

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 07, 2024

CASE: 2024-00184N

Citation: Sieviewright v. Toronto Standard Condominium Corporation No. 1793 et al., 2024 ONCAT 120

Order under Rule 19.1 of the Condominium Authority Tribunal's Rules of Practice

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Karen Sieviewright

Self-represented

The Respondents,

Toronto Standard Condominium Corporation No. 1793

Represented by Carol Dirks, Counsel

Toronto Standard Condominium Corporation No. 1808

Represented by Carol Dirks, Counsel

DECISION ON COSTS

[1] The Tribunal released its decision on the Respondents' motion to dismiss the case pursuant to Rule 19.1 of the Tribunal's Rules of Practice on July 12, 2024.¹

I granted the motion and dismissed the application. Counsel for the Respondents (at that time, Bree Pierce) asked that the Respondents be given the opportunity to make submissions on costs. I allowed them to do so and gave the Applicant the opportunity to make submissions in response to their request. I have now reviewed their respective submissions and have decided that there will be no costs awarded for the reasons set out below.

[2] The Respondents seek reimbursement of their costs on a partial indemnity basis, in the amount of \$1767.32. They submit that this is the second application brought by the Applicant related to noise from the garage doors. While it is true that her previous application related to the grate covering the drain at the garage door and was dismissed on the basis that it was a repair and maintenance issue and not within the Tribunal's jurisdiction, the application was not dismissed in its entirety.

¹ *Sieviewright v. Toronto Standard Condominium Corporation No. 1793 et al.*, 2024 ONCAT 104 (CanLII)

The remaining issue related to the generator vent did proceed and was resolved by a settlement agreement.

- [3] The Applicant framed the noise from the garage mechanism differently in this application. Since the previous application, the garage door mechanism had been replaced and her complaint centered on that. While there was undoubtedly some similarity between the two applications, in the intervening time, the Tribunal issued its decision in *Kimel v. Toronto Standard Condominium Corporation No. 2026*, 2023 ONCAT 186 (“Kimel”), which the Applicant relied on here to a great extent, as noted in my decision on the motion. It was not unreasonable that in reading Kimel, the Applicant may have understood it to provide considerable support to the position she was advancing in this application.
- [4] Section 1.44 (1) 4 of the *Condominium Act, 1998* (the “Act”) states that the Tribunal may make “an order directing a party to the proceeding to pay the costs of another party to the proceeding”. Section 1.44 (2) of the Act states that an order for costs “shall be determined in accordance with the rules of the Tribunal”. Pursuant to Rule 48.2 of the Tribunal’s Rules of Practice, legal costs incurred are generally not reimbursed, but an award may be appropriate if a party’s behavior was unreasonable or undertaken for an improper purpose. As the sections of the Act and the Tribunal’s Rules of Practice highlight, an award of costs is discretionary.
- [5] The Respondents submit that in light of her previous case and the Kimel decision, the Applicant’s conduct was unreasonable and for an improper purpose. As noted above, I do not find the Applicant’s reliance on Kimel to be unreasonable. Further, there is no basis to conclude that this case was initiated for an improper purpose; simply asserting this to be the case does not make it so.
- [6] The Respondents also submit that significant legal costs were incurred and that all owners, most of whom have no direct involvement in this case, must therefore contribute to these costs. That is frequently the situation – as the Tribunal has noted in other cases when a submission such as this is made, such costs are often the consequence of the business of a condominium corporation. However, I note that there are now two decisions where the Tribunal has decided against the Applicant on a very similar (though not identical) issue. Should a third and similar case be brought, the Tribunal may exercise its discretion differently.
- [7] Based on the Applicant’s submissions (and I note that she provided extensive documentation related to her efforts to resolve her dispute, to which I gave limited weight in making this costs decision), she continues to actively pursue what she perceives to be required – a solution to the noise arising from the operation of the

garage door. She is clearly frustrated by her situation. I reiterate my admonition to the parties to work together to determine if there is a viable response to the Applicant's complaints, rather than to turn once more to the Tribunal.

A. ORDER

[8] The Tribunal orders that this application is dismissed without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: August 07, 2024