

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 19, 2024

**CASE:** 2023-00703N

**Citation:** Peel Condominium Corporation No. 203 v. Lam et al., 2024 ONCAT 58

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

Peel Condominium Corporation No. 203

Represented by Justin McLarty, Counsel

**The Respondents,**

Jeffrey Lam

No one appearing

Nuong Tri Thieu

No one appearing

Tila Thi

No one appearing

**Hearing:** Written Online Hearing – March 13, 2024 to April 12, 2024

### **REASONS FOR DECISION**


**A. INTRODUCTION**

[1] Respondents Jeffrey Lam and Nuong Tri Thieu are non-resident owners of a unit of Peel Condominium Corporation No. 203 (“PCC 203” or the “Applicant”). The unit is occupied by Respondent Tila Thi. PCC 203 requests that the Tribunal order Ms. Thi to comply with its rule which forbids the storage of garbage on the common elements and to order owners Lam and Thieu to take all reasonable steps to obtain Ms. Thi’s compliance. It also requests its costs in this matter.

[2] None of the three respondents joined this matter which proceeded directly to Stage 3 – Decision. I asked Tribunal staff to attempt to contact them. Staff advised that Ms. Thi had sent them numerous e-mails containing abusive language and stated that she would not be joining the case. One of those e-mails indicated that none of the three respondents reside in the unit. Staff also advised that the owners’ e-mail address provided by PCC 203 was incorrect and that another unit

owner was receiving CAT-ODR system notifications; however, although staff had advised PCC 203, no updated contact information had been provided.

- [3] I asked Counsel for the Applicant to confirm that Ms. Thi occupies the unit and to verify the owners' contact information. He advised that Ms. Thi was still residing in the unit and that the corporation had no additional contact information for the owners. He confirmed that the unit's address was the owners' address for service on the corporation's records and that the notices of the Tribunal application had been delivered by regular mail to them at that address. Further, PCC 203 disclosed an e-mail dated March 15, 2024 sent by Ms. Thi to its condominium manager in response to a letter which the corporation had sent to the owners at the unit's address. Ms. Thi's e-mail, which is replete with expletives, states in part:

Good luck getting payments from a bunch of ghost [sic] you dumb bitches  
 again they don't live there, and you will never figure out where they live, and nor will I ever tell you...

It is the responsibility of owners to provide the corporation with their address for service. It is unknown whether the respondent owners are aware of this case. However, I am satisfied that the notices of this matter were properly served at their address for service on the corporation's records. Therefore, the hearing proceeded without the participation of any of the respondents and my decision is based solely on the evidence of the Applicant.

- [4] I find that Tila Thi has breached PCC 203's rule with respect to storage of garbage and order her immediate compliance. I also find that owners Lam and Thieu have not made any effort to obtain Ms. Thi's compliance and order them to do so. Finally, I order owners Lam and Thieu to pay PCC 203 costs of \$3,121.34.

## **B. ISSUES & ANALYSIS**

- [5] The issues to be decided in this matter are:

1. Is Tila Thi in breach of PCC 203's rule with respect to storage of garbage?
2. Have owners Jeffrey Lam and Nuong Tri Thieu made reasonable efforts to obtain Ms. Thi's compliance?
3. Should the Tribunal award costs in this matter?

**Issue 1: Is Tila Thi in breach of PCC 203's rule with respect to storage of garbage?**

- [6] Rule 6 of PCC 203's rules dated January 1, 1981, prohibits storage of garbage on the common elements:

The owner shall not place, leave or permit to be placed or left in or upon the common elements including those of which he has the exclusive use, any debris, refuse or garbage, except on days designated by the board or the manager as garbage pick-up days. Such debris, refuse or garbage shall be contained in properly tied polyethylene or plastic garbage bags not exceeding twenty-five (25) pounds per bag in weight. Where such debris, refuse or garbage consists of packing cartons or crates, the owner shall arrange with the manager for disposal thereof and such packing cartons or crates shall not in any event be left outside the unit.

Section 119 (1) of the *Condominium Act, 1998* (the "Act") requires an owner and an occupant of a condominium unit to comply with its rules:

A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

In this case, it is unclear whether Ms. Thi is a tenant of the owners or whether she is occupying the unit in some other capacity; the owners have not provided PCC 203 with notice that the unit is leased as required by s. 83 of the Act. Regardless of her status, s. 119 (1) of the Act requires her to comply with the corporation's rules.

- [7] Aurelia Dumitrescu, PCC 203's condominium manager, testified that beginning in the winter of 2022, Ms. Thi repeatedly stored garbage, recycling and organic waste disposal bins on the common element driveway located in front of the unit. She further testified that this behaviour was continuing as of April 3, 2024, the date of her affirmed written witness statement.
- [8] Ms. Dumitrescu sent letters to the owners asking them to comply with the garbage storage rule on January 5, March 9 and May 3, 2023. The first two letters were returned to the corporation as "undeliverable". The May 3, 2023 letter advised that if the rule continued to be breached, PCC 203 would refer the matter to its legal counsel and the owners would be responsible for the legal costs it incurred. None of the corporation's letters were copied to Ms. Thi.
- [9] On August 18, 2023, the first of two letters from PCC 203's counsel was sent to the owners at their address for service. The letter advised them of the garbage

storage rule and of their obligation to obtain their tenant's compliance. The second letter, dated October 30, 2023, again advised of the rule and requested the owners' co-operation in securing Ms. Thi's compliance. It noted that if Ms. Thi did not comply within ten days, PCC 203 would file an application to the Tribunal. The two legal letters were copied to Ms. Thi and were sent to her by both regular mail and e-mail.

[10] Given that PCC 203's initial letters to the owners were not copied to Ms. Thi, it is possible that she may not have been aware of the corporation's garbage storage rule before she received the two legal letters, notwithstanding that Counsel for the Applicant advised me that condominium management had dealt with her directly with respect to the requirements. However, she has been aware that garbage must not be stored on the common elements since at least August 18, 2023, the date of the first legal letter.

[11] The undisputed evidence is that Ms. Thi continues to store garbage bins on the common elements in breach of Rule 6 of PCC 203's rules. Therefore, I will order her immediate compliance.

**Issue 2: Have owners Jeffrey Lam and Nuong Tri Thieu made reasonable efforts to obtain Ms. Thi's compliance?**

[12] Section 119 (2) of the Act requires owners to take all reasonable steps to obtain the compliance of an occupier of their unit:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

There is no evidence before me to indicate that owners Lam and Thieu have made any effort to obtain Ms. Thi's compliance with the garbage storage rule.

[13] The fact that the compliance letters sent by both the corporation and its legal counsel were mailed to the owners' unit at PCC 203 and that at least two of the corporation's letters were returned as "undeliverable" suggests the owners may not be aware of the issue or of PCC 203's application to the Tribunal. Whether Respondents Lam and Thieu have failed to notify PCC 203 of a change in their address for service or whether they are relying on the unit's occupant to forward any correspondence sent to their unit is unknown. If the latter is the case, Ms. Thi's March 15, 2024 e-mail to condominium management, which expresses some hostility towards the owners, suggests it is unlikely that she informed them of the compliance issue. Referring to the owners, she wrote:

These people owe me money, and I don't give a fuck if you bill them anything 😊😊😊😊, the more crap that's happening to them the more I don't care, and I'm glad it is happening to them because they deserve it!!

However, that the unit owners may not be aware of Ms. Thi's breach of the garbage storage rule does not absolve them of their responsibility under s. 119 (2) of the Act. They are responsible for informing the corporation of their address for service. They either failed to do so or have relied on their unit's occupant to their detriment. Given the evidence is that Ms. Thi continues to breach the garbage storage rule, I will order the owners to take reasonable steps to obtain her compliance.

### **Issue 3: Should the Tribunal award costs in this matter?**

[14] PCC 203 is requesting costs of \$3,121.34, comprised of \$150 paid in Tribunal fees and \$2,971.34 in legal fees, to be paid by owners Lam and Thieu.

[15] 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.

[16] PCC 203 was successful in this matter and therefore, in accordance with rule 48.1, I will order the owners to reimburse PCC 203 the \$150 it paid in Tribunal fees.

[17] Counsel for PCC 203 submits that the legal fees the corporation incurred should be reimbursed on a full indemnity basis in accordance with the indemnification provision set out in Article XI of its declaration. Counsel argues that the Respondents were given multiple opportunities to comply with the corporation's garbage storage rule before it was required to request a compliance order from the Tribunal and incur associated legal costs. Counsel referred me to the Tribunal's decision in *Peel Condominium Corporation No. 96 v. Psofimis*, 2021 ONCAT 48 (CanLII), a case in which the Tribunal found the respondent had willfully failed to comply with the corporation's pet rules and awarded the applicant's legal fees on a full indemnity basis.

- [18] As in *Psofimis*, this case is one of a respondent's willful non-compliance. The storage of garbage bins is not a complicated issue and compliance would not be difficult to achieve; the October 30, 2023 legal letter went as far as to suggest that most owners store their garbage bins in their garages. However, while Ms. Thi has been aware of PCC 203's garbage storage rule since at least August 18, 2023, it appears that she has simply decided to continue her practice of storing the bins on the common element driveway. Her apparent lack of respect for the corporation's rules is reinforced by her decision not to participate in this matter.
- [19] Costs not awarded by the Tribunal will ultimately be expensed to all of the owners of PCC 203. While enforcing its rules is part of the ongoing responsibility of a corporation and therefore incurring some costs is to be expected, it would not be reasonable for PCC 203's owners to bear enforcement costs when there is no evidence of the unit owners taking any action to address willful noncompliance by their unit's occupant. That the owners may not have received any of the compliance letters sent before this matter came before the Tribunal, or in fact, any of the notices of this matter itself, is not a mitigating factor in considering costs in this case; if they are unaware, and I note this is unknown, it is because they either failed to notify PCC 203 of a change in their address for service or because reliable arrangements were not made to receive correspondence sent to their unit's address.
- [20] I have reviewed the legal fees claimed by the Applicant and find them to be reasonable and proportionate to the issue in this matter. I note that the Applicant has not included the costs of producing the two legal letters sent before it filed its application with the Tribunal in its request for costs.
- [21] In the specific circumstances of this case, I am ordering the owners to reimburse the Applicant the legal fees it incurred in this proceeding on a full indemnity basis. Therefore, with the inclusion of the \$150 in Tribunal fees, the cost award totals \$3,121.34.

**C. ORDER**

[22] The Tribunal Orders that:

1. Under s. 1.44 (1) 1 of the Act, Tila Thi shall comply with Rule 6 of Peel Condominium Corporation 203's rules dated January 1, 1981 and shall immediately cease storing garbage, recycling and/or organic waste bins on the corporation's common elements.

2. Under s. 1.44 (1) 1 of the Act, Jeffrey Lam and Nuong Tri Thieu shall take all reasonable steps to ensure their unit's occupant's compliance with Rule 6 of Peel Condominium Corporation 203's rules dated January 1, 1981.
3. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this decision, Jeffrey Lam and Nuong Tri Thieu shall pay \$3,121.34 in costs to Peel Condominium Corporation No. 203.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: April 19, 2024