

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 20, 2024

CASE: 2024-00041N

Citation: Wentworth Condominium Corporation No. 156 v. Halloum, 2024 ONCAT 87

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

Member: Brian Cook, Member

The Applicant,

Wentworth Condominium Corporation No. 156

Represented by Michelle Kelly, Counsel

The Respondent,

Bash Halloum

Not participating

Hearing: Written Online Hearing – May 21, 2024 to May 29, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] Bash Halloum is the owner of a unit in Wentworth Condominium Corporation No. 156 (WCC 156). He lives in the unit with his spouse and two children. Two dogs also live in the unit.
- [2] In this application, WCC 156 alleges that the two dogs are large and bark loudly and often, disrupting other residents. WCC 156 also alleges that the dogs are often not under control and have threatened people and other pets. The WCC 156 governing documents provide that only one small dog can reside in a unit. The governing documents also provide that the board of directors can require dogs to be removed if they are found to be a nuisance.
- [3] The Respondent has advised WCC 156 that two members of the household have disabilities and that both dogs are emotional support animals. However, no medical confirmation was provided despite several requests from the Applicant and its counsel.
- [4] WCC 156 seeks an order that both dogs be removed because they are a

nuisance. It also seeks legal costs from attempts to enforce the governing documents and bringing this application.

B. PARTICIPATION OF THE RESPONDENT

[5] The Respondent joined the case in the Tribunal's on-line dispute resolution (ODR) system. Once a person has joined a case, they receive notice of messages and documents posted in the system.

[6] Although he joined the case, the Respondent did not participate in the Tribunal's mediation stage. After the case moved to the adjudication stage, I posted a message in the ODR system that reads in part as follows:

The condominium is seeking an order that the dogs be removed from the unit and requiring the respondent to pay its legal costs.

The stage 2 mediator's report indicates that the respondent did not participate in the mediation process.

This case is a legal proceeding brought under the Condominium Act which is now in adjudication or stage 3 in the tribunal's process. I am the assigned adjudicator. I will make a decision in this case based on the evidence provided by the parties. If one of the parties does not participate, the decision will be based on evidence provided by the other party.

In stage 3, it is possible for the parties to come to an agreement that would settle the dispute.

How this case will proceed will depend on whether both parties are participating. After this is clarified, I will provide further direction about how evidence will be provided.

Bash Haloum, please respond to this message to confirm that you are participating in the hearing. The Tribunal staff can assist if you need any technical assistance to access the system. If I do not hear from you by Monday May 27 at 5:00, I will assume that you have decided to not participate and the hearing will proceed without your involvement.

[7] On May 27, I asked the Tribunal staff to contact the Respondent to ensure that he was aware of this message. I was advised that the staff member called the Respondent twice and he hung up both times. The staff member also sent him an email reminding him of the need to participate in the case. No communication has been received from the Respondent or anyone acting on his behalf.

[8] On the basis of the available information, I am satisfied that the Respondent has

been aware of the case and decided to not participate.

C. EVIDENCE

- [9] The evidence from WCC 156 consists of a statement from the condominium manager. She states that beginning in 2022, she began to receive complaints of excessive noise coming from the Respondent's unit, caused by dogs barking and a person yelling. The condominium manager wrote to the Respondent in November 2022, and again in December, reminding him of the rules regarding noise and the board's authority to deem a dog a nuisance and require its removal.
- [10] No response was received to these letters and the manager continued to receive complaints of noise and aggressive behaviour from the dogs, including occasions when they were off leash.
- [11] At its January 31, 2023 meeting the WCC 156 board of directors determined that the dogs were a nuisance and required their removal. This decision was communicated to the Respondent on February 2, 2023. There was again no response, and the matter was then referred to legal counsel.
- [12] Counsel wrote to the Respondent on March 8, 2023, demanding that the noise stop.
- [13] According to counsel for WCC 156, the Respondent responded, and said that both dogs were therapy dogs and that the yelling noise was caused by a child on the autism spectrum. Counsel asked the Respondent to provide medical confirmation that the dogs are therapy dogs. The Respondent provided a note confirming his child's diagnosis, and a photo of pill bottles, but did not provide medical information to confirm that the dogs are therapy or support dogs. He did explain that one of the dogs was a support dog for his child and the other was a support animal for another family member. The Respondent also indicated that he had installed some sound proofing materials on the wall of his unit but did not respond to requests for details about the sound proofing.
- [14] On May 26, 2023, the condominium manager received a report from a resident who complained that one of the dogs ran at the resident who said she was terrified by the incident. She also complained of the continuing barking noise.
- [15] On November 16, 2023, counsel wrote again to the Respondent reminding him of the provisions in the governing documents regarding dogs, and the need to provide medical support for a request for accommodation because of disability. Counsel advised the Respondent that an application to the Condominium Authority

Tribunal would be filed if nothing was done to address the noise complaints.

[16] The application was filed with the Tribunal and mediation started in February 2024. The Respondent joined the case, but according to the Stage 2 Summary and Order, despite many efforts on the part of the mediator, the Respondent did not participate. The case then moved to Stage 3 – Adjudication.

[17] According to the condominium manager, she continues to receive complaints of excessive barking coming from the unit as well as reports of aggressive behaviour by the dogs.

D. ANALYSIS

[18] Section 117(2) of the Condominium Act, 1998 (the “Act”):

117(2) No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

[19] The WCC 156 declaration states that only one cat or small dog may be kept in any unit. It also states that no dog that is deemed by the board or condominium manager to be a nuisance shall be kept in any unit. The WCC 156 rules have a similar provision. The rules and the declaration provide that the board of directors can require the removal of a dog or dogs that are deemed to be a nuisance.

[20] The Respondent has said that the dogs are support animals. He provided some information about his daughter’s medical condition but did not provide confirmation from a health care provider that she requires a support dog to help manage the disability. He indicated that the second dog is a support animal for another member of the household but did not provide any medical information to support a request for accommodation.

[21] When, as in this case, the condominium’s governing documents have provisions about animals, a unit owner cannot simply ignore those provisions. A person with a disability is entitled to ask for an accommodation to exempt them from the rules. If the accommodation they want is an exemption from the rules regarding animals, they must ask for the accommodation. They cannot simply decide that they are

entitled to an accommodation. When considering such a request for accommodation, the condominium is entitled to ask for some, usually limited, additional information, including medical information, to help in its consideration of the accommodation request. Having reviewed the letters sent to the Respondent in this case, I find that the requests for information were appropriate and the requests were made in a respectful way.

E. CONCLUSIONS

- [22] I find the evidence provided by WCC 156 to be clear and credible. That evidence establishes that there are two dogs living in the unit; the dogs are not small dogs; and other residents have complained of frequent and loud barking caused by the dogs as well as aggressive behaviour. The board of directors have determined that the dogs are a nuisance and required that the dogs be removed.
- [23] It is very unfortunate that the Respondent did not participate in this case. From the limited information he gave to WCC 156, it appears that the family has many challenges that could have been taken into consideration to see if a solution could be found that would support the family but not cause unreasonable disruption to others. In the absence of participation, I must make a decision based on the evidence before me, which includes only the evidence from WCC 156.
- [24] On the basis of that evidence, I find that the dogs' barking results in unreasonable noise which is a nuisance for other residents. I further find that the dogs have been allowed to engage in aggressive behaviour that is not properly controlled.
- [25] Within four weeks of the date of this decision, or such longer period as the board may permit, the Respondent must make arrangements so that the dogs are no longer living in the unit.
- [26] Under the governing documents of WCC 156, the Respondent and his family are entitled to have one small dog, provided that the dog does not cause unreasonable noise or engage in aggressive behaviour. If one dog is sufficient, there is no need to seek accommodation.
- [27] I have significant concerns about the impact this order may have on the Respondent's family. The loss of a dog, particularly if it is in fact a support animal, may be very difficult. Had the Respondent provided the requested information to WCC 156 or participated in the case, the family circumstances would have been considered, potentially leading to a different result. However, the failure of the Respondent to engage in the accommodation process by providing information that was reasonably and respectfully requested, and the failure to engage in this

case means that no evidence was available from the Respondent. WCC 156 was entitled to bring the application and it is not clear what more could reasonably have been done to encourage participation by the Respondent.

F. COSTS

[28] WCC 156 says that it incurred \$2,766.29 in legal costs in the period before the application was filed with the Tribunal, and \$4,133.28 in costs related to the application. It also paid \$200 in Tribunal filing fees.

[29] Section 1.44(1) of the Act sets out the things the Tribunal can do after a proceeding. These include:

3. An 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.

4. An order directing a party to the proceeding to pay the costs of another party to the proceeding.

[30] Rule 29 of the WCC 156 rules states:

Any loss, cost or damages incurred by the Corporation by reason of a breach of any rules in force from time to time by an owner, his family, guests, agents or occupants of his unit shall be borne by such owner and may be recovered by the Corporation against such owner in the same manner as condominium fees.

[31] The Tribunal's Rules of Practice includes the following rule regarding costs:

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.

Costs and damages for the period before the application was filed

[32] Counsel for the Respondent has summarized the expenses for the period before the application was filed:

Invoice	Dates	Description of Work	Amount
52499	Mar. 1 to 31, 2023	Open new file, review of documents from client, prepare letter; send letter to owner, listen to voicemail and call with owner, reporting call and email from owner to client.	\$694.89
53080	Apr. 1 to 30, 2023	Prepare second letter to owner, save complaints and audio to file, emails to/from owner regarding letter and required information.	\$905.64
53502	May 1 to 31, 2023	Email from owner, forward email to client for review.	\$147.69
56503 & 57588	Jun. 1 to Dec. 31, 2023	Emails to/from owner to ask for documents, prepare third letter to owner, emails to client.	\$1,018.07
		Total Pre-CAT Legal Costs	\$2,766.29

[33] In the absence of any evidence to suggest otherwise, these expenses seem reasonable for the work done.

[34] As noted above, the WCC 156 rules provide that an owner is responsible for costs and damages related to attempts to require compliance with the condominium's rules.

[35] When the Tribunal has awarded compensation for costs and damages for the period before the application is filed, it has generally awarded only a portion of the claimed costs.

[36] I find that the Respondent should pay some of the expenses claimed by the Applicant for the period before the application was filed related to the attempts to seek compliance with the WCC 156 governing documents and the Act. Within four weeks of the date of this decision, the Respondent is directed to pay \$1,283 to WCC 156, representing half of the claimed expenses. If this amount is not paid, WCC 156 may add the costs to the common expenses for the unit.

Costs and damages for the period after the application was filed

[37] As indicated in Rule 48.2, quoted above, the Tribunal does not usually award costs related to the period after an application is filed, apart from the Tribunal filing fees.

[38] I find that there is no basis to depart from the usual practice and in this case. Under Rule 48.2, the Respondent is not required to compensate the Applicant for the costs claimed for the period after the application was filed.

[39] However, under Rule 48.1, the Respondent is required to pay the Tribunal filing fees of \$200.

G. ORDER

[40] The Tribunal Orders that:

1. Within four weeks of the date of this decision, or such longer period as WCC 156 may permit, the Respondent must remove the dogs from the unit.
2. If the Respondent and his family wish to have a dog in the future, they must ensure that they comply with the governing documents of WCC 156 regarding pets.
3. Within four weeks of the date of this decision, or such longer period as the Applicant may permit, the Respondent shall pay the following amounts to the Applicant:
 - a. \$200 representing the Tribunal filing fees.
 - b. \$1,283, representing half of the claimed costs for the period before the application was filed related to the Applicant's attempts to seek compliance with its governing documents and the legislation

If these amounts are not paid, they may be added to the common expenses for the unit.

Brian Cook
Member, Condominium Authority Tribunal

Released on: June 20, 2024