

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** July 11, 2024

**CASE:** 2024-00239N

**Citation:** Toronto Standard Condominium Corporation No. 2250 v. Syed et al., 2024 ONCAT 103

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Toronto Standard Condominium Corporation No. 2250

Represented by Darlene Mezzabotta, Paralegal

**The Respondents,**

Shoab Syed

Not Participating

Amy Williams

Self-Represented

Nelson Lima

Not Participating

**Hearing:** Written Online Hearing – June 11, 2024 to June 28, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] Shoab Syed (the “Owner”) is the Respondent unit owner in Toronto Standard Condominium Corporation No. 2250 (“TSCC 2250”). Amy Williams and Nelson Lima (the “Tenants”) are the Respondent occupants of Mr. Syed’s unit.
- [2] TSCC 2250 brings this application to the Tribunal seeking orders against the Owner and the Tenants requiring them to comply with their obligations under the *Condominium Act, 1998* (the “Act”) and the provisions of its governing documents related to pets.
- [3] The Owner and the Tenant, Shoab Syed and Amy Williams, joined the case. The Tenant, Nelson Lima did not join the case despite having been served notice of the

case on May 2, May 21 and June 5, 2024.

- [4] The Owner did not participate in the hearing. The Tenant, Ms. Williams', participation was minimal. In Stage 3, just before the deadline for closing submissions, Ms. Williams wrote a message in the CAT Online Dispute Resolution System ("ODR"). Ms. Williams indicated that she did not know what documents to submit. In my response to Ms. Williams, I inquired why she had not participated in the proceeding and gave her the opportunity to formally request an extension of time to provide her evidence, given the deadlines had passed. I also provided Ms. Williams with contact information for the Tribunal office should she need assistance. Ms. Williams did not make a request. After the deadline passed, Ms. Williams wrote a message in the ODR indicating that she had no evidence and provided a brief statement of her account of the issues in dispute.
- [5] As stated above, TSCC 2250 seeks orders requiring the Owner and the Tenants to comply with its obligations under the Act and under its governing documents. TSCC 2250 also requests an order requiring the Respondent and the Tenants to reimburse it the expenses incurred for enforcement attempts, the application filing fee, and for the legal fees to participate in this proceeding.

## **B. OUTCOME**

- [6] For the reasons that follow, I find the Owner has not complied with his obligations pursuant to TSCC 2250's governing documents by not taking steps to ensure the Tenants comply with the same. I order the Owner to comply with these obligations.
- [7] I further find that the Tenants have breached TSCC 2250's pet provisions and that the breaches have resulted in their dogs being declared nuisances by TSCC 2250's board of directors pursuant to section 20 (g) of its declaration. I order the Tenants to comply with the TSCC 2250's pet provisions. I further order them to permanently remove both of their dogs from the condominium property.
- [8] Regarding the issue of legal fees and compensation for the cost of enforcement, I order the Owner to reimburse TSCC 2250 \$4,829.19. This amount represents 100% of the enforcement costs (\$1,829.19) and 50% of legal fees (\$3,000) claimed.

## **C. RELEVANT LEGISLATION and PROVISIONS of TSCC 2250'S GOVERNING DOCUMENTS**

- [9] The Tribunal's jurisdiction to hear disputes relating to pets comes from section 1(1)(d)(i) of the Ontario Regulation 179/17 ("O. Reg. 179/17") which states:

The prescribed disputes for the purposes of subsections 1.36 (1) and (2) of the Act are,

Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or the assets, if any, of the corporation.

[10] Section 15 (f) of the TSCC 2250's declaration states:

No pet, animal, livestock or fowl of any kind shall be kept on any part of the common elements or exclusive use common element areas.

[11] Section 19 (b) of the TSCC 2250's declaration states:

The Owner of each Unit shall comply, and shall require all residents, tenants, invitees and licensees of his Unit to comply with the Act, the Declaration, the By-laws, the Rules, the Easement and Cost Sharing Agreement and rights and easements registered against the Property.

[12] Section 20 (g) of the TSCC 2250's declaration states:

No animal, livestock or fowl of any kind other than those pets usually considered to be a pet shall be kept or allowed in any unit. No animal, which is deemed by the board of directors or the property manager, in their absolute discretion, to be a nuisance shall be kept by any owner or tenant in any unit. Such owner or tenant shall within two weeks of receipt of written notice from the board or the property manager requesting the removal of such animal, permanently remove such animal from the Property. Notwithstanding the generality of the foregoing, no attack dogs shall be allowed in any unit, and no breeding of animals for sale shall be carried on, in or around any unit.

[13] TSCC 2250's Rules state:

II.9. An Owner shall take all reasonable steps to ensure that the Residents and his Guest(s) (and the Resident shall take all reasonable steps to ensure that his Guest(s)) comply with the Act, the Declaration, the by-laws and the rules in force and effect, and the Owner and/or Resident shall be responsible to fully reimburse or indemnify the Corporation for all losses, liabilities, suits, claims, actions or damages of any nature, financial or otherwise arising from the conduct of the Owner, the Resident or Guest of a Unit, upon the Units or Common Elements within this Corporation.

IV.2. Subject to #4 below, Residents may keep two pets per Unit. However, not more than one of these shall be a dog, unless the Resident requires a seeing-eye dog, guide dog, a dog to assist the hearing impaired or a dog to assist the physically challenged.

IV.6. No dangerous animal shall be permitted to enter or reside within this Corporation at any time. Pit Bulls or Pit Bull Cross dogs are deemed to be dangerous animals under the Ontario Statute Law Amendment Act, 2005, and therefore not permitted to be kept in a Unit according to the rules. Without limiting the generality of the foregoing, the Board, in its sole and unfettered discretion, after receiving a written complaint alleging the viciousness of a pet, may deem such to be dangerous and require the immediate removal of such pet from the Corporation.

IV.13. Residents shall not permit their pet(s) to soil or damage any part of the Common Elements or Units whether by waste, defecation, urination or otherwise. If such soiling or damage occurs, the pet's owner shall immediately rectify the damage or remove the excrement. If the Resident does not remove the excrement, the Manager shall have it removed and the Resident shall be liable for a \$50.00 removal charge which may be collected in the same manner as Common Element expenses.

IV.15. No pets shall be permitted outside of a Unit where it resides or anywhere upon the Common Elements, except in the custody of the Owner and/or Resident and upon a short leash.

IV.18. Pets shall not be exercised in the lobbies, corridors, stairways, garages, footpaths, grounds, pavements or any other portion of the non-exclusive-use Common Elements within this Corporation.

IV.21. No household pet deemed to be a nuisance by the Board or Manager may be kept by a Resident. If the Board receives a complaint regarding the noise level, general disturbances, waste or damage caused by a pet, it shall notify the pet's owner of the complaint. This notice shall constitute a "first warning". The Board shall give the Resident a sufficient period of time in which to rectify any previous non-compliance of the rules (insofar as this is possible) and show compliance (including taking measures to prevent his pet from causing such waste, noise or nuisance) with the rules governing the keeping of pets within this Condominium. A Resident who fails to comply with the rules after being provided with "first warning" will thereafter, at the sole discretion of the Board and/or Manager, receive written notice requesting the permanent removal of the pet from the Corporation and the Resident owner of the pet must comply with the request for such permanent removal within two weeks from receiving written notice thereof.

#### **D. ISSUES AND ANALYSIS**

##### **Issue #1: Have the Owner and the Tenants breached their obligations under TSCC 2250's governing documents and the Act?**

[14] Since May 22, 2023, TSCC 2250 has received 11 complaints about the Tenants' two dogs. In a letter sent to the Owner on March 13, 2024, TSCC 2250 summarized the complaints as follows:

March 8, 2024	The Tenant's dogs are trying to attack another dog; the Tenant's dogs are not muzzled.
March 7, 2024	The Tenant's dogs are trying to attack another dog; the Tenant's dogs are not muzzled.
March 1, 2024	The Tenant's dog attacked another resident's dog upon exiting the elevator.
January 23, 2024	The Tenant's dogs are trying to attack another dog; the Tenant's dogs are not muzzled.
January 3, 2024	The Tenant's dogs attack another dog.
October 29, 2023	The Tenant's dogs, running off-leash in the lobby, jumped on the resident and attacked their dog.
September 8, 2023	Dogs urinating in the 4th-floor corridor.
August 12, 2023	Dogs urinating in the elevator.
July 23, 2023	Dogs urinating in the 4"-floor corridor.
June 21, 2023	Dogs running off-leash and urinating in the elevator.
May 22, 2023	Dogs running off-leash on the common elements.

[15] The June 21, 2023, May 22, 2023, October 29, 2023, and January 3, 2024, incidents were captured on video. The January 3, 2024, video is particularly disturbing and depicts both of the Tenants' dogs aggressively attacking another unit owner's small dog. The other noted incidents were verified by security and the reports were submitted as evidence.

[16] In addition to the above noted incidents, TSCC 2250 submits that the Tenants' dogs have urinated several times on the carpet of the fourth floor where their unit is located. TSCC 2250 provided pictures of the urine-stained carpets, and the copies of the chargeback letters (February 15, March 16, June 21, and July 24, 2023) sent to the Owner and the Tenants.

[17] TSCC 2250 sent additional letters to the Owner and the Tenants notifying them of the above noted complaints, and the need for compliance with its governing documents. These letters were sent to the Owner and the Tenants on May 23 and

October 30, 2023.

- [18] On January 15, 2024, TSCC 2250 wrote another letter to the Owner and the Tenants informing them of the ongoing complaints about the dogs. The letter advised the Tenants that because of the ongoing complaints, the board of directors deemed their dogs to be a nuisance. TSCC 2250 directed the Tenants to remove both of their dogs from the condominium property by February 9, 2024. The Tenants and the Owner were notified that failure to comply with the removal of the dogs would result in TSCC 2250 making an application to the Tribunal seeking an order for compliance and recovery of its legal fees.
- [19] The Tenants did not comply with TSCC 2250's direction to remove both of their dogs from the condominium property, and the Owner did not take any steps to ensure the Tenants' compliance. As such, another letter was sent to the Owner and the Tenants. This letter was sent on March 13, 2024, and directed the Tenants to remove their dogs from the condominium property by March 27, 2024. TSCC 2250 advised that failure to remove the dogs would result in legal action for compliance and recovery of legal costs.
- [20] In response to the March 13, 2024, letter, the Owner emailed TSCC 2250 and advised that the Tenants are not his "original tenants" and are living in his unit "illegally". The Owner further advised that he has made application to the Landlord and Tenant Board for eviction. The Owner told TSCC 2250 to direct all "corrective actions" to the Tenants, including removal of the dogs. TSCC 2250 responded to the Owner and reiterated his responsibility under the Act and TSCC 2250's governing documents to ensure the Tenants' compliance.
- [21] Since filing this application, TSCC 2250 submits that the incidents of urinating in the hallway outside of the unit has continued. TSCC 2250 had the carpets cleaned on May 3, 2024. On May 6 and 13, 2024 the carpets were again soiled.
- [22] In her brief statement in the ODR system, Ms. Williams submits that her dogs have not soiled on the hallway carpet for over a year. She leaves the door open to her balcony so that her dogs can relieve themselves on "pee pads". It is Ms. Williams' position that other dogs living in the condominium are responsible for the urine stains on the fourth-floor hallway because her dogs have not engaged in this type of behaviour in over a year. However, Ms. Williams did admit that her white dog is the "problematic one for other dogs". Ms. Williams indicated that she feels "targeted for reasons that the building management knows and won't explain to us".
- [23] Having considered the evidence before me, I find the Owner has failed to comply

with his obligations under Section 19 (b) of the TSCC 2250's declaration and its Rule II.9 by not taking measures to acquire his Tenants' compliance with the corporation's governing documents relating to pets. In making this finding, I considered the uncontested and compelling evidence of TSCC 2250 that the Owner did not respond or initiate action against his Tenants to ensure their compliance. Further, the email from the Owner to TSCC 2250 in response to the concerns demonstrates that he relinquished his responsibilities as a unit owner and declined to assist in resolving the issues. As such, I am ordering the Owner to comply with his obligations under TSCC 2250's governing documents by taking steps to ensure the Tenants comply with the provisions of TSCC 2250's governing document relating to pets and TSCC 2250's direction to permanently remove both of their dogs from the condominium property because they have been deemed by the board of directors to be nuisances.

[24] I further find, based on the compelling evidence of TSCC 2250, that the Tenants have also not complied with the provisions of its governing documents relating to pets. Specifically, the Tenants have not complied with Rules IV.2, IV.6, IV.13 and IV.15 because they are keeping two dogs in the unit, they have allowed the dogs to urinate on the common elements, and the dogs have demonstrated dangerous behaviour by attacking other dogs living in the condominium property. While Ms. Williams may dispute that her dogs are being aggressive and soiling on the common elements, the videos and security reports submitted in evidence by TSCC 2250 support my findings, as does Ms. Williams' statements during the hearing where she indicated her white dog is problematic with other dogs. I am ordering the Tenants to comply with the pet provisions of TSCC 2250's governing documents.

[25] Because the Tenants have not complied with the pet provision set out in the governing documents, I find both of the Tenants' dogs are nuisances under section 20 (g) of TSCC 2250's declaration and its Rule IV.21. In making this finding, I considered the fact that the Tenants have been permitting both of their dogs to urinate on the common elements and attack or try to attack other dogs living in the condominium property. There have been numerous verified complaints of these activities which supports my finding. I am ordering the Tenants to permanently remove both of their dogs from their unit and the condominium property.

## **Issue #2: Should costs be awarded?**

[26] TSCC 2250 has requested an order for the Respondents to reimburse it the fee (\$150) paid to file this application.

[27] Rule 48.1 of the Tribunal's Rules of Practice states that if a matter is not resolved

by Settlement Agreement or Consent Order and the adjudicator makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the adjudicator decides otherwise. In this matter, the Applicant was successful. I am ordering the Owner to pay \$150 to TSCC 2250 to reimburse the fee it incurred for filing this application. In my view the Owner breaching his responsibilities in seeking his Tenants' compliance with TSCC 2250's governing documents significantly contributed to this application needing to be filed.

[28] TSCC 2250 also requests an order requiring the Respondents reimburse it for the cost of the legal fees it incurred to participate in the Tribunal proceedings.

[29] The Tribunal's Rule 48.2, provides:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[30] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,

(i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(ii) the conduct of all parties and representatives requesting costs;

(iii) the potential impact an order for costs would have on the parties;

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[31] In this matter, the Owner and Tenants' lack of participation during the Tribunal process contributed to the matter going to hearing. In considering the Respondents' conduct and the likely impact it had on TSCC 2250's legal fees, I find it appropriate to make an order for costs.



- [32] While TSCC 2250 has claimed \$6000 for legal costs for participating in the Tribunal proceeding, I find this amount disproportionate. I say this because essentially this was a default hearing. There were no preliminary issues, no cross examination, TSCC 2250 did not have to review evidence submitted by the Owner or the Tenants. This was a straightforward hearing that ended ahead of schedule. I have determined that an award for 50% of the claimed amount is appropriate in this circumstance. The Owner and the Tenants shall each pay \$1,500 to TSCC 2250 for the legal cost incurred for the Tribunal proceeding.
- [33] TSCC 2250 has requested an order for compensation requiring the Owner and Tenants to reimburse it \$1,829.19, for the costs incurred for enforcement prior to the Tribunal proceeding. TSCC 2250's Rule II.9 provides that an owner or resident "shall be responsible to fully reimburse or indemnify the Corporation for all losses, liabilities, suits, claims actions or damages of any nature, financial or otherwise arising from the conduct of an owner, the Resident or Guest of a Unit".
- [34] Section 1.44 (1) 3 of the Act provides that the Tribunal can make an order directing a party to pay compensation for damages incurred by another party because of non-compliance.
- [35] In this matter, I find it appropriate to make an order for compensation under Section 1.44 (1) 3 of the Act because the Owner and Tenants engaged in conduct that caused TSCC 2250 to incur costs in attempt to get them to comply with their obligations under the Act and the corporation's governing documents. Because of this lack of compliance, TSCC 2250 had to engage legal counsel. I am ordering the Owner pay compensation to TSCC 2250 in the amount of \$1,829.19, representing 100% of the requested amount. I am not ordering the Tenants to pay any portion of this amount because I am of the view, the Owner had the ultimate responsibility to take measures to seek his Tenants' compliance with the Act and TSCC 2250's governing documents and he failed to do so.

#### **E. ORDER**

[36] The Tribunal Orders that:

1. Shoab Syed shall comply with his obligations under Section 19 (b) of TSCC 2250's declaration by taking all reasonable measures to ensure the tenants of his unit comply with TSCC 2250's Rules IV.2, IV.6, IV.13, IV.15 and IV.21 and section 20(g) of its declaration.

2. Amy Williams and Nelson Lima shall comply with their obligations under TSCC 2250's Rules IV.2, IV.6, IV.13, IV.15 and IV.21 and section 20(g) of its declaration.
3. Pursuant to section 1.44 (1) 1 of the Act, Amy Williams and Nelson Lima shall within fifteen (15) days of this Order, permanently remove both of their dogs from their unit and TSCC 2250's property.
4. Shoab Syed shall within thirty (30) days of this Order, pay \$150 to the TSCC 2250 for the cost of filing this application.
5. Shoab Syed shall within thirty (30) days of this Order, pay \$1,500 to the TSCC 2250 for reimbursement of legal fees incurred for this proceeding.
6. Amy Williams and Nelson Lima shall jointly within thirty (30) days of this Order, pay \$1,500 to the TSCC 2250 for reimbursement of legal fees incurred for this proceeding.
7. Shoab Syed shall within thirty (30) days of this Order, pay compensation in the amount of \$1,829.19 to TSCC 2250 for the cost incurred for its enforcement efforts.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: July 11, 2024