

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 16, 2024

CASE: 2024-00625SA

Citation: Toronto Standard Condominium Corporation No. 2674 v. Malcolm, 2024 ONCAT 187

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

Member: Dawn Wickett, Member

The Applicant,

Toronto Standard Condominium Corporation No. 2674

Represented by Justin McLarty, Counsel

The Respondent,

Kalvin Malcolm

Not Participating

Hearing: Written Online Hearing – November 19, 2024, to December 6, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Toronto Standard Condominium Corporation No. 2674 (“TSCC 2674”), brings this application alleging the Respondent, who is the Tenant of a unit in TSCC 2674, has not complied with terms of the Settlement Agreement 2023-00605N (the “SA”) that is dated July 16, 2024, which resolved the issues between them in the case 2023-00605N.
- [2] The Respondent did not join this case. Counsel for TSCC 2674 submitted that Notice of this case was served to the Respondent by way of regular mail on October 8, 2024, October 25, 2024, and November 6, 2024. Based on these submissions, I am satisfied the Respondent received proper notice of this case and for unknown reason chose not to participate. The hearing proceeded without the Respondent’s participation.
- [3] It is TSCC 2674’s position that shortly after the SA was issued, the Respondent engaged in conduct that disregarded the agreed upon terms. TSCC 2674 alleges

that the Respondent has not complied with the following terms of the SA:

[5] Mr. Malcolm agrees to bring himself, his guests and invitees into compliance with the provisions of the *Condominium Act, 1998* (the "Act") and the Declaration and Rules of TSCC 2674. In particular, Mr. Malcolm agrees that he and his guests and invitees will:

1. Not smoke in the Unit or on the common elements, including the exclusive use common element terrace adjoining the Unit;
2. Not create disruptive noise during office hours, that is from 9:00 am to 6:00 pm. If disruptive noise is reported, then Mr. Malcolm, his guests and invitees will take immediate remedial action;
3. Not park vehicles in contravention of the TSCC 2674's Declaration and parking rules. In particular, they will not evade paying the parking fees;
4. Not use the common elements for social events or filming without prior authorisation and without paying the applicable fee;
5. Not engage in activities that cause damage to the common elements;
6. Clean up after themselves when they have dirtied the common elements.

[6] Mr. Malcolm will, within 30 days of the date of this Settlement Agreement, pay TSCC 2674 the amount of \$613 and will, within 60 days of the date of this Settlement Agreement, pay TSCC 2674 the amount of \$614, both amounts on account of the legal fees TSCC 2674 has incurred in this matter. After Mr. Malcolm has made these payments, Mr. Malcolm will again be permitted to book access to the 9th floor amenities, including the lounge and terrace.

[4] TSCC 2674 seeks orders requiring the Respondent to comply with the provisions of its governing documents and the terms set out in the SA. It also requests orders requiring the Respondent to reimburse it the legal fees for participating in the Tribunal proceedings (\$3,058.48), the application filing fee (\$150), and the costs (\$1,435.10) related to its attempts to have the Respondent comply with the terms of the SA.

[5] For the reasons that follow, I find the Respondent has not complied with all the above noted terms of the SA. I will order the Respondent to comply. I decline to make an order requiring the Respondent to comply with the provisions of TSCC 2674's governing documents. The Respondent's compliance with the terms of the SA aligns with the provisions of the corporation's governing documents. If TSCC 2674 believes the Respondent is not complying with other provisions of its

governing documents, those alleged incidents would be subject to a new application. This application relates only to the Respondent's alleged non-compliance with the terms set out in the SA.

- [6] I will also order the Respondent to reimburse TSCC 2674 for the fee it paid to file this application, the fees incurred for seeking the Respondent's compliance with the terms of the SA and the legal costs (as per submitted invoice) incurred to participate in the Tribunal Hearing.

B. BACKGROUND

- [7] In In the SA, the unit owner is named as a respondent. The unit owner did not participate in the case 2023-00605N. As part of the SA, TSCC 2674 and Mr. Malcom, the Tenant agreed to resolve the issues between themselves and incorporate their agreement into a Settlement Agreement. The agreed upon terms in the SA have no impact on the unit owner.

- [8] TSCC 2674 is a corporation that manages units which are business enterprises. The Respondent operates a film studio in the unit he rents from the unit owner.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent breached terms of the SA?

- [9] The condominium manager for TSCC 2674, Evelyn Jamuyot, provided evidence about the Respondent's alleged non-compliance with the terms of the SA. Given the Respondent did not participate in the Hearing, her evidence is uncontested.
- [10] The summary of Ms. Jamuyot's evidence for each term of the agreement is as follows:

Term 5.1: Not smoke in the Unit or on the common elements, including the exclusive use common element terrace adjoining the Unit.

- November 5, 2024: Strong marijuana odors were reported on the 9th floor and bathrooms, following guest activities linked to Unit XXX (redacted).
- [11] Term 5.1 does not explicitly state what substance the Respondent cannot smoke in the unit or the common elements. The term "smoke" is broad. It is a reasonable inference that this term of the SA means that the Respondent and or his guests cannot smoke any kind of substance, including but not limited to cigarettes and marijuana, in the unit or the common elements.

[12] The condominium manager's evidence on this issue is clear and concise. It describes a single incident and references an incident report number. I find no reasons not to accept her evidence that the Respondent and/or his guests smoked marijuana on the common elements and/or in the unit. This conduct is not in compliance with term 5.1 of the SA. As such, I am satisfied that the Respondent has not complied with this term.

Term 5.2: Not create disruptive noise during office hours, that is from 9:00 am to 6:00 pm. If disruptive noise is reported, then Mr. Malcolm, his guests and invitees will take immediate remedial action.

[13] While TSCC 2674 submitted evidence that the Respondent created disruptive noise on October 24, 2024, by playing loud music, it did not lead any evidence to indicate that the incident occurred during office hours as set out in term 5.2. As such, I do not find that the Respondent contravened this term of the SA.

Term 5.3: Not park vehicles in contravention of the TSCC 2674's Declaration and parking rules. In particular, they will not evade paying the parking fees.

- August 2, 2024: Mr. Malcom parked a black SUV in a no-parking area for approximately two hours despite security's instructions to move.
- September 22, 2024: Mr. Malcom parked on Richardson Street, a no parking zone, and left before enforcement arrived.
- November 25, 2024: A vehicle from Unit 905 caused damage to the parking gate arm while attempting to leave without paying.

[14] The condominium manager's evidence on this issue is compelling. Her uncontested descriptions of the incidents demonstrate that the Respondent and/or his guests' ignored parking signage, security's instructions and caused damage to the parking gate while attempting to avoid paying the required fee. I find no reasons not to accept her evidence that on at least three separate occasions (set out above), after the date of the SA, the Respondent and/or his guests did not comply with TSCC 2674's parking provisions. The Respondent's conduct is not in compliance with term 5.3 of the SA. As such, I am satisfied that the Respondent has contravened this term.

Term 5.4: Not use the common elements for social events or filming without prior authorization and without paying the applicable fee.

[15] The evidence submitted by TSCC 2674 does not demonstrate that the Respondent and/or his guests, engaged in conduct contrary to the provisions of

term 5.4 of the SA.

[16] As the evidence submitted by TSCC 2674 is insufficient to demonstrate that the Respondent and/or his guests used the common elements for social events or filming without prior authorization and payments of the applicable fee, I cannot conclude that the Respondent has not complied with this term.

Term 5.5: Not engage in activities that cause damage to the common elements.

- October 7 and November 25, 2024: Damage to the parking gate arm due to improper handling during exit attempts.

[17] There is no evidence before me to challenge TSCC 2674's evidence that on two separate occasions, the Respondent and or his guest(s) caused damage to the parking gate arm while exiting the parking lot. As such, I find no basis not to accept the evidence as presented. Accordingly, I find the Respondent has failed to comply with term 5.5 because on at least two occasions, he and/ or his guest(s) have caused damage to the parking gate arm.

[18] The condominium manager also provided descriptions of other incidents where the Respondent and/or his guests put their feet on the lobby walls, walked on common element furniture with shoes on, kicked an elevator door, several incidents of unauthorized access to the lounge area, and drinking alcohol in the lobby. In the evidence before me, there is no indication that these incidents caused damage to the common elements. As such, I am satisfied that these incidents are not related to the terms of the SA, and I will not address them in this decision.

Term 5.6: Clean up after themselves when they have dirtied the common elements.

- September 4, 2024: Guests misused washrooms by entering male and female facilities in pair and leaving them untidy.
- September 27, 2024: Improper garbage disposal left shared bins untidy.

[19] The uncontested evidence of condominium manager demonstrates that on at least two occasions, the Respondent and/or his guests did not clean up after themselves after having used the common elements. While the description of the incidents suggest that the untidiness may not rise to the level of significant, they are still in contravention of the SA term. I say this because according to Merriam-Webster dictionary, a synonym for "untidy" is "dirty". This suggests that "dirtied" and "untidy" can be used interchangeably when describing a situation or incident where someone does not clean up after themselves. Further, term 5.6 of the SA

does not set out specific criteria or a degree of dirtiness required for an incident to be considered a contravention of this term. I find the Respondent has contravened term 5.6 of the SA.

Term 6: Mr. Malcolm will, within 30 days of the date of this Settlement Agreement, pay TSCC 2674 the amount of \$613 and will, within 60 days of the date of this Settlement Agreement, pay TSCC 2674 the amount of \$614, both amounts on account of the legal fees TSCC 2674 has incurred in this matter. After Mr. Malcolm has made these payments, Mr. Malcolm will again be permitted to book access to the 9th floor amenities, including the lounge and terrace.

[20] TSCC 2674 submits that the Respondent has not complied with term 6 because he has not paid either amount, despite having been reminded to do so in a letter that was sent to him on August 22, 2024. In this letter, counsel for TSCC 2674 advised the Respondent that failure to comply with the terms of the SA would result in the corporation taking legal action for enforcement.

[21] There is no evidence before me demonstrating that the Respondent has made the required payments to TSCC 2674, as set out in term 6 of the SA. As such, I find the Respondent has not complied with this term.

Issue No. 2: Costs and Compensation

Costs - Application Filing Fee

[22] TSCC 2674 has requested an order requiring the Respondent to reimburse it for the fee it 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 TSCC 2674 was successful. I am ordering the Respondent pay \$150 to TSCC 2674 to reimburse the fee it incurred for filing this application.

Compensation - Compliance Letter

[24] TSCC 2674 has also requested an order of compensation reimbursing it the fee (\$1,435.10) paid for having its counsel send a letter to the Respondent advising him of the requirements that he comply with the terms of the SA.

[25] Section 1.44 (1) 3 of 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.

- [26] I find it appropriate to make an order for compensation under section 1.44 (1) 3 of the Act because the Respondent engaged in conduct that caused TSCC 2674 to incur legal fees in attempting to get him to comply with the terms set out in the SA. It is unreasonable that these fees land on the shoulders of other unit owners, given the Respondent agreed to the terms, and as such, should not have had any issues abiding by the terms.

Costs - Legal Fees

- [27] TSCC 2674 further requested an order requiring the Respondent to reimburse it for the cost of the legal fees (\$3,058.48) it incurred for participating in this Tribunal proceeding. I note that the detailed invoices submitted by TSCC 2674 total \$2,944.78, and not the amount identified in submissions.

- [28] Regarding TSCC 2674's request for costs, the Tribunal's Rule 48.2 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.

- [29] The Tribunal's Practice Direction: Approach to Ordering Costs, 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.

- [30] In considering the Tribunal's rules regarding costs, in this matter, I find it appropriate to award TSCC 2674 the amount indicated in the submitted invoice, which I find to be proportionate and reasonable in the context of a default Hearing. In coming to this decision, I considered the amount claimed, the fact the Respondent did not join the case, and the fact that the Respondent made no attempt to bring himself into compliance with the terms of the SA after he was sent a letter by TSCC 2674's counsel. The Respondent's ongoing disregard for certain terms of the SA resulted in the need for this application being filed.

D. CONCLUSION

[31] It is apparent from the evidence before me, that soon after the SA was issued by the Tribunal, the Respondent disregarded the agreed upon terms. He also allowed his guests to engage in conduct that has contributed to my findings relating to his failure to comply with terms 5.1, 5.3, 5.5, 5.6 and 6. The Respondent is reminded that not only does he need to comply with the terms of the SA, but he must also ensure his guests do the same.

E. ORDER

[32] The Tribunal Orders that:

1. Pursuant to section 1.44 (1) 1 of the Act, The Respondent shall immediately bring himself into compliance with terms 5.1, 5.3, 5.5 and 5.6 of Settlement Agreement 2023-00605N. The Respondent shall also continue to comply with all other terms of Settlement Agreement 2023-00605N.
2. Pursuant to section 1.44 (1) 1 of the Act, the Respondent shall comply with term 6 of Settlement Agreement 2023-00605N, by paying \$1,227 to the Respondent within 15 days of the date of this Order.
3. Pursuant to section 1.44 (1) 3 of the Act, within 30 days of the date of this order, the Respondent shall pay compensation to TSCC 2674 in the amount of \$1,435.10.
4. Pursuant to section 1.44 (1) 4 of the Act, within 30 days of the date of the Order, the Respondent shall pay \$2,944.78 to TSCC 2674 for the costs incurred for participating in the Tribunal proceeding.
5. Pursuant to section 1.44 (1) 4 of the Act, within 30 days of the date of the Order, the Respondent shall pay \$150 to TSCC 2674 to reimburse it the fee it paid to file this application.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: December 16, 2024