

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 25, 2024

CASE: 2024-00509N

Citation: York Condominium Corporation No. 176 v. Shearer, 2024 ONCAT 160

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

Member: Dawn Wickett, Member

The Applicant,

York Condominium Corporation No. 176

Represented by Natalia Polis, Counsel

The Respondent,

Stacey Shearer

Not Participating

Hearing: Written Online Hearing – September 11, 2024, to October 16, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Respondent owns and lives in a unit that is part of York Condominium Corporation No. 176 (“YCC 176”), the Applicant.
- [2] YCC 176 brings this application to the Tribunal alleging the Respondent has not complied with section 12, subsection 3 of its rules which prohibits household pets being kept in units or on the common elements whose weight is more than 25 pounds and exceed the height of 14 inches (measured from the ground to the pet’s shoulders). YCC 176 further alleges that the Respondent permits a visitor to bring their oversized dog onto the condominium property, contrary to its rules.
- [3] YCC 176 requests the following orders from the Tribunal:
1. The Respondent comply with the provisions of YCC 176’s rules, section 12, subsection 3.
 2. The permanent removal of the Respondent’s dog from the condominium property.

3. The Respondent reimburse it the fee (\$553.50) paid to have its counsel send a compliance letter, and for the legal costs (\$5,276.96) incurred for participating in the Tribunal hearing.
4. The Respondent reimburse it the fee (\$150) paid to file this application.

[4] The Respondent did not join or participate in the hearing. Counsel for YCC 176 submits it served the Respondent notices of the case on August 7, 2024, August 19, 2024, and September 4, 2024. The notices were sent to the Respondent by regular mail and email. Counsel further submits that the Respondent is aware of the case because when she tried to speak to YCC 176 about the dog issue which is the subject of this hearing, YCC 176 notified her that the matter was with the Tribunal and directed her to communicate through the Tribunal. Based on these submissions, I am satisfied that the Respondent was served notice of this case, and the hearing proceeded as a default proceeding.

B. DECISION

- [5] For the reasons that follow, I find the Respondent has not been complying with YCC 176's pet provisions. I will order the Respondent to comply.
- [6] I further find it appropriate to make orders requiring the Respondent to reimburse YCC 176 the cost it paid to file this application, the fee it paid for having its counsel send a compliance letter, and a portion of the legal fees it incurred for participating in this proceeding.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent failed to comply with YCC 176's pet rules?

- [7] In about March 2023, YCC 176 became aware that the Respondent had obtained a dog, specifically a Rottweiler puppy. The dog's breed is well known to exceed YCC 176's weight restriction of 25 pounds once fully grown.
- [8] YCC 176 submits that it received numerous written and verbal complaints with respect to the Respondent's dog being on the property.
- [9] To address the issues, YCC 176's condominium management sent the Respondent letters reminding her of its pet rules and requested that she take steps to resolve the issue by removing the dog from its property. YCC 176 sent the letters on April 28, 2023, May 10, 2023, and May 30, 2023.
- [10] The Respondent did not comply with YCC 176's request to remove her dog from

the property and therefore had its counsel send a compliance letter. The compliance letter is dated November 7, 2023, and apprises the Respondent of her obligation to comply with YCC 176's governing documents, specifically section 12, subsection 3 of the rules. The letter further directed the Respondent to remove her dog from the property no later than three weeks from the date of the letter, and that failure to do so would result in the corporation filing an application with the Tribunal. Additionally, pursuant to section 12, subsection 13 of YCC 176's rules, it billed the Respondent \$553.50 for the legal fees it incurred for its enforcement efforts. Section 12, subsection 13 of YCC 176's rules state:

The Owner agrees to indemnify and save harmless the Corporation against all costs, damages, claims, causes of action, etc., resulting from the presence of the pet on the on the common elements or within any unit, including, but not limited to, all costs, charges, and expenses incurred by the Corporation to enforce this or any other rule and/or to effect any necessary repair or maintenance required as a result of damage caused by the pet. All payments pursuant to this clause shall be deemed to be common expenses attributable to the particular owner's unit and shall be recoverable by the Corporation.

- [11] In addition to keeping an oversized dog in her unit, YCC 176 submits that the Respondent also allowed one of her visitors to bring their large dog (over 25 pounds) onto the property.
- [12] The Respondent did not remove her dog from the condominium property and did not indemnify YCC 176 by reimbursing the fee incurred for its enforcement efforts. Because of the Respondent's non-compliance, YCC 176 filed this application with the Tribunal.
- [13] Near the end of the hearing, YCC 176 advised that the Respondent no longer has her dog living in her unit, and her visitor no longer brings their dog onto the property. YCC 176 does not have confirmation that the removal of the Respondent's dog is permanent. As such, YCC 176 requested the Tribunal make an order for the permanent removal of the Respondent's dog from the property.
- [14] Based on the uncontested and compelling evidence before me, I find the Respondent has not complied with section 12, subsection 3 of YCC 176's rules because for more than a year, she had a dog weighing more than 25 pounds living in her unit and allowed a visitor to bring their oversized dog onto the condominium property.
- [15] At the time of this decision, YCC 176 provided evidence that it believes the Respondent's dog is no longer living on the condominium property. As such, there is no rationale for me to make an order for the dog's permanent removal. Rather I

will order the Respondent to comply with YCC 176's pet provisions. This order for compliance ensures that the Respondent does not bring a dog whose weight is more than 25 pounds and/or exceeding the height of 14 inches (measured from the ground to the pet's shoulders) onto the condominium property, whether to live or visit.

Issue No. 2: Should the Tribunal award compensation for non-compliance with YCC 176's governing documents?

- [16] YCC 176 seeks an order requiring the Respondent to reimburse it the costs (\$553.50) it incurred for its enforcement efforts relating to its pet rules. Because the Respondent would not comply with YCC 176's requests to remove her oversized dog from the condominium property, it had to engage the services of counsel. Further, YCC 176 submits that the provision of its rules as set out above, allow for it to recoup costs incurred for enforcing its rules.
- [17] Section 1.44(1)3 of the *Condominium Act, 1998* (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.
- [18] Having considered the submissions of YCC 176, I find it reasonable to make an order requiring the Respondent reimburse YCC 176 for the cost it incurred for its enforcement efforts. The evidence demonstrates that YCC 176 would not have incurred these costs had the Respondent taken steps to bring herself into compliance with the corporation's pet rules after the initial letter was sent advising her of her obligations to comply. I will order the Respondent to pay compensation to YCC 176 in the amount of \$553.50.

Issue No. 3: Should the Tribunal award YCC 176 costs for participating in the Tribunal proceeding?

- [19] YCC 176 requests that the Respondent reimburse it the legal fees (\$5,276.96) incurred for participating in the Tribunal proceedings. Rule 48.2 of the Tribunal's Rules of Practice states:

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.

- [20] In this circumstance, I find it is appropriate that some costs be awarded to YCC

176. In coming to this conclusion, I considered the Tribunal's Practice Direction: Approach to Ordering Costs, which provides guidance regarding the awarding of costs. In this Practice Direction, the Tribunal outlines some of the factors the Tribunal may consider in deciding whether to order costs under Rule 48. These factors include: the conduct of a party or its representative in the hearing; whether the parties attempted to resolve the issues before the case was filed; the provisions of the governing documents; and whether the parties had a clear understanding of the potential consequences for contravening them. The principle of proportionality is also an important consideration in determining the appropriate quantum of costs.

- [21] In determining the amount of legal costs that the Respondent will pay to YCC 176, I find the amount requested is disproportionate to the nature of the issues in dispute, particularly since this is a default proceeding. This means there was no Stage 1 - Negotiation or Stage 2 - Mediation leading up to this hearing. Further the Respondent did not participate in the hearing. As such, YCC 176's counsel did not have to read the opposing party's evidence, cross-examination did not occur, and there were no delays in the proceeding. The hearing was straightforward and uncomplicated. Weighing the facts in this case, I find it reasonable to award partial indemnity in the amount of \$3,700 to YCC 176 for their legal costs.
- [22] YCC 176 has further requested an order for the Respondent to reimburse it the fee (\$150) paid to file this application.
- [23] 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 Respondent pay \$150 to YCC 176 to reimburse the fee it incurred for filing this application.

D. ORDER

[24] The Tribunal Orders that:

1. The Respondent shall comply with section 12, subsection 3 of YCC 176's rules by not having any pet living or visiting on/in the condominium property, whose weight exceeds 25 pounds, or whose height measures more than 14 inches (measured from the ground to the pet's shoulders).

2. Pursuant to section 1.44(1)3 of the Act, within thirty (30) days of the date of this order, the Respondent shall pay compensation to YCC 176 in the amount of \$553.50.
3. Pursuant to section 1.44(1)4 of the Act, within thirty (30) days of the date of this order, the Respondent shall pay costs to YCC 176 in the amount of \$3,700.
4. Pursuant to section 1.44(1)5 of the Act, within thirty (30) days of the date of this order, the Respondent shall pay \$150 to YCC 176 for the fee it paid to file this application.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: October 25, 2024