

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 23, 2024

CASE: 2023-00461

Citation: Carleton Condominium Corporation No. 165 v. Steele, 2024 ONCAT 60

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

Member: Nicole Aylwin, Member

The Applicant,

Carleton Condominium Corporation No. 165

Represented by Anna Iordanidi, Agent

The Respondent,

Jillian Steele

Self-Represented

Hearing: Written Online Hearing – November 8, 2023 to April 8, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Carleton Condominium Corporation No. 165 (“CCC 165”), claims that the Respondent, Jillian Steele, a unit owner of the Applicant, has failed to comply with its Rule 4.3, which requires all pets to be carried by hand or in a container, when outside the unit. CCC 165 asks the Tribunal to find that the Ms. Steele is in breach of its governing documents and order Ms. Steele to immediately comply with the rule. They also seek to have Ms. Steele pay costs in the amount of \$200 to reimburse them for the Tribunal fees paid to file this application.

[2] Ms. Steele states she has a disability that prevents her from complying with the rule and is therefore entitled to an accommodation. However, she also asserts that regardless of her disability, she should not have to comply with the rule because the rule itself is contrary to the Ontario *Human Rights Code*, RSO 1990, c H. 19 (the “Code”). Finally, Ms. Steele claims that CCC 165’s board of directors has acted aggressively towards her because she sought an accommodation and that this has caused psychological harm and seeks damages on that basis. She

requests that the Tribunal order CCC 165 to pay compensation in the amount of \$5,000, under 1.44 (1) 3 of the *Condominium Act, 1998* (the “Act”). She also requests costs in the amount of \$3,802 for legal fees related to participating in this proceeding.

B. BACKGROUND

[3] In early 2020, Ms. Steele began to consider getting a dog to provide her with emotional support. However, in contemplating her decision, Ms. Steele became concerned that due to a physical disability she would not be able to comply with CCC 165’s Rule 4.3, which imposes restrictions on how pets are to be transported through the common elements of the condominium. Thus, in October 2020, she asked to meet with CCC 165’s board of directors for the purposes of alerting them to what she believed to be the discriminatory nature of Rule 4.3, in the hopes they would amend the rule.

[4] CCC 165’s Rule 4.3 states:

When not inside a unit, all pets must either be carried by hand or must be in a container (such as a box, cart, basket or similar container) which reasonably serves to confine and control the pet. No such container shall be left on the common elements when not being used to transport a pet.

[5] The evidence before me shows that Ms. Steele’s request to meet with the board led to series of interactions (including meetings and email correspondence) between Ms. Steele and the board about this rule and its reasonableness (in the context of persons with disabilities). While I will not recount the details of the interactions here (although I will discuss some of these later in the decision insofar as they relate to the specific issues I have to decide), the end result was that the board declined to remove or amend the rule as, they submit, the rule’s purpose was to limit any wear and tear and/or damage to the common elements by pets and was reasonable and desired by unit owners. However, the board did advise Ms. Steele on the process available to owners for changing rules, should she wish to pursue that avenue with other owners.

[6] It is at this point that the parties’ perceptions about the events that transpired and why they transpired diverge and tensions between the parties escalated.

- [7] According to Ms. Steele, her request to change the rule due to its impact on those with disabilities was dismissed with hostility and derision and thus led her to file her own case with the Tribunal in November of 2020. That case was withdrawn in February 2021 and Ms. Steele made an official request for an accommodation to CCC 165 in March 2021, which she believes the board failed to act on in good faith.
- [8] According to CCC 165, at the October 2020 meeting, they heard Ms. Steele out and considered her request to change the rule. After some discussion the board decided not to amend or change the rule. CCC 165 submits that despite being aware of the board's decision to leave the rule as is, Ms. Steele ignored the rule and obtained a breed/size of dog that she knew would not allow her to comply with the rule. They claim she is now attempting to use the accommodation process to justify her non-compliance. Further, they submit that even when they did engage with Ms. Steele regarding her accommodation request, she attempted to assert entitlement to her own preferred accommodation rather than engage in good faith discussions.
- [9] Despite their differing positions, between March 2021 and approximately August 2023 the parties did engage in discussions regarding Ms. Steele's request for accommodation. However, eventually tensions between the parties escalated to the point that these discussions broke down, with neither party being satisfied with the other's proposed solutions or perceived attitude toward the situation. Having failed to come to an agreement as to whether Ms. Steele was even entitled to an accommodation, this case was filed, with the following issues left to be decided:
1. Should Ms. Steele be required to comply with CCC 165's Rule 4.3?
 2. Is Ms. Steele entitled to damages? If so, in what amount?
 3. Should either party be awarded costs? If so, in what amount?

C. RESULT

- [10] In making this decision, I have reviewed all of the evidence and submissions before me; however, I only refer to the evidence and arguments directly related to the issues I have to decide.
- [11] For the reasons set out below I find that CCC 165's Rule 4.3 is reasonable; however, Ms. Steele is entitled to the accommodation set out in this decision and does not need to comply with CCC 165's Rule 4.3 as written. I find the evidence does not support an award of damages and I award no costs to either party.

D. ISSUES & ANALYSIS

Issue No. 1: Should Ms. Steele be required to comply with CCC 165's Rule 4.3?

- [12] CCC 165 takes the position that Ms. Steele, who acquired her dog, Eugenie, in April 2021, should be required to comply with the rule because she has not demonstrated that she has a disability that would require an accommodation under the Code. They further argue that Ms. Steele was aware of Rule 4.3 when she purchased her dog and thus should have chosen a dog that would allow her to comply with the condominium's rule.
- [13] There is no dispute that the Code applies to condominiums and prohibits discrimination by a condominium against a unit owner or tenant. The Code establishes several protected grounds, including disability.
- [14] "Disability" is defined in Section 10 of the Code and includes, "any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness..."
- [15] Section 11 of the Code also prohibits "constructive discrimination". Constructive discrimination occurs where the right of a person is infringed when a requirement, such as a rule, exists that results in the restriction on persons who may be identified by a prohibited ground of discrimination.
- [16] Ms. Steele takes the position that Rule 4.3 discriminates against those with disability-related needs by restricting their right to have a pet if they cannot carry or push them, which makes the rule unreasonable and invalid and thus it should be nullified. She further asserts that even if the rule is valid, she is entitled to an accommodation.
- [17] Rule 4.3 on its face is not discriminatory. It seeks to treat all owners equally regardless of their traits, conditions, or circumstances. It does not directly discriminate against all people with disabilities as asserted by Ms. Steele. Nor there is evidence before me that the rule is unreasonable or inconsistent with the Act.
- [18] However, based on the evidence before me, I accept that the effect of the rule is discriminatory on Ms. Steele given her particular disability.
- [19] As evidence of her disability and need for accommodation, Ms. Steele submitted a total of four medical notes into evidence. The first note is dated February 4, 2021, and was submitted to CCC 165 along with her initial request for accommodation in March 2021. It is written by a registered medical provider (a nurse practitioner) and

clearly states that Ms. Steele has a chronic back pain due to herniated discs and sciatica, which result in an inability to regularly carry a dog. It further states that using the type of equipment specified by the rule, such as a conveyance, may lead to further complications and injury.

- [20] Two more notes dated February 27, 2023, and July 25, 2023, from mental health care providers, outline Ms. Steele’s need for an emotional support animal. The final note, again from a nurse practitioner, dated November 29, 2023, reiterates that “any kind of carrying, pushing or pulling of a conveyance could result in further strain and injury and may be detrimental to the health of her [Ms. Steele’s] back”.
- [21] Additionally, Ms. Steele has testified that she has tried to comply in the past by using various conveyance devices and each time this has led to severe pain that requires extended periods of recovery.
- [22] It is worth noting that the documentation Ms. Steele provided regarding her need for an emotional support animal is not relevant to the issue at hand. Ms. Steele does not need to justify her need for a dog or even the size of the dog – CCC 165’s governing documents do not prohibit dogs, nor do they prohibit certain breeds or restrict the weight of dogs. In this case, Ms. Steele was requesting an accommodation due to a physical disability because she could not meet the requirements of Rule 4.3 – which deals only with how pets are transported through the common elements. So, what Ms. Steele needed to provide to the board in requesting her accommodation was sufficient medical information to establish that she had a physical disability that prevented her from complying with Rule 4.3 and required accommodation.
- [23] Although CCC 165 argues that the medical notes submitted by Ms. Steele do not disclose a disability or inability to comply with Rule 4.3, they are wrong. The Ontario Human Rights Commission (“OHRC”) publishes policies on its website regarding requirements of the Code. According to the OHRC, these policies reflect its interpretation of the Code, and set out standards, guidelines, and best practice examples for how individuals, service providers, housing providers, employers and others should act to ensure equality for all Ontarians. In its *Policy on ableism and discrimination based on disability* (“OHRC Policy”), it clarifies that “a person with a disability does not have to meet an onerous standard for initially communicating that a disability exists to trigger the organization’s duty to accommodate”; it then indicates that the type of information that accommodation seekers may generally be expected to provide includes:
- that the person has a disability;
 - the limitations or needs associated with the disability;

- whether the person can perform the essential duties of their role, with or without accommodation;
- the type of accommodation that may be needed.

[24] While Ms. Steele ended up providing several notes regarding her disability-related needs, in this case only the first note was necessary. The note submitted to CCC 165 is from a licensed medical provider (i.e. nurse practitioner), it provides a clear description of the nature of Ms. Steele's disability (i.e. back injury) and physical limitations (i.e. unable to carry, push or pull), and clearly states why she is unable to comply with the rule (i.e. it may result in further injury).

[25] CCC 165 has offered no indication of what additional information they believe they needed to determine if Ms. Steele was entitled to an accommodation, nor have they provided any reasons for why, in their view, the information she did provide was not sufficient. I am more than satisfied that Ms. Steele does have a disability as defined by the Code and thus, it is the case that Rule 4.3 does have an adverse impact on Ms. Steele and she is entitled to an accommodation. Going forward, I encourage CCC 165 to review the OHRC policy and familiarize itself with its content so as to ensure they are familiar with their obligations under the Code, including what information they need or are entitled to during the process of determining a need for accommodation.

[26] Having established that Ms. Steele is entitled to an accommodation, the next question is: what is the appropriate accommodation?

[27] Despite taking the position in this hearing that Ms. Steele was not entitled to an accommodation, CCC 165 and Ms. Steele did attempt to come to an agreement on an accommodation for Ms. Steele prior the filing of this case. Three different proposals for accommodations were made (one by Ms. Steele and two different proposals by CCC 165). However, in the end, the fact that they could not agree appears to have not only been the final catalyst for how the application ended up before the Tribunal, but also the cause of great frustration and animosity between the parties.

[28] Extensive submissions were made by both parties on what they considered to be the 'unreasonable' position of the other side, with CCC 165 arguing that Ms. Steele attempted to impose her own preferred accommodation on the board, and Ms. Steele arguing that CCC 165 failed to meet their duty to accommodate since they did not accept outright the accommodation she proposed.

[29] For the purposes of this application, CCC 165 maintained the position that the last

accommodation they proposed to Ms. Steele is the most appropriate one. This accommodation is as follows:

1. Eugenie must be kept on a tight leash at all times while moving through the common elements;
2. Eugenie must wear a vest, harness, or some visible marker illustrating that she is a service animal; and
3. Ms. Steele must provide written confirmation that she understands her already-existing obligation that if any damage to the common elements is caused by Eugenie, that she will be solely responsible for the costs to repair the damage. Such costs will be chargeable back to her unit in the same manner as a common expense.

[30] I note that the breakdown in the discussions between the parties over an appropriate accommodation appeared to have come to a head over the second item in CCC 165's final accommodation proposal, i.e. the requirement that Eugenie wears a service vest that identifies her as a service animal. CCC 165 argues that this requirement is necessary to limit the complaints likely to be received by other owners when they see Ms. Steele walking Eugenie rather than carrying/pushing her.

[31] Ms. Steele, however, submits that this requirement is both an affront to her dignity as it forces her to identify herself as a person with a disability, and moreover, bears no logical connection to the actual reason she requires an accommodation to Rule 4.3 – which is a physical disability. She asserts that the fact that Eugenie may or may not be a service animal is irrelevant as anyone in the building can have a dog for any reason.

[32] Ms. Steele's submissions in relation to CCC 165's duty to accommodate were extensive and while it is not necessary that they be set out in detail for the purposes of this decision, it is, again, instructive to refer to the OHRC Policy for guidance regarding the duty to accommodate and some of the principles that should be considered when deciding on the most appropriate accommodation for the individual. These principles include accommodating in a manner that respects the dignity of the person, responds to their individual needs, and allows for their integration and full participation, and should be met, up until the point of undue hardship.¹

¹ Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability*, Section 8.3 "Appropriate Accommodation."

[33] In determining the appropriate accommodation, I have considered these factors: the evidence provided and each party's reasons for proposing and/or rejecting accommodation proposals. Based on the evidence before me, I find that while items one and three in CCC 165's proposal are reasonable accommodations in this case, requiring Eugenie to wear a service vest is not. While a service vest may help reduce complaints to the board regarding non-compliance with Rule 4.3 and may help ensure that Ms. Steele is not approached by other residents about what may appear to them to be an act of non-compliance, CCC 165 has not demonstrated that the possibility that it will receive more complaints will result in undue hardship. Condominiums are required to provide accommodations to residents, and this is something that can be communicated to any complainants easily and swiftly (while maintaining confidential the identity of the accommodation seeker).

[34] Therefore, I will order that CCC 165 accommodate Ms. Steele by allowing her to walk her current dog, Eugenie, through the common elements on a short leash.

[35] To the extent that CCC 165 may be concerned about damage to the common elements, as CCC 165 itself notes, its governing documents already oblige owners to pay for any damages they cause to the common elements. Ms. Steele has been clear in her submissions and in her communications with the board that she understands this obligation. There is no need to have Ms. Steele confirm this as a condition of the accommodation. Ms. Steele is still required to adhere to provisions in the governing documents that relate to damage to the common elements, and if there are any occurrences of damage to the common elements, CCC 165 is entitled to enforce these provisions.

[36] Having determined that Ms. Steele is entitled to the accommodation above, non-compliance with Rule 4.3 is no longer an issue and I would expect that no further letters will be sent to her about non-compliance.

Issue No. 2: Is Ms. Steele entitled to any damages? If so, in what amount?

[37] Ms. Steele has requested that the Tribunal award her \$5,000 in damages under Section 1.44 (1) 3 of the Act, which allows the Tribunal to make "[a]n order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed."

[38] According to Ms. Steele, CCC 165 has engaged in harassing behavior towards her that has caused psychological harm. She alleges that this harm was caused by an ongoing dismissal of her concerns regarding the potential discriminatory nature of

Rule 4.3, a disregard for the medical documentation she provided when she sought an accommodation, and an “aggressive pursuit” of compliance with the rule despite her request for accommodation. As evidence, Ms. Steele cites CCC 165’s refusal to acknowledge her request to speak about the rule at an AGM, their delayed response to her accommodation request, the sending of compliance letters to her unit – what she argues are overzealous reminders to residents about the importance of complying with Rule 4.3 –, and a general disregard for her right to an accommodation.

- [39] To support her arguments for compensation, Ms. Steele referred me to *Rahman v. Peel Standard Condominium Corporation No. 779, 2021 ONCAT 13* (“Rahman”), wherein Ms. Steele notes the Tribunal found that in attempting to bring Mr. Rahman in compliance with its visitor parking rule, Peel Standard Condominium Corporation No. 779 had “tipped over from aggressively pursuing its claims to harassing one of its condominium unit owners.”
- [40] I do not find the facts in Rahman to be comparable for several reasons. First, in Rahman, the condominium corporation outright refused to acknowledge the validity of Mr. Rahman’s Accessible Parking Permit, issued by the City of Mississauga, and insisted that he was also required to ‘prove’ a need for an accommodation. They did not engage Mr. Rahman in discussions or consider proposals for accommodation.
- [41] In this case, CCC 165 met with Ms. Steele to hear about her concerns over the rule, and then, although admittedly with some significant delay (which led to confusion and likely the escalation of the dispute), engaged with her directly and then via her legal representative regarding various accommodation proposals. Despite Ms. Steele’s claims that CCC 165 sought to impose “unilateral demands” on her, the evidence does not support this – several versions of accommodation proposals were exchanged. While the parties strongly disagreed on the law and what an appropriate accommodation was in this case, and though the tone of these exchanges was not always collegial or collaborative, Ms. Steele’s claims were not ignored or dismissed outright, nor does the evidence show CCC 165 took an overly adversarial position in these discussions or acted in bad faith. What it does show is that CCC 165 took Ms. Steele’s claims seriously (even if they disagreed with them), engaged in conversations and explored accommodation solutions, meeting their procedural duty to accommodate.
- [42] Additionally, while Ms. Steele asserts this case is like Rahman insofar as CCC 165 has aggressively pursued her compliance with Rule 4.3, to the point that this has tipped over into harassment and bullying, I am not persuaded by the evidence

before me on this point. In Rahman, the condominium corporation not only sent non-compliance letters to Mr. Rahman, but it also charged back the legal costs of those letters and other related legal fees in the number of thousands of dollars. The condominium corporation then went so far as to place a lien on Mr. Rahman's unit due to unpaid fees that had been charged back to him, with at least some of those fees being the result of chargebacks issued in relation to non-compliance with the visitor parking rule.

- [43] In this case, while CCC 165 did send Ms. Steele compliance letters, both before and while accommodation discussions were taking place, the letters are not overly aggressive in their tone or language, nor was there any attempt to make Ms. Steele responsible for legal costs associated with the matter. I would certainly encourage CCC 165 to consider whether sending these letters while engaging in discussions about accommodation was necessary and/or helpful, but I cannot conclude that CCC 165 was harassing Ms. Steele by sending them.
- [44] I am also not persuaded that the increased signage in the building or the increased notices to residents regarding the importance of compliance with Rule 4.3 is evidence of harassment in this case. The evidence provided shows that Rule 4.3 is important to owners and at least one request has been made to the board to increase reminders to residents regarding this rule. While Ms. Steele may feel these reminders are directed at her, it is more plausible that these reminders are a response to the concerns of other residents who want to see the board enforcing the condominium rules (and have no way of knowing that an accommodation may have been made for any individual resident when they see them not following the rule).
- [45] Finally, while the Tribunal did find that Mr. Rahman was entitled to damages, those damages were directly related to his condominium's non-compliance with its own specific rules regarding visitor parking and Section 134 (5) of the Act, which deals with indemnification provisions. The damages were not generally for 'harassment' or 'harm', but for specific acts of non-compliance. While I accept Ms. Steele's evidence that this dispute and the process of attempting to assert her rights to accommodation have been stressful, anxiety-producing, and difficult for her, there is no evidence in this case to suggest that CCC 165 has not complied with the Act or that it failed to meet its duty to accommodate in such a way that justifies an award for compensation of damages.

Issue No. 3: Should either party be awarded costs? If so, in what amount?

- [46] The Tribunal's authority to make cost-related orders is set out in Section 1.44 (1) 4 of the Act. Section 1.44 (2) of the Act further states that an order for costs "shall be

determined in accordance with the rules of the Tribunal.”

[47] 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.

[48] The Tribunal’s Practice Direction: Approach to Ordering Costs provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative’s conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; and, whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[49] CCC 165 has requested that Ms. Steele reimburse it for Tribunal fees in the amount of \$200. Ms. Steele has requested costs in the amount of \$3,802 for legal fees she incurred as a result of this application, in seeking legal advice.

[50] In this case, neither party was wholly successful in their claims, and there is no evidence to suggest this application was filed in bad faith or for an improper purpose. Rather, what the evidence demonstrates is that the parties did attempt to resolve this issue prior to this application; however, the gap between the parties’ respective positions was simply too wide and the animosity too great, hindering the possibility of a successful resolution outside of the Tribunal. Both parties acted respectfully during the hearing, causing no delay or additional expense.

[51] Costs awards are discretionary; thus, based on the above, I find, in this case, it is appropriate that each party bear their own costs, and I award no costs to either party.

E. ORDER

[52] The Tribunal Orders that:

1. Ms. Steele may walk her current dog, Eugenie, through the common elements on a short leash as an accommodation under the Code.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: April 23, 2024