

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 12, 2024

CASE: 2024-00205N

Citation: Muskoka Condominium Corporation No. 5 v. Page et al., 2024 ONCAT 81

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice

Member: Ian Darling, Chair

The Applicant,

Muskoka Condominium Corporation No. 5

Represented by Sienna Molu, Counsel

The Respondents,

Cheryl Page

Represented by Julia Danks, Agent

Perry Page

Represented by Julia Danks, Agent

Donald Page

Represented by Julia Danks, Agent

Sanna Jansson

Represented by Kari-Gail Roy-Jansson, Agent

Submission Dates: April 19, 2024 to May 22, 2024

MOTION ORDER

- [1] The Applicant seeks an order from the Tribunal to address smoke, noise, inappropriate behavior towards neighbors and visitors which disturbs the community. The Applicant asserts that two tenants are the source of the nuisance, annoyance or disruption.
- [2] The Respondents, Cheryl and Perry Page, own a unit in Muskoka Condominium Corporation No. 5. The Application also named Donald Page and Sanna Jansson as parties based on their status as tenants who reside in the Unit.
- [3] Sanna Jansson's Agent submitted a motion to remove Ms. Jansson as a

Respondent in this case because she is not a tenant.

- [4] The Agent for the Pages confirmed that Donald is a resident in the unit. They also stated that Ms. Jansson was not a tenant but did confirm that Ms. Jansson had attended the property as a guest (or invitee) of Donald. The Pages did not respond to the motion to remove Ms. Jansson but did speak to their efforts to address the alleged disruptive behaviour, and their intention to resolve the issue with the Applicant.
- [5] I am satisfied that Ms. Jansson is not a tenant. The Pages (who own the unit) have stated that she is not a tenant, and the Applicant has not provided sufficient proof to establish tenancy. I characterize her presence as like a visitor.
- [6] The Applicant opposed the motion. They provided a list of four instances between March 28, 2024, and April 7, 2024, that purport to demonstrate a connection between Ms. Jansson's presence and involvement in incidents at the property. Based on the submissions before me, I am satisfied that there is a relationship between Ms. Jansson's presence and the alleged incidents.
- [7] Section 1.38 of the *Condominium Act, 1998* (the "Act") defines "the parties to a proceeding" before the Tribunal as "the parties described in subsection 1.36 (1), (2) or (3) [...], and any other person added as a party under subsection (3)." Subsections 1.36 (1), (2) and (3) provide that the usual parties to a Tribunal application may include a condominium corporation, an owner, mortgagee, or occupier of a unit, and in one instance a purchaser of a condominium unit. Subsection (3) of 1.38 then states that "The Tribunal may add or remove a person as a party if the Tribunal considers it appropriate."
- [8] The Corporation appears to be bringing an application to enforce elements of their harassment rule. The rule states that:
 - 31. No person on the Corporation's property or shared facilities shall engage in any violent or harassing conduct toward any other person or injure, harass, threaten, intimidate, annoy, disturb or initiate any defamatory, threatening, hateful or discriminatory statement or action, or participate in any illegal or harmful conduct toward any other person.
 - 32. In this rule, a "person" may include the Corporation's unit owners and occupants, their visitors, guests and invitees, any of the Corporation's representatives, directors, managers or workers and any contracted worker on the Corporation's property

- [9] While Ms. Jansson is not a tenant or resident, the rule applies to her, as she meets the definition of a “person” under the rule.
- [10] Section 1.39 (1) of the Act establishes that the Tribunal will give “all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on matters in the proceeding.” The proceeding, and any potential orders may directly affect Ms. Jansson. Therefore, even though she is not a tenant, she should be included in the case so she can have an opportunity to participate in the process.
- [11] The motion is denied. The case is currently in “pending status” because Ms. Jansson has not joined the case. The Tribunal will grant Ms. Jansson (or her Representative) 14 days to join the case. If Ms. Jansson (or her Representative) joins the case before that point, the case will proceed to Stage 1 – Negotiation. If Ms. Jansson (or her Representative) does not join the case within 14 days, the Applicant can move the case directly to Stage 3 according to Tribunal Rule 28 (Process in the Absence of the Respondent(s)).
- [12] I note a potential jurisdictional issue in the case. The Applicant stated that the application was under Section 117 (1) of the Condominium Act, which stipulates that no person shall permit a condition on the property that is likely to damage the property or cause injury to an individual. The Tribunal’s jurisdiction to deal with nuisances is established under section 117 (2) of the Act. While this is not a basis to dismiss the case at this time – because the application includes behaviour that does fall within the jurisdiction– the parties are advised that if the case proceeds to Stage 2 - Mediation, or Stage 3 – Tribunal Decision the Tribunal may issue orders to ensure the case remains within the Tribunal’s jurisdiction.

ORDER

- [10] The Motion is denied.
- [11] If Sanna Jansson (or her Representative) does not join the case within 14 days of this Order, the Applicant can proceed to Adjudication under Tribunal Rule 28.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: June 12, 2024