CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 26, 2024
CASE: 2023-00529N
Citation: Waterloo North Condominium Corporation No. 37 v. Baha et al, 2024 ONCAT 131

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Waterloo North Condominium Corporation No. 37
Represented by Fiona Burnett, Counsel

The Respondent,
Antoaneta Claudia Baha
Represented by Joseph Murphy, Agent

The Intervenor,
Joseph Murphy
Self-Represented

Hearing: Written Online Hearing – March 5, 2024 to July 10, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Tribunal has dealt with many cases where the deterioration in personal relations within a condominium community has led to acrimony, lawyers' letters (and resultant costs to the corporation), photo surveillance and litigation. This is one of those cases. Along the way, on March 29, 2024, the Respondent, Antoaneta Claudia Baha ("Ms. Baha"), the owner of a unit in Waterloo North Condominium Corporation No. 37 ("WNCC 37"), and her partner, Joseph Murphy ("Mr. Murphy"), the Intervenor, state they have temporarily moved out of their unit due to the stress the litigation has caused them. The toll that matters such as this take on not only the parties directly involved, but the entire condominium community is not insignificant.

[2] In this case, the dispute centers on the presence of two dogs in Ms. Baha's unit

contrary to WNCC 37's Rules (specifically Rule 7.01) which permit only one dog. The initial complaint was focussed on noise – the alleged excessive barking of dogs in Ms. Baha's unit resulting in unreasonable noise that created an alleged nuisance contrary to s. 117 (2) of the *Condominium Act, 1998* (the "Act") and Rule 2.02 of WNCC 37's Rules. The dispute then evolved into perhaps the more contentious issue – whether Ms. Baha and Mr. Murphy should have an accommodation pursuant to the *Ontario Human Rights Code* (the "Code") and therefore be permitted to have a second dog in their unit.

[3] The other relevant WNCC 37 Rules regarding pets are as follows.

> 7.02 No pet that is deemed by the Board in its absolute discretion, to be a nuisance, shall be kept in any Unit …
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> …
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> 7.06 Any restrictions, rules or prohibitions with respect to pets is subject to one or more exceptions which can be made for medical reasons in the discretion of the Board reasonably exercised, upon receipt of adequate documentation evidencing:
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> (a) that a dog … which would otherwise be prohibited is a trained service dog or animal, and is necessary to any person with a right of access to the common areas of the Condominium.
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> …
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> 7.08 The Board has discretion but not the obligation to permit other pets that might otherwise be prohibited, if the need for the same is established by sufficient documented medical evidence of one or more licensed physicians in the province of Ontario.

[4] Before addressing the issues, I do note that the presence of two dogs in Ms. Baha's unit is not the only matter causing strife between the parties. The issue of whether Ms. Baha is permitted to install a washer-dryer in her unit and issues around board governance were also referenced in the parties' evidence and submissions. These are not matters which the Tribunal has jurisdiction to determine, and I have not considered these in making my decision.

[5] I also note that, as a preliminary matter, Ms. Baha requested a stay of this application because of her concurrent application to the Human Rights Tribunal of Ontario (the "HRTO"). WNCC 37 opposed the request. In my decision denying the stay[1], I stated at paragraph 9 (referencing the Supreme Court of Canada decision in *Tranchemontagne v. Ontario (Director, Disability Support Program*), 2006 SCC 14 (CanLII) ("Tranchemontagne")):

> … the relief that WNCC 37 seeks in this case – compliance with the condominium's rules related to the presence of the two dogs – is a matter solely within the CAT's jurisdiction. And, to the extent that issues of disability and the requirement for an accommodation arise in the context of the dispute, the Tribunal has authority to apply the Ontario Human Rights Code (the "Code") where issues of human rights properly arise in the case before it. The HRTO does not have exclusive jurisdiction over the interpretation of the Code. Whether or not WNCC 37 may enforce compliance of the one-pet rule or is required to grant an accommodation to the Respondent and Intervenor can be fully addressed here. …

[6] After considering the relevant evidence and submissions, I have concluded that WNCC 37 has not established that the dogs are causing unreasonable noise, and that Mr. Murphy has provided sufficient information to support the requested accommodation thereby permitting the presence of two dogs in the unit. In this case, both parties requested costs. I make no order for costs. The Respondent and Intervenor also requested other relief such as a declaration that WNCC 37 and its directors have acted in bad faith and harassed them, damages for pain and suffering in the amount of $25,000. WNCC 37 had the opportunity to make submissions in reply and did so. After considering the parties' submissions on these issues, I award to Ms. Baha, damages in the amount of $15,000. There is no order for the declaration requested.

B. BACKGROUND

[7] The chronology of events preceding this application provides helpful context for the issues before me.

[8] Ms. Baha and Mr. Murphy moved into her unit in WNCC 37, a 176-unit condominium, on January 9, 2023. Both had dogs at that time and the evidence indicates that Ms. Baha never attempted to hide the fact that there were two dogs in the unit.

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[1] *Waterloo North Condominium Corporation No. 37 v. Baha et al.*, 2024 ONCAT 53 (CanLII)

[9] Sometime around January 28, 2023, Anthony Bohnert (“Mr. Bohnert”) (the president of WNCC 37’s board of directors at that time), who resides in the unit below Ms. Baha’s, complained to management about dog(s) barking constantly. Ms. Baha responded to the complaint, advising the condominium manager that her dog is a service dog and attached a doctor’s note explaining the nature of her health need for the dog.

[10] Mr. Bohnert sent an email to the condominium manager on February 26, 2023, asking her to “add this to the file on my complaints,” stating that there were “several barking sessions today coming from [Ms. Baha’s] unit” and that “this is not the small service dog, but from a larger dog by the sound …” He described it as being at times “very aggressive barking”. On February 27, 2023, Mr. Bohnert sent another email complaining of barking sessions and stating that it was “definitely not the small dog that is supposedly the service dog”. To this point, there had been no complaint about the fact that there were two dogs in the unit.

[11] On March 20, 2023, the condominium manager circulated a notice to all owners and occupants that stated that “there are quite a few owners who have more than one pet in their unit” and directing people to Rule 7.01 as well as Rule 7.12 which states that guests/visitors are not permitted to bring their pets to the property. This notice is corroborative of Ms. Baha’s evidence that they are not the only residents who have more than one dog in their unit. On that same day, Ms. Baha emailed the condominium manager to notify her that both she and her partner have service dogs and that both dogs had appropriate documentation as required by the *Accessibility for Ontarians with Disabilities Act* and the Code. Management responded to this email stating that Ms. Baha’s partner was “not an owner and therefore could not bring a pet onto the property, service animal or not,” and that, regarding Ms. Baha’s claim for a service animal, they needed proper medical documentation and the doctor’s letter was not sufficient. This latter point seemed redundant given that Ms. Baha as an owner was permitted to have a dog in her unit in any event.

[12] On May 4, 2023, the first of several letters from WNCC 37’s legal counsel was sent to Ms. Baha. In that letter, counsel stated that it was WNCC 37’s understanding that there were three (and potentially four) dogs being kept in the unit and descriptions of the dogs were provided. This appeared to be based on photos that had been taken of Ms. Baha, copies of which were attached to the letter. Regarding Mr. Murphy’s dog, if an accommodation was required under the Code, documentation was requested. Counsel noted that numerous complaints had been received regarding excessive barking which was causing a nuisance – no less than 12 occasions over the preceding three months. Finally, counsel

alluded to a rule requiring that all dogs had to be of a weight to allow them to be easily carried, though there does not appear to be any rule of this condominium restricting the weight or size of dogs.

[13] On May 24, 2023, Ms. Baha responded to this letter advising, among other things, that there were two service dogs in the unit and attached a note from Mr. Murphy's psychiatrist supporting his request for a service dog. On June 16, 2023, counsel wrote again to Ms. Baha, acknowledging that there were two, not three or four dogs in the unit. Further, counsel stated in the letter that the psychiatrist's letter was not sufficient evidence to establish the existence and nature of the disability as enumerated by the Code, the medical need to be accommodated, and the nexus between the disability and the requested accommodation.

[14] Ms. Baha responded on June 20, 2023. She questioned the corporation's enforcement of the one-pet rule in that they had become aware, through conversations with various residents, that others had multiple pets in their units, with knowledge of the board. She also requested that Mr. Bohnert recuse himself from any decision-making process in relation to her and Mr. Murphy as he "seems to have embarked on a personal vendetta against us … he is the person who took the two pictures …" and was the only person who has complained about their dogs. In an email to Ms. Baha on July 14, 2023, in which counsel provided her with board minutes from January to May 2023, counsel noted that Mr. Bohnert had recused himself.

[15] On July 13, 2023, Ms. Baha provided another letter, dated July 12, 2023, from Mr. Murphy's psychiatrist, Dr. Patelis-Siotis, who advised that Mr. Murphy had been under her care for several years and that he met the definition of disability under the Code. Dr. Patelis-Siotis further stated that "Due to his disability he has certain limitations and the presence of his service dog is necessary to alleviate his symptoms and to help him live an independent life." This letter was not accepted as sufficient by WNCC 37. In their letter of August 9, 2023, counsel advised that Dr. Patelis-Soulis' letter did not provide the information requested in their letter of June 16, 2023, and requested that Mr. Murphy "provide medical documentation indicating the nature of the disability, and the medical **need** rather than the **preference** for the animal" (emphasis in the original). Counsel requested this documentation by August 25, 2023, failing which WNCC 37 would be considering commencing an application to the CAT seeking orders for compliance.

[16] Though there were more communications between Ms. Baha and counsel as well as between condominium management and both Ms. Baha and Mr. Murphy, I have, here, highlighted only the most relevant.

[17] WNCC 37's application to the Tribunal was accepted on October 17, 2023. Subsequently, on February 13, 2024, in counsel's letter to Ms. Baha and Mr. Murphy, counsel advised that WNCC 37 was not disputing that Mr. Murphy has a disability, but that the previously requested documentation required the specific symptoms, conditions and/or needs which may require an accommodation to be included. As counsel stated, "In other words, **please advise why a second dog at the Unit is needed to accommodate Mr. Murphy's medically related needs arising from his disability, rather than any other method of accommodation**" (emphasis in the original). Counsel also referred to numerous complaints of excessive noise emanating from the unit – dog barking – causing a nuisance.

C. ISSUES AND ANALYSIS

Issue No. 1: Is there unreasonable noise (dogs' barking) emanating from the Respondent's unit causing a nuisance contrary to the Act and Rule 2.02?

[18] As noted above, complaints from Mr. Bohnert were first made in late January 2023. WNCC 37's evidence about the noise complaints is largely from Mr. Bohnert and Danielle Huff ("Ms. Huff"), described as the property administrator, though Anne Beauchesne ("Ms. Beauchesne"), the condominium manager, also testified.

[19] Ms. Huff testified that she did a walk through the hallways of each floor every morning. She heard the dogs in Ms. Baha's unit bark every morning. She stated that she received numerous complaints from "an occupant at the Condominium about the dogs barking …". Ms. Beauchesne testified that Mr. Bohnert was the only resident from whom management had received complaints about the dogs. Ms. Huff stated that she, with a board member (Mr. Bohnert), took the photographs of Ms. Baha. She would occasionally hear other dogs bark on her walk throughs. Her testimony was that she received verbal complaints from other residents, but no one else wanted to come forward and get involved. Ms. Beauchesne also stated that she had spoken to others, but they do not want to get involved.

[20] Ms. Huff described the dogs as "very friendly". She also stated that the barking decreased approximately six months ago (therefore in approximately December 2023). Mr. Bohnert, however, described "aggressive" barking, meaning, according to him, that if he was near the dog he would be cautious approaching it when it barks like that.

[21] Mr. Bohnert (who remained a board member from January 2019 to January 2024, after which he resigned from the board) testified that he began hearing barking in late January 2023. He described 30-second bursts of barking; at times, there were 20 such barking sessions per day. WNCC 37 submitted his noise logs for the period of November 8, 2023 to March 10, 2024, which Mr. Bohnert said was not an exhaustive list, but only what he had recorded. Of the approximate 28 dates, 16 relate to dogs barking. He appeared able to distinguish the barking of the small and larger dog from one another. On one date, he wrote that he thought the dog had a chew toy, indicating that there were little banging and scraping noises. Mr. Bohnert also noted “extremely loud and aggressive walking” sounds of a clogged toilet and plunger sounds. The log does suggest noise transmission without question, and perhaps also a sensitivity on Mr. Bohnert’s part to any sounds emanating from Ms. Baha’s unit.

[22] In contrast to Mr. Bohnert’s testimony, Ms. Baha submitted a letter dated April 17, 2024, from a neighbour who lives across the hallway from her. This individual noted that there are two dogs and when Ms. Baha and Mr. Murphy first moved in, she could hear the dogs bark for short bursts of time, 10 seconds or less. But she wrote that this settled down after a few weeks and the barking became less and less and was never excessive or a disturbance to them. She described the dogs as gentle and friendly. In some measure, this evidence is similar to that of Ms. Huff.

[23] The onus is on WNCC 37 to establish, on a balance of probabilities, that the noise from the dogs’ barking is unreasonable and creating a nuisance. It has failed to do so. It has relied to a significant extent on the evidence of Mr. Bohnert which is somewhat at odds even with the evidence of Ms. Huff and certainly with that of the neighbour across the hall. He is the only one who seems to have presumed the dogs to be aggressive; the video stills submitted by WNCC 37 of Mr. Murphy and the dogs which purport to suggest aggressive behavior do the contrary. I do not accept the assertion that there are others who are disturbed but will not come forward in the absence of any supporting evidence in that regard. What the evidence suggests is that one individual has complained about the dogs. It is possible that others may have been prompted to comment about the barking when specifically asked by management, but there is no evidence before me of other complaints. The dogs do bark at times – Ms. Baha and Mr. Murphy do not dispute that; however, there is a lack of compelling evidence to support a conclusion that Ms. Baha and Mr. Murphy are permitting unreasonable noise in their unit.

Issue No. 2: Are the Respondent and Intervenor entitled to accommodation under the Code and therefore an exemption from the one-pet rule?

[24] As the chronology indicates, as this dispute evolved, WNCC 37 ceased questioning whether Ms. Baha was permitted to have a service dog (and as noted, one dog is permitted under the rules in any event) and accepted that Mr. Murphy has a disability. However, WNCC 37 maintains the position that he has refused to provide the required information to establish that his requested form of accommodation (a second dog) is appropriate and necessary, rather than any other form of accommodation.

[25] A person seeking accommodation must provide a reasonable and sufficient amount of information about their disability-related needs.[2] I find that Mr. Murphy has done so. Mr. Murphy testified that in the spring of 2020 his specialist prescribed a service dog to alleviate his symptoms. He acquired his dog ("Rylie") in February 2021. This evidence was not challenged by WNCC 37, although whether the dog was appropriately trained seemed to become a matter of contention for WNCC 37 at the hearing. He has provided two letters from his treating psychiatrist, the last one being in July 2023 at which time the psychiatrist wrote that the presence of his service dog is necessary to alleviate his symptoms. In addition, Mr. Murphy provided a letter dated April 15, 2024, from another of his treating physicians describing daily anxiety symptoms exacerbated, in the physician's assessment, by the dispute about the presence of Rylie in the unit. Whether or not this dispute has worsened his symptoms, the letter does indicate that another of Mr. Murphy's treating physicians has linked the presence of Rylie to a medically-related need arising from his disability.

[26] What WNCC 37 appears to be insisting on is that it must be able to assess whether some other form of accommodation is appropriate. When examining the various obligations of parties to an accommodation request, context is important. WNCC 37 counsel has cited several cases in which the request is made within the employment context where considerations such as whether the employee can be appropriately accommodated by a change in location within an office or an altered work schedule. And in those cases, courts have stated that it is not a matter of preference that will dictate the appropriate accommodation solution[3].

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[2] As set out in the Ontario Human Rights Commission's (the "OHRC") "Policy on ableism and discrimination based on disability".

[3] In *Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC) at paragraph 51, for example, the court noted that while the complainant may be in a position to make suggestions, the

[27] The Tribunal has, in other cases, used the language relied on by WNCC 37 – that condominiums are only obliged to accommodate a need, not a preference. In *Martis v. Peel Condominium Corporation No. 253* [4]("Martis"), for example, the parties agreed that Ms. Martis' son had a medical requirement for an emotional support animal; the issue was the weight of the dog. A dog had been acquired which would exceed the weight restriction the corporation sought to impose. The preference was not for a dog, but a dog of a certain weight. The Tribunal found, at paragraph 37, that the corporation was obliged to accommodate his need for a dog but could set a weight limit.

[28] By contrast – and the Tribunal decision that is most persuasive in the context of accommodation in the condominium context –, in *Peel Condominium Corporation No. 415 v. Vokrri et al.*, 2024 ONCAT 78 ("Vokrri"), the Tribunal stated at paragraphs 25-27 and 29 as follows:

> [25] Regarding PCC 415's argument that Mr. Vokrri has not provided enough information to prove he requires a dog over 25 lbs to meet his disability related needs, I agree. However, I am not persuaded that this means that Broly [Mr. Vokrri's dog], specifically, is simply Mr. Vokrri's preferred accommodation and is not necessary to meet Mr. Vokrri's disability related needs.
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> [26] The Ontario Human Rights Commission's "Policy on ableism and discrimination based on disability" sets out that one of the principles of accommodation is individualization. The Policy states "There is no set formula for accommodating people identified by Code grounds. Each person's needs are unique and must be considered afresh when an accommodation request is made."
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> [27] Dogs are not widgets. While in some cases it may be that a dog that exceeds the weight limit is merely a preference, to suggest that Broly, whom Mr. Vokrri has had since he was a puppy, could be swapped out with a smaller dog to the same or similar effect, is not a persuasive argument in this case.
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> …
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> [29] In line with other Tribunal decisions, such as *York Region Standard Condominium Corporation No. 1375 v. Sousa, 2022 ONCAT 11*, I am not willing to substitute my or PCC 415's opinion, with Ms. Ponsford-Hill's professional opinion that Broly addresses Mr. Vokrri's specific needs. I accept

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employer is in the best position to determine how the complainant can be accommodated without undue interference in the operation of the employe's business.

[4] 2021 ONCAT 110 (CanLII)

> that in these circumstances, allowing Broly to remain in the unit with Mr. Vokrri is an accommodation that directly responds to Mr. Vokrri's disability related need.

[29] A clear point from these contrasting decisions is that it is not self-evident that the desire for a particular service animal, as opposed to just any service animal, is necessarily a mere issue of preference. As Vokrri indicates, where opinions provided by qualified medical professionals support the position that the particular animal is the appropriate accommodation, it is not appropriate for the condominium's board or counsel, or the Tribunal, to disregard those opinions and assume that some other animal would suffice.

[30] Mr. Murphy's physicians have clearly identified Rylie, his existing service dog, as the appropriate accommodation to meet his specific needs. Nevertheless, WNCC 37 submits that it needs further information to be able to propose other potential accommodation methods – in other words, to substitute its opinion for that of the medical professionals, as alluded to in WNCC 37's counsel's letter of February 13, 2024. One such proposal made in submissions was that one dog may be sufficient – that is, that Ms. Baha and Mr. Murphy share a service dog, thereby bringing themselves into compliance with the one-pet rule. As stated in Vokrri, dogs are not widgets, and even less so when considering service dogs which serve an individual's specific needs.[5]

[31] The remaining issue is whether such an accommodation reaches the point of undue hardship. It is well settled that the party who received a request to accommodate a disability is obliged to do so to the point of undue hardship. There is no compelling evidence before me that allowing Rylie to remain in the unit, as the second dog in the unit, would cause any undue hardship to WNCC 37. Rules 7.06 and 7.08 contemplate circumstances where more than one dog may be in a unit; WNCC 37 failed to reasonably exercise its discretion when applying these rules, and this failure has had negative repercussions on Ms. Baha and Mr. Murphy as the evidence showed – they have moved out of their home. And importantly, I have found that there is no compelling evidence to support a finding that the presence of the dogs is creating a nuisance or disturbing the comfort and quiet enjoyment of other residents.

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[5] I also note that in the OHRC's policy referenced at footnote 2, above, s. 8.7 states that an accommodation provider is not entitled to substitute its own opinion for that of medical documentation provided by a doctor.

[32] For the reasons set out above, I find that Mr. Murphy is entitled to keep Rylie in the unit as an accommodation under the Code.

Issue No. 3: What remedy, if any, should be ordered?

[33] Given the reasons set out above, WNCC 37 is not entitled to the remedy they sought – the removal of Rylie.

[34] As I stated in paragraph 6, Ms. Baha and Mr. Murphy have requested several orders from the Tribunal to which WNCC 37 was given an opportunity to respond and did so. First and foremost, among these requests is that their two dogs be permitted to reside with them and accompany them in the common elements. Flowing from my reasons set out above, and in applying the Code, I so order. They have also requested that this decision and order be posted to the WNCC 37's website (referred to as the Condo Control app). This decision becomes a public document upon issuance and is posted on the CAT website as well as on CanLII, the legal decisions website. There is no apparent need, based on the evidence before me, for the decision to be posted to the WNCC 37's website as well. I will not make that order.

[35] I have considered WNCC 37's submission that the Tribunal does not have jurisdiction to grant declaratory relief, and I am not prepared to issue the requested declaration that WNCC 37 and its directors have discriminated against and harassed Ms. Baha and Mr. Murphy. This decision speaks for itself in terms of my findings about the history of this matter.

Costs

[36] Both parties requested costs.

[37] WNCC 37 seeks indemnification for legal costs incurred on a full indemnity basis, in the amount of $18,472.10. As WNCC 37 has not been successful, I award no costs to it. It appears to me that in its handling of this case, WNCC 37 became too entrenched in its position, too focussed on enforcement of the strict letter of its rules without due regard to the Code accommodation principles. The result was that the matter was propelled forward when a resolution ought to have been achieved. Its flawed perception of this case is highlighted in WNCC 37's closing submission that the Respondent and Intervenor "have not provided adequate evidence to justify preferencing their private interests over that of the entire community by providing them with an exemption to the Condominium's Rules to keep *two* dogs in their Unit."(emphasis in the original) It is a significant mischaracterization of a request for accommodation due to disability to describe it

as a “private interest”. Indeed, to the contrary, it is in the interest of all owners and residents of a condominium community that individuals with disabilities are not subjected to discriminatory treatment under their rules.

[38] Mr. Murphy as Intervenor and representative for himself and, for most of this hearing, as representative for the Respondent as well, has proposed that an award of costs at $200 per hour would be appropriate as this is a rate amount that might have been incurred had the work been performed by a lawyer. Costs are, on rare occasions, awarded to self-represented litigants. Typically, this is based on lost opportunity arising from the litigation or sometimes costs of consulting a lawyer, but not as an hourly rate for time that the self-represented litigant may have spent on the case. While I recognize that considerable time and effort was devoted to this case, there has been no compelling reason put forward to support an award of costs for time incurred by them. Therefore, I make no award of costs to the Respondent or intervenor.

[39] I am prepared, pursuant to s. 1.44 (1) 7 of the Act to make the order requested that Ms. Baha be given a credit toward the common expenses attributable to her unit equivalent to her unit’s proportionate share of the legal costs incurred by WNCC 37 in relation to this case which may be charged to all unit owners. Given my decision in this matter, it would be unfair for Ms. Baha to pay any portion of those costs.

The request for damages

[40] As noted at the outset of this decision, Ms. Baha and Mr. Murphy seek damages for pain and suffering. Sections 1.44 (1) 3 and 1.44 (1) 7 of the Act state, respectively, that the Tribunal may make an order for compensation for damages as a result of an act of non-compliance up to $25,000 and/or an order directing whatever other relief the Tribunal considers fair in the circumstances. In the case of *Rahman v. Peel Standard Condominium Corporation No. 779* (“Rahman”)[6], the Tribunal awarded Mr. Rahman $1,500 pursuant to s. 1.44 (1) 3 of the Act, having found an act of non-compliance with the Act and the condominium’s declaration in that the condominium denied him access to accessible parking spaces provided under the declaration.

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[6] 2021 ONCAT 13 (CanLII).

[41] The Rahman decision was appealed by the condominium corporation to the Divisional Court [7]. At paragraph 33 of the decision, in upholding the damage award, the Court stated: “It was clear on the record that Mr. Rahman was seeking such an award, and in my view it would have been open to the Tribunal to make such an award even in the absence of an express request for it: part of the role of the Tribunal is to oversee the conduct of condominium corporations.”

[42] WNCC 37 asserted, in response to the claim for damages, that this was a new issue raised by the Respondent and Intervenor in closing submissions and ought not to be considered. However, though the exact nature of damages had not been articulated by them, a claim for damages was a significant factor for the Respondent when she sought a stay of this proceeding in favour of the HRTO case. As in Rahman, it was clear on the record that such an award was sought. It could not have been a surprise to WNCC 37, given this and the evidence submitted, that a claim for damages would be made.

[43] WNCC 37 also submitted in its reply that this claim for compensation does not arise as a result of an act of non-compliance by it as per the wording of s. 1.44 (1) 3 of the Act, and that there is no compelling or causal evidence of the damages. For the reasons set out below, I find otherwise. I also note that WNCC 37 asserts that what Ms. Baha and Mr. Murphy are seeking is, in effect, a penalty. It is clearly not – it is a claim for compensation for damages as contemplated in s. 1.44 (1) 3 of the Act.

[44] In two cases cited by WNCC 37, the Tribunal has declined to award relief under s. 1.44 (1) 3 of the Act: *Sakala v. York Condominium Corporation No. 344*[8] and *Sidhu v. Peel Condominium Corporation No. 426* [9](“Sidhu”). Both were cases arising from records requests, which distinguish them from this case and limits their relevance. In Sidhu, the Tribunal did not find that the circumstances justified an award for compensation to the Applicant, but did not state that it could not have made such an award.

[45] While s. 1.44 (1) 3 of the Act does not require that damages must result “directly” from an act of non-compliance as submitted by WNCC 37, I do agree that there should be evidence of a nexus between the act of non-compliance and the damages said to have resulted therefrom. Ms. Baha has submitted that she had to restart therapy and incurred missed opportunity costs in terms of her career path;

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[7] *Peel Standard Condominium Corp. No. 779 v Rahman*, 2023 ONSC 3758 (CanLII)
[8] 2022 ONCAT 11 (CanLII)
[9] 2022 ONCAT 112 (CanLII)

however, the evidence to support an award in respect of this is lacking.

[46] Nevertheless, as the evidence has shown, these events, commencing in early 2023, have taken a toll on Ms. Baha and Mr. Murphy. I have found WNCC 37's conduct to be unreasonable in terms of its stance on the accommodation request, as clearly set out above. As a result, Ms. Baha and Mr. Murphy suffered discriminatory treatment and an injury to their dignity, feelings and self-respect that they ought not to have been required to endure. I am mindful of the direction given in the Tranchemontagne decision, referred to in paragraph 5 above, that the Tribunal has authority, and the obligation, to apply the Code where issues of human rights arise in a case properly before it.

[47] While a general award for pain and suffering may be nebulous in terms of assessment (though there is evidence of this before me), I have compelling evidence of Ms. Baha and Mr. Murphy's departure from their home to mitigate the stress they were experiencing at WNCC 37. The evidence is that Ms. Baha and Mr. Murphy moved out of their home on March 29, 2024 because of this case and the stress they felt subjected to as a result of the continuing dispute. Their evidence on this point was not challenged. Indeed, I note that stills from security camera footage dated March 18 and 19, 2024 of Mr. Murphy and Ms. Baha was uploaded by WNCC 37 as evidence of them having two dogs. At this point, this case was in Stage 3 – Tribunal Decision and the existence of two dogs (wearing service dog harnesses) was not in dispute. It is not unreasonable to conclude, in light of this degree of surveillance, that they felt, if not targeted, then very uneasy living in their home.

[48] In the case of *Peel Condominium Corporation No. 542 v. Gorgiev* [10]cited by WNCC 37, the court stated that when considering human rights issues, a tribunal is to consider whether a condominium's declaration, by-laws or rules, either expressly or by necessary implication contain a provision that prevents the person suffering from the disability from residing in the premises. This is a factor I have weighed when considering an appropriate remedy in light of WNCC 37's failure to comply with its duties under Rules 7.06 and 7.08 to reasonably exercise its discretion in assessing the Code accommodation request, which, as a consequence, led to Ms. Baha's and Mr. Murphy's departure from their home.

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[10] 2011 ONSC 7211 (CanLII), at paragraph 39

[49] I find here that Ms. Baha has incurred damages which flow from WNCC 37's non-compliance with its rules. She submitted that she has suffered damages in the amount of $3,000/month, being the costs associated with ownership of the unit while they have been living elsewhere. Notably, they have not claimed any costs they may have incurred in relocating or the inconvenience caused by the move, nor any duplicative costs they may have incurred, such as utilities. What they have claimed includes interest, taxes and condominium fees, which is reasonable. Their actual costs have likely exceeded their claim. And again, WNCC 37 did not question that particular amount in its reply submissions, although they could have done so.

[50] This case, in particular, the genesis of the initial complaints made against Ms. Baha, WNCC 37's handling of the accommodation request and the departure from their home as a result, is unusual. A well-founded claim for compensation for damages has not arisen often in many of the cases that have come before the Tribunal to date. This has caused me to very carefully weigh the parties' submissions on this issue. As the Divisional Court stated[11], part of the role of the Tribunal is to oversee the conduct of condominium corporations. This is a circumstance in which it is fair and appropriate to do so. I will award damages pursuant to s. 1.44 (1) 3 of the Act to Ms. Baha in the amount of $15,000, calculated at $3,000 per month for the five months from April through to August 2024.

D. ORDER

[51] The Tribunal Orders that:

1. WNCC 37's application is dismissed.

2. Under s. 1.44 (1) 2 of the Act, WNCC 37 shall permit the Respondent and Intervenor's dogs to reside in the Respondent's unit; Rylie is permitted as a matter of accommodation under the Code.

3. Under s. 1.44 (1) 3 of the Act, WNCC 37 shall pay to the Respondent $15,000 within 45 days of the date of this Order.

4. Under s. 1.44 (1) 7, to ensure that the Respondent does not pay any portion of the amount awarded to her under subparagraph 3 above nor any portion of the legal expenses incurred by WNCC 37 in this case, she shall be given a

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[11] Referenced at footnote 7.

credit toward the common expenses attributable to her unit equivalent to her unit's proportionate share of those amounts.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: August 26, 2024