

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** September 10, 2024

**CASE:** 2024-00406N

**Citation:** Hastings Condominium Corporation No. 4 v. Goyen et al., 2024 ONCAT 139

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Hastings Condominium Corporation No. 4

Represented by David Howard, Agent

**The Respondents,**

Sarah Goyen

Not Participating

Yvonne Stachowski

Self-Represented

**Hearing:** Written Online Hearing – August 12, 2024 to August 28, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The Respondent, Sarah Goyen (the “Tenant”) lives in the unit owned by the Respondent, Yvonne Stachowski (the “Unit Owner”), part of Hastings Condominium Corporation No. 4 (“HCC 4”). The Tenant has two dogs living with her in the unit.
- [2] The Tenant did not join the case. HCC 4 submitted that they served three notices of the case to the Tenant by delivering it to her mailbox. The notices are dated June 28, 2024, July 11, 2024, and July 25, 2024. I am satisfied the Tenant received proper notice of this case, and the hearing proceeded in her absence.
- [3] The Unit Owner joined the case but did not participate.
- [4] HCC 4 brings this application alleging the Tenant has not complied with the pet provisions of its governing documents. It further alleges that the Unit Owner has

also not complied with its governing documents by not taking steps to seek the Tenant's compliance.

- [5] HCC 4 seeks orders requiring the Tenant and the Unit Owner to comply with its governing documents, and should they not, an order to permanently remove the dogs from its property. It also seeks orders requiring the Respondents to reimburse it the application filing fee and compensation for the fees incurred from its enforcement efforts.

## **B. OUTCOME**

- [6] For the reasons that follow, I find the Tenant has not complied with the pet rules set out in HCC 4's governing documents. I am ordering the Tenant to comply.
- [7] I further find that the Unit Owner has not complied with her obligations set out in HCC 4's governing documents. I am ordering the Unit Owner to comply.
- [8] I am also ordering the Unit Owner to pay HCC 4 the application filing fee (\$150).
- [9] I decline to make an order for the permanent removal of the Tenant's dogs should she comply with HCC 4's pet rules. HCC 4 has remedies available to them under their governing documents should the Tenant continue to not comply.

## **C. ISSUES & ANALYSIS**

### **Issue No. 1: Have the Tenant and the Unit Owner failed to comply with HCC 4's governing documents?**

- [10] Article XVII of HCC 4's declaration requires unit owners to ensure tenants living in their unit comply with its governing documents. This is also a requirement under section 119 (2) of the *Condominium Act, 1998* (the "Act"), which states:

An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules.

- [11] HCC 4's Rule 2018-07 (f) states:

Each pet owner must ensure that any defecation by such pet must be cleaned up immediately by the pet owner, so that the Common Elements are neat and clean at all times. Should a pet owner fail to clean up after his pet as aforesaid, the pet shall be deemed a nuisance, and the owner of said pet shall, within two (2) weeks of receipt of written notice from the Board or the Manager requesting removal of such pet, permanently remove such pet from

the property.

[12] HCC 4's Rule 2018-09 states:

a) Pets which are determined to be a nuisance by the board of directors must be removed from the complex within two (2) weeks of the written request from the board of directors. On the first offence, for non-dangerous pet behaviors, the Unit occupant and or Unit Owner will receive a written notice to correct the nuisance. On a second offence, within 6 months of the first offence, the Owner/occupant will receive a second notice to remove the Pet within two (2) weeks or legal enforcement actions will be commenced by the board of directors. The Owner of the Unit shall be liable to the Corporation for all expenses hereby incurred (including reasonable solicitor's fees).

b) Nuisance can be one or more of the following as determined by the board of directors at their sole discretion but not limited to;

...

- Animal feces from pets not cleaned up and disposed of appropriately by occupants or owners of the unit immediately after occurring, on a regular basis...

[13] HCC 4 submits that the Tenant's behaviour of not immediately cleaning up her dogs' droppings has been a long-standing issue. The dogs relieve themselves on the exclusive use common elements yard. At various times, when the issue was brought to her attention, the Tenant would eventually clean up the yard. However, since early 2024, the issue has escalated, and both the Tenant and the Unit Owner have not been responsive to HCC 4's concerns.

[14] On May 26, 2024, HCC 4 contacted the Tenant and requested she clean up the yard. Pictures submitted during the hearing demonstrate that on this date, numerous dog droppings were left in the yard. On May 27, 2024, HCC 4 emailed the pictures to the Unit Owner and reminded her of her responsibility to ensure the Tenant's compliance with its pet rules. The Unit Owner never responded.

[15] On June 1, 2024, HCC 4 provided the Tenant with an inspection notice to clean up the dog droppings in the yard. The notice advised the Tenant that she was not in compliance with HCC 4's rules.

[16] Despite HCC 4's efforts in addressing the issue with the Tenant and the Unit Owner, the problem persisted.

[17] On June 25, 2024, HCC 4 emailed the Unit Owner, included photos of dog

droppings in the yard, and advised that they sent a letter (also mailed to the Unit Owner) to the Tenant outlining their concerns and her non-compliance with the pet rules. HCC 4 advised the Unit Owner that it would be taking the issue to the Tribunal. The Unit Owner never responded.

- [18] In the June 25, 2024, letter to the Tenant, HCC 4 advised her of the ongoing issue of dog dropping being left in the yard. It requested the Tenant to clean up the droppings and not to let them accumulate. HCC 4 notified the Tenant that it was taking the issue to the Tribunal for enforcement, and that an order for the removal of her dogs could be made, as well as an order for costs against the Unit Owner.
- [19] HCC 4 provided clear and compelling evidence in support of their allegation that the Tenant has not been complying with its pet rules as set out above. The pictures submitted for evidence clearly demonstrate that the Tenant allows dog droppings to accumulate in the yard. Further, the Tenant does not respond to HCC 4's attempts to address the issue and enforce its rules, ultimately leading to this application being filed. Based on the evidence before me, I find the Tenant has not complied with HCC 4's pet rules. I order the Tenant to bring herself into compliance by immediately picking up her dogs' droppings after they have been left in the yard.
- [20] Regarding the Unit Owner's non-compliance with her obligations as set out in Article XVII of HCC 4's declaration and section 119 (2) of the Act, HCC 4 provided compelling evidence that she has not taken steps to ensure the Tenant's compliance with its pet rules. HCC 4 provided copies of emails, letters and photos that were sent to the Unit Owner, all of which were unanswered, and the Tenant's non-compliance continued resulting in this application being filed. Based on the evidence before me, I find the Unit Owner has not complied with her obligations set out in Article XVII of HCC 4's declaration and section 119 (2) of the Act. I order the Unit Owner to bring herself in compliance with HCC 4's governing documents by taking steps to seek her Tenant's compliance with the corporation's pet rules.

## **Issue No. 2: Is HCC 4 entitled to orders for compensation and costs?**

- [21] HCC 4 has requested an order for the Respondents to reimburse it the fee (\$150) paid to file this application.
- [22] 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 Unit Owner to pay \$150 to HCC 4 to

reimburse the fee it incurred for filing this application.

[23] HCC 4 has requested an order for compensation requiring the Respondents to reimburse it \$339 (inclusive of HST), for the costs incurred for enforcement prior to the Tribunal proceeding. HCC 4 did not provide a basis of how this cost was incurred. If it is in fact for the time spent for enforcement efforts by the condominium management team, this would not typically be ordered as compensation given enforcement is part of their duties.

[24] Given I am unable to ascertain the basis for the claim of \$339, I decline to make an order requiring the Respondent reimburse it to HCC 4.

**D. ORDER**

[25] The Tribunal Orders that:

1. The Tenant shall immediately bring herself into compliance with HCC 4's Rule 2018-07 (f) by immediately picking up her dogs' droppings after they have left them in the yard.
2. The Unit Owner shall immediately bring herself into compliance with Article XVII of HCC 4's declaration and section 119 (2) of the Act, by taking steps to ensure the Tenant complies with HCC 4's Rule 2018-07 (f).
3. Within thirty (30) days of this Order, the Unit Owner shall pay HCC 4 \$150 for the cost it paid to file this application.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: September 10, 2024