

## **Corrected Order**

This order includes a correction to the role of the parties.

### **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** November 29, 2024

**CASE:** 2024-00476N

**Citation:** York Condominium Corporation No. 138 v. Himanshu, Kaul, 2024 ONCAT 178

Order under section 1.47 of the *Condominium Act, 1998*.

**Member:** Nicole Aylwin, Member

**The Applicant,**

York Condominium Corporation No. 138

Represented by Varun Vashisht, Counsel

**The Respondents,**

Himanshu Himanshu

Self-Represented

Khushboo Kaul

Self-Represented

### **CONSENT ORDER**

- [1] In the Condominium Authority Tribunal's (CAT) online dispute resolution system, the Parties agreed to settle this case in Stage 2 – Mediation.
- [2] Under Rule 34.3 of the CAT's Rules of Practice, the CAT can close a case in Stage 2 – Mediation if the Parties agree to the CAT making a consent order that resolves the dispute.
- [3] With the consent of the Parties, the CAT orders that this case has been resolved, based upon the terms and conditions set out in this consent order.

## **ORDER**

- [4] Going forward, the unit owners shall comply with York Condominium Corporation No. 138's ("YCC 138") Declaration, By-Laws and Rules (the "governing documents") which deal with noise, and not create or permit the creation of any unreasonable noise or nuisance in their unit that may disturb other owners or residents regardless of the time of day.
- [5] The parties agree that for the Respondents to be in breach of YCC 138's governing documents, any noise complained of must be found to be unreasonable.
- [6] The parties understand that for a noise to be considered unreasonable, it must be substantially and unreasonably interfering with an owner's use and enjoyment of their property. It is also acknowledged that some interferences (for example, noises associated with everyday living) may be acceptable and must be accepted as a part of life in a multi-unit residential complex. Not every undesirable noise is considered a nuisance. It is also acknowledged that the test for what constitutes an unreasonable noise is objective. This means it is measured with reference to a reasonable person occupying the premise, not subjective expectations of a single person.
- [7] The parties agree that any noise complaints received must be substantiated, and the noise complained of must be found to be a nuisance to be considered a violation of the governing documents.
- [8] As the two Respondents have possession of the unit on different days, the Respondents agree that any substantiated noise complaints logged on a day that they are in sole possession of the unit will be attributed to them.

### **Substantiating Complaints**

- [9] Complaints will be considered substantiated if one or more of the following criteria is met:
  - 1. At least three different individuals (residing in different units) independently hear and submit written complaints to YCC 138 about the same noise event. The complaints must clearly identify that the noise is/was emanating from the Respondents' unit and describe the noise(s) made and the duration of the noise event.
  - 2. A complaint that identifies the Respondents as the source of the noise is accompanied by an audio or video recording where the noise(s) can be clearly heard. The recording must be time/date stamped.

3. Three representatives from the corporation (which may include, board members and/or property management) visit the unit together to observe the noise (in real time).
- [10] If a substantiated complaint is received, within 24 hours, YCC 138 will notify both owners via email of the complaint. This notification will include the date and time of the complaint, a description of the noise and provide the Respondents with information about how the complaint was verified (they do not need to name the complainant(s)). If the complaint is substantiated by an audio or video recording, a copy of the audio or video recording will be provided to the Respondents.
- [11] There will be no repercussions against the Respondents because of the first and second written notice of a verified noise complaint/warning letter.
- [12] Should YCC 138 verify three noise complaints with respect to the Respondents' unit within any three-week period, the board will discuss the complaints at a board meeting and determine if the noise complained of is unreasonable. If the board deems the noise to be unreasonable, they must notify the Respondents of their decision within 7 (seven) days.
- [13] Once YCC 138 has satisfied the above criteria and has notified the Respondents of their decision to deem the noise unreasonable, YCC 138 may take additional enforcement measures, including but not limited to seeking to enforce this order at Superior Court of Justice.

#### Investigation

- [14] Within 30 days of the date of this Order, YCC 138 agrees to propose to the primary complainant(s) of the noise that an acoustical test, at YCC 138's expense, be conducted to determine if there is noise from the Respondents' unit that is transferring at an unreasonable level. Should the complainant(s) agree, YCC 138 will conduct the test within 120 days of getting the consent of the affected party(ies). If access to the Respondents' unit is necessary to conduct the test, the Respondents agree to grant access to their unit for the purposes of the acoustical test. If a test is conducted, YCC 138 agrees to share the results of the test with the Respondents and any other party whose unit is directly involved in the test. This term is conditional upon the complainant(s) voluntary participation in the testing, as they are not parties to the application.

## **COMPLIANCE**

- [15] If any of the Parties fails to comply with any of the terms of this order, it may be enforced through the Ontario Superior Court of Justice.
- [16] The Parties agree that if there is non-compliance with this Order, and enforcement of the order is sought, all parties may seek to recover their costs, including legal costs and costs associated with enforcing compliance with the governing documents of the corporation, including the cost of any acoustical testing conducted because of this Order.

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Nicole Aylwin  
Member, Condominium Authority Tribunal

Released on: November 29, 2024