking product in her unit, or on any common-elements, on any exclusive-use common elements (including any balcony, patio or terrace) or anywhere on the corporation's property, unless outside and at least 9 meters away from the building and from any entrances. Maureen Wilson shall also ensure that her guests comply with Halton Condominium Corporation No. 77's Rule 8.2.
2. Within thirty (30) days of the date of this order, the Respondent, Maureen Wilson shall pay \$125 to Halton Condominium Corporation No. 77 for the cost it incurred in filing this application.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: April 9, 2024