

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 26, 2024

CASE: 2024-00177N

Citation: York Condominium Corporation No. 228 v. Sniderman, 2024 ONCAT 150

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

Member: Brian Cook, Member

The Applicant,

York Condominium Corporation No. 228

Represented by Victor Yee, Counsel

The Respondent,

Barbara Sniderman

Self-Represented

Hearing: Written Online Hearing – April 25, 2024 to August 24, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Barbara Sniderman is an owner and resident of a unit in York Condominium Corporation No. 228 (“YCC 228”). Ms. Sniderman is the owner of a Great Dane dog named Lola. YCC 228 filed this Application alleging that on several occasions, Ms. Sniderman had allowed Lola to be off leash in the common elements’ areas, and sometimes was unable to physically control the dog. YCC 228 alleged that Lola had occasionally charged at residents, causing concern. Following warning letters from the condominium manager and then from counsel, the YCC 228 board of directors determined that Lola was a nuisance and should be removed.

[2] The issue in this case is whether Ms. Sniderman has complied with the YCC 228 rules regarding dogs, and in particular, whether she is able to have full physical control of Lola when they are in the common elements’ areas.

B. HEARING

[3] The application was filed in March 2024. Ms. Sniderman did not initially join the case so there was no Stage 2 – Mediation. Stage 3 – Tribunal Decision started in

April 2024.

- [4] The hearing was complicated by the fact that Ms. Sniderman does not have access to the internet in her home, although she does have access at her local library. With the assistance of counsel for YCC 228 and the condominium manager, we arranged for messages and documents to be printed and delivered to Ms. Sniderman's unit. She in turn was able to write messages and provide documents which were filed with the assistance of counsel and the manager. Tribunal staff also provided considerable assistance to facilitate the hearing.
- [5] Two telephone conference calls were scheduled. The first of these was on July 3, 2024. During the call, Ms. Sniderman advised that she wished to have assistance from a friend who has legal training. The friend was added to the conference call but said that he would need time to review the case documents before he could proceed, and the conference call was adjourned on that basis.
- [6] The friend was added to the system and was able to access the documents and file some messages on Ms. Sniderman's behalf. However, Ms. Sniderman then advised that she no longer wanted the friend to assist her because he had asked for money. She then indicated that a niece in the United Kingdom who has legal training could help her.
- [7] With assistance from the Tribunal administrative staff, the niece was added to the system and could access documents. The niece emphasized that she was not purporting to legally represent Ms. Sniderman, as she is not licensed to practice law in Ontario. It was understood that she was instead assisting Ms. Sniderman. I am grateful for the assistance that she was able to provide.
- [8] A second conference call was scheduled that included Ms. Sniderman and her niece. Evidence was provided and it was agreed that final comments would be made in writing. The niece asked for more time to file submissions and indicated that she was having some difficulty assisting her aunt. She was able to provide a brief document summarizing Ms. Sniderman's position on the issues. This process was completed in August.

C. EVIDENCE

- [9] During the first conference call on July 3, 2024, Ms. Sniderman indicated that she had obtained Lola as a puppy and that she is about 2 years old now. She indicated that Lola weighs about 120 pounds. She said that Lola was to be spayed the following week and she hoped that this would help her to be less exuberant. She said she has been working with a trainer and that Lola was becoming better

behaved. She indicated that she has called some animal shelters but has not found any suitable alternate arrangement for her dog.

- [10] On July 2, 2024 (the day before the first conference call), YCC 228 reported that there had been an incident involving Lola and a resident of the condominium. The resident was on the ground floor, about to exit the building to take his two small dogs for a walk. The resident reported that he was suddenly struck from behind by Lola who hit his legs, causing him to fall to the ground. He reported injuries to his wrist and knees that required medical attention. His wrist injury required a cast.
- [11] This incident was discussed at the July 3 conference call. At that time, Ms. Sniderman expressed remorse about the incident and concern for the injured resident.
- [12] As noted above, following the July 3 conference call, it was understood that Ms. Sniderman's friend would be helping her to access the system. When nothing was heard from the friend, and before the niece became involved, I invited Ms. Sniderman to provide a written statement, and she did so on July 22. In her statement, she acknowledged the July 2 incident but indicated that Lola is generally well behaved and not aggressive. She noted that Lola is still a young dog, and she continues to work on training.
- [13] On July 25, 2024, there was another reported incident. Lola was in the off-leash dog area. The gate was left open, and Lola ran out of the off-leash area. A resident of the condominium reported that Lola bit her 4-year-old son on the arm and then continued to chase after them until another neighbor intervened. The resident indicated that Lola had bitten her in the past, an incident that had not previously been reported.
- [14] I asked Ms. Sniderman to comment on the July 25 incident and noted that if the incident occurred as reported, it was a serious matter and that she should consider taking steps such as having someone with her when Lola is outside her unit and possibly a muzzle.
- [15] Ms. Sniderman provided a handwritten response on July 26. She indicated that the incident involving the child was not her fault and that it was instead the fault of another person who had left the gate to the off-leash area open, allowing Lola to escape. She stated that Lola did not bite the child and suggested that the problem arose because the child and his mother were upset and screaming. She reiterated that Lola is a good dog who is good around children. She also referred to the July 2 incident, suggesting that this too was not her fault, but rather occurred because the resident had two small dogs with him. She stated that Lola had not attacked

the resident.

- [16] Also on July 26, counsel for YCC 228 reported that there had been another incident involving the same resident who had been injured on July 2. The resident reported that Lola had again lunged at him. However, nothing happened because there was a glass partition between the resident and the dog.
- [17] This recent history raised two problems. The first was that there had been incidents reported that, if true, were serious and raised doubt about Ms. Sniderman's ability to adequately control Lola as required by the YCC 228 pet rules. I was concerned that it was not clear that Ms. Sniderman was able to control Lola or that she was accepting full responsibility for the behaviour of her dog. There was a possibility of further incidents. Counsel for YCC 228 submitted that the situation was getting worse and asked for an Interim Order.
- [18] The second problem was whether the more serious allegations might cause the Tribunal to lose jurisdiction over the case. I will return to the jurisdiction issue below.
- [19] On July 26, 2024, I issued an Interim Order. The full Order is attached as an Appendix to this decision. It included the following:
- Ms. Sniderman is ordered to ensure that her dog is on a tight leash and in control at all times while on the condominium common elements and grounds. If she cannot control the dog herself sufficiently to ensure that the dog does not jump up or have unwanted physical contact with anyone, she must ensure that someone who can control the dog is with her when she is with her dog on the common elements and condominium grounds.
- If the dog is taken to the off-leash dog area, she cannot be left unsupervised. She must be supervised by a person who can control the dog. Subject to further direction, this Interim Order applies until a final decision on the Application is made.
- [20] Although the Interim Order is dated July 26, 2024 (a Friday), it was not delivered to Ms. Sniderman until Monday July 29. Counsel for YCC 228 advised that another incident had occurred on July 28, before the Order was received, in which Lola lunged at a 9-year-old child but was controlled by a person who accompanied Ms. Sniderman.
- [21] The second conference call occurred on August 2, 2024. Ms. Sniderman attended, and we were joined by her niece in the UK. Prior to the call, I had indicated that during the call, Ms. Sniderman could comment on the Interim Order and provide

further evidence and submissions about the recent incidents.

- [22] During that conference call, Ms. Sniderman indicated that she disputes the history of the alleged incidents. She emphasized that Lola is a good dog who is good around people and children. She confirmed that she had received the Interim Order and that she was complying with it.
- [23] To date, I have not heard of any further alleged incidents.
- [24] On August 8, 2024, I issued directions about final submissions. I identified that the issues in the case are whether Ms. Sniderman has complied with the YCC 228 rules about dogs and also included the jurisdiction issue, discussed below. I was anticipating that Ms. Sniderman's niece would assist her. Updated submissions from YCC 228 were received and a paper copy was provided to Ms. Sniderman as well as in the Tribunal's online system that the niece now had access to.
- [25] The niece indicated that she was having some difficulty assisting her aunt with submissions and asked for an extension of time which was granted. Brief submissions were received on August 23, consisting of a point form summary of some of Ms. Sniderman's evidence. These indicated that Ms. Sniderman did not agree with the history of the alleged incidents in July 2024 because Lola is very friendly. She indicated that Lola is "like a service dog" who helps her mental and physical health. She advised that she continued to follow the Interim Order.
- [26] For its part, YCC 228 submitted that it seeks an order requiring permanent removal of the dog from the building, costs in the amount of \$2,368 related to the period before the application was filed, and legal costs in the amount of \$10,368.88 related to the hearing. Counsel did not comment on the jurisdictional issue.

D. JURISDICTION

- [27] Under Section 1.36 of the *Condominium Act, 1998* (the "Act"), a condominium corporation may apply to the Tribunal for the resolution of prescribed disputes with an owner of a unit. Applications can also be brought under section 117(2) of the Act, which provides in part:

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,

...

(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.

[28] The prescribed disputes are set out in section 1(1) of Ontario Regulation 179/17 (“O. Reg. 179/17”), and include:

(i) 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.

[29] However, section 1(3) of O. Reg. 179/17 provides that the condominium corporation cannot apply to the Tribunal if the dispute is “also with respect to subsection 117(1) of the Act” which reads:

117(1) No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

[30] What this means is that the Tribunal has the power or jurisdiction to deal with disputes related to a condominium’s pet rules, provided that the dispute does not also involve a condition or activity that is likely to result in an injury.

[31] When this Application was filed, YCC 228 was seeking an order finding that Ms. Sniderman was not compliant with the YCC 228 rules regarding pets. YCC 228 alleged that Ms. Sniderman was allowing Lola to be off leash on the grounds and had difficulty controlling her dog. It was not alleging that a risk of injury was likely. After the application was filed, the allegations became more serious and included allegations of actual injury.

[32] *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 1 is a case that considered whether the Tribunal had jurisdiction over a dispute about parking in which the applicant alleged that he was at risk of injury because of the parking issue. In that case, the Tribunal found that it would not have jurisdiction to deal with a case where the risk of injury “cannot reasonably or easily be divorced from analysis of the dispute in question or, more particularly, where a correct determination of the central issues in dispute cannot be made without also addressing such considerations.” In that case, the central issue was whether the condominium’s rules were being complied with.

[33] I adopt this reasoning and find that the central issue, and the issue identified when the application was filed, is whether Ms. Sniderman is compliant with the YCC 228 rules regarding pets. In my view, that issue can be determined independent of the

issue of whether there has been actual injury or a significant risk of injury.

[34] I am satisfied that the Tribunal does have jurisdiction to deal with the application. It would not be fair to any of the parties for this application to be terminated only because the allegations have become more serious. Neither party is contesting the Tribunal's jurisdiction.

[35] As filed, the application fell within the Tribunal's jurisdiction. Even though there have been incidents of alleged actual injury after the application was filed, the underlying issue is whether Ms. Sniderman is compliant with the YCC 228 pet rules. I have confined my analysis to that question.

YCC 228 Pet Rules

[36] YCC 228 has detailed and extensive pet rules. The relevant provisions include the following:

17.1 ...

i. When in the common elements inside the building, all pets must not be running or playing in the interior common elements and must be kept tightly controlled on a short leash, short lead, short chain, or within their pet carrier. When on the common elements outside of the building (save and except for inside the designated Off-Leash Area), all pets must be controlled on a leash within the full physical control of a Resident and restricted to walking only on the paved walkways or sidewalks of the exterior common elements and only for the purposes of ingress or egress to the building, or ingress or egress to the Off-Leash Area.

...

m. No pets deemed by the Board or Property Management to be dangerous and/or a nuisance shall reside in any unit of the Corporation.

n. No Resident or Owner shall permit a pet to cause any noise and/or disturbance that interferes with the comfort and/or quiet enjoyment of the property by other Residents.

o. Any pet deemed to be a nuisance by the Board or Property Management, in its absolute discretion, shall be permanently removed from the Corporation's property within two (2) weeks of the Owner of the unit in which the pet resides receiving a written notice from the Board or Property Management requesting the permanent removal of the pet. The Owner shall comply with the notice and permanently remove the pet from the Corporation's property within two (2) weeks of their receipt of the notice.

p. A pet may be deemed to be a nuisance by the Board or Property Management if the pet engages in any of the following:

- i. unruly behavior causing personal injury and/or property damage;
- ii. found urinating or defecating on any part of the Common Elements;
- iii. exhibiting aggressive, dangerous or potentially dangerous behavior; and/or
- iv. causes noise and/or disturbances that interferes with the comfort and/or quiet enjoyment of the property by other Residents.

q. Owners shall indemnify and save harmless the Corporation against all costs, damages, claims and/or causes of action resulting from the presence of a pet in a unit and/or on any part of the Common Elements including, but not limited to, all costs, charges and expenses incurred by the Corporation to enforce these rules and/or to conduct any necessary repairs or maintenance as a result of the pet. All payments made pursuant to this section shall be recovered by the Corporation against the Owner of the unit in which the pet resides in the same manner as common expenses.

17.2 Off-Leash Area

a. Any pet in the Off-Leash Area must be properly vaccinated (including but not limited to for Bordetella), licensed, and neutered or spayed.

...

e. No pet that is deemed by the Board of Directors or their agent, in their sole discretion, to be a potential or actual threat to the safety of persons, animals, and/or property shall be allowed inside the Off-Leash Area.

f. Every pet in the Off-Leash Area must be under the supervision and control of an adult Resident. No pet may be left unattended in the Off-Leash Area.

...

h. A dog inside the Off-Leash Area is not required to be kept on a leash, but must remain within the visible sight of the adult Resident supervising them and within the dog's earshot so that the dog may respond to said adult Resident's verbal commands.

i. If an unwelcome confrontation occurs between the dog and another pet or another human being inside the Off-Leash Area, then said dog must be promptly leashed by the adult Resident supervising them.

E. ANALYSIS AND FINDINGS

- [37] As noted earlier, the issue that I have jurisdiction to determine is whether Ms. Sniderman has complied with the YCC 228 pet rules.
- [38] I conclude that Ms. Sniderman has not been compliant with those rules because Lola has sometimes not been on a leash in full physical control by Ms. Sniderman, in contravention of Rule 17.1(i). On at least one occasion, Lola was allowed to escape from the Off-Leash area, in contravention of Rule 17.2.
- [39] I accept Ms. Sniderman's evidence that Lola is generally a friendly dog who is good around people including children. However, Lola is also a large dog. Ms. Sniderman has agreed that on occasion she has experienced problems controlling Lola. I also accept Ms. Sniderman's evidence that she has been working with a trainer and a dog walker and that she has been working on training her dog.
- [40] The evidence available to me indicates that Ms. Sniderman has complied with the Interim Order. In particular, she has a dog walker or other adult person with her who is able to physically control Lola when she is on a leash or in the Off-Leash area.
- [41] With these measures, Ms. Sniderman is in compliance with rules requiring a dog to be physically controlled.
- [42] Given Lola's size and weight, it appears likely that Ms. Sniderman may have difficulty physically controlling Lola on her own, even with training. For these reasons, I find that the direction in the Interim Order must be made permanent.
- [43] I acknowledge that the allegations in this case include alleged incidents when there was a significant risk of injury or actual injury caused by Lola. For the reasons explained above in the discussion of jurisdiction, I find that I do not have the jurisdiction to deal with those allegations.

F. COSTS

- [44] In its final submission, YCC 228 seeks reimbursement of costs associated with this case.

Pre-Application costs

- [45] YCC 228 seeks \$2,368 for costs associated with YCC 228's attempts to seek compliance with its rules before the application was filed with the Tribunal. These costs are the result of the involvement of counsel after YCC 228 took several steps to try to remedy the situation.

[46] The Tribunal has the authority to award compensation for damages incurred by a party because of non-compliance (section 1.44(1) of the Act), and these may include legal costs incurred while seeking compliance. The Tribunal may award the full pre-application costs, or a portion. The factors that are generally considered are whether the claimed costs are fair, reasonable, and proportionate to the issues in dispute. Full compensation for these costs is not generally awarded.

[47] In this case, YCC 228 sent three letters to Ms. Sniderman about issues with her dog before counsel became involved. They claimed \$2,368 appears to relate to two letters sent to Ms. Sniderman by counsel. I find that an amount of \$1,184, or half of the claimed amount is fair and reasonable.

Costs associated with the Application

[48] YCC 228 seeks \$10,368.88 for costs associated with filing the application and pursuing the hearing.

[49] The Tribunal's Rules of Practice includes the following rules 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.

[50] Some of the costs associated with the application were incurred because of the amount of assistance that was necessary to allow Ms. Sniderman to participate in the hearing. However, this was not because of unreasonable behaviour on her part. I find that there is no reason in this case to depart from the general approach of not making a cost award for legal costs incurred in the course of the proceeding, apart from the \$150 Tribunal filing fee.

G. ORDER

[51] Pursuant to section 1.44(1) of the Act, the Tribunal orders that:

1. Ms. Sniderman is ordered to ensure that her dog is on a tight leash and in

control at all times while on the condominium common elements and grounds. If she cannot control the dog herself sufficiently to ensure that the dog does not jump up or have unwanted physical contact with anyone, she must ensure that someone who can control the dog is with her when she is with her dog on the common elements and condominium grounds.

2. If the dog is taken to the off-leash dog area, she cannot be left unsupervised. She must be supervised by a person who can control the dog.
3. Within 30 days of the date of this decision, Ms. Sniderman shall pay YCC 228 \$1,184, as compensation for damages related to attempts to seek compliance before the Application was filed, and \$150 for the Tribunal filing fees. If these amounts are not paid, they may be added to Ms. Sniderman's common expenses.

Brian Cook
Member, Condominium Authority Tribunal

Released on: September 26, 2024

APPENDIX – July 26, 2024, Interim Order

INTERIM ORDER

1. This is an Interim Order requiring the respondent Barbara Sniderman, to bring herself into compliance with the rules governing pets owned by occupants of York Condominium Corporation No. 228 (YCC 228).
2. An Interim Order has become necessary because of developments in the case. The reasons for the Interim Order, including the tribunal's jurisdiction to make such an order, will be provided later in this process.
3. Section 17.1(i) of the YCC 228 Rules states that:
 - i. When in the common elements inside the building, all pets must not be running or playing in the interior common elements and must be kept tightly controlled on a short leash, short lead, short chain, or within their pet carrier. When on the common elements outside of the building (save and except for inside the designated Off-Leash Area), all pets must be controlled on a leash within the full physical control of a Resident and restricted to walking only on the paved walkways or sidewalks of the exterior common elements and only for the purposes of ingress or egress to the building, or ingress or egress to the Off-Leash Area.
4. Section 17.2(f) of the Rules states that: "Every pet in the Off-Leash Area must be under the supervision and control of an adult Resident. No pet may be left unattended in the Off Leash Area."
5. The Application was filed by YCC 228 in April 2024. Allegations in the Application included incidents when Ms. Sniderman's dog Lola charged at other dogs and people but there were no allegations of physical injury.
6. Since the Application was filed, there have been further, and more serious incidents.
7. On July 2, 2024, Ms. Sniderman's dog Lola attacked a YCC 228 resident. The resident was injured and required medical attention. During a telephone conference call on July 3, Ms. Sniderman agreed that this incident had occurred and expressed regret. However, she emphasized that the other incidents described in the Application were allegations that had not been proved.
8. On July 19, counsel for YCC 228 advised that another incident had occurred that

morning, involving the same resident. Lola allegedly charged at the resident who was fortunately behind a glass door and so was not physically impacted.

9. On July 25, counsel advised that Ms. Sniderman's large dog was off-leash, jumped on a four year old child, and bit the child's arm. Later that day, I sent a message to Ms. Sniderman inviting her to make comments or submissions on these allegations and advised that I might issue an Interim Order on July 26. In the interim, I urged her to ensure that Lola is on a leash and under control while on the condominium premises.
10. On July 26, Ms. Sniderman provided written comments. She now indicates that she does not agree that Lola attacked the resident involved in the incidents on July 2 and 19, although it is not clear if she is referring to both incidents. She states that she does not agree that Lola bit a child on the arm as is alleged to have occurred on July 25. Counsel for YCC 228 provided a written statement from the mother of the child that indicates that her child was bitten.
11. Ms. Sniderman's submission of July 26 includes a letter from a doctor dated August 10, 2017, indicating that Ms. Sniderman requires an emotional support animal.
12. Ms. Sniderman has not yet had an opportunity to challenge the allegations made in the Application and there appears to be a dispute about the facts of events after the Application was filed.
13. There is also an issue of whether the Tribunal may have lost jurisdiction to deal with some or all of the aspects of the case because there is now concern about the threat of physical injury. Section 117(1) of the Act prohibits activities that are likely to cause an injury to an individual. However, the Tribunal does not have jurisdiction to deal with cases under section 117(1).
14. It will take some time to resolve the jurisdictional issue and to complete the hearing if there is jurisdiction. However, I agree with counsel for YCC 228 that the fact that an incident involving an injury to a resident, which Ms. Sniderman at least initially confirmed, and the seriousness of the incident as alleged on July 25, an Interim Order requiring compliance with the YCC 228 rules is necessary, pending a final conclusion on the Application.

ORDER

15. Ms. Sniderman is ordered to ensure that her dog is on a tight leash and in control at all times while on the condominium common elements and grounds. If she

cannot control the dog herself sufficiently to ensure that the dog does not jump up or have unwanted physical contact with anyone, she must ensure that someone who can control the dog is with her when she is with her dog on the common elements and condominium grounds.

16. If the dog is taken to the off-leash dog area, she cannot be left unsupervised. She must be supervised by a person who can control the dog.
17. Subject to further direction, this Interim Order applies until a final decision on the Application is made.

Dated: July 26, 2024