

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** January 3, 2025

**CASE:** 2024-00487N

**Citation:** Toronto Standard Condominium Corporation No. 1767 v. Gomes, Kiziltas, 2025 ONCAT 3

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

**Member:** Brian Cook, Member

**The Applicant,**

Toronto Standard Condominium Corporation No. 1767

Represented by Natalia Polis, Counsel

**The Respondents,**

Isabel Gomes

Self-Represented

Kenan Kiziltas

Self-Represented

**Hearing:** Written Online Hearing – October 4, 2024, to December 4, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Isabel Gomes and Kenan Kiziltas<sup>1</sup> (the respondents) are owners and occupiers of a unit in Toronto Standard Condominium Corporation No. 1767 (“TSCC 1767”).
- [2] It is not disputed that Mr. Kiziltas regularly smokes cannabis on the unit balcony.
- [3] TSCC 1767 says that its rules prohibit smoking or vaping cannabis on common elements including balconies and seeks an order directing Mr. Kiziltas to not smoke on the balcony. The respondents say that the rule relied on by TSCC 1767 was not properly adopted.

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<sup>1</sup> Mr. Kiziltas’ name was incorrectly spelled when the Application was filed.

- [4] For the reasons that follow, I find that the rule was properly adopted and took effect on November 7, 2022. I find that the provisions in the rule that prohibit smoking or vaping cannabis on balconies is reasonable and conclude that Mr. Kiziltas violates the rule by consuming cannabis on the exclusive use common elements balcony of the respondents' unit.

## **B. ANALYSIS**

### Jurisdiction

- [5] Section 117(2) of the *Condominium Act, 1998* (the "Act") provides as follows:

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,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or

(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.

- [6] Section 26 of Ontario Regulation 48/01 prescribes smoke, vapour, and odour for the purposes of section 117(2)(b), if there are unreasonable.

- [7] Under section (1)(1)(d) of Ontario Regulation 179/17, the Tribunal has authority to deal with disputes about rules that prohibit, restrict or otherwise govern activities related to smoke, vapour and odour.

### Was the rule properly adopted?

- [8] The respondents submit that the smoking rule was not properly adopted and is accordingly not enforceable.

- [9] In March 2022, draft rules, including a smoking rule, were distributed to owners. Under sections 46 and 58 of the Act, a requisition for a meeting of owners to vote on proposed rule changes can be made by owners who own at least 15% of the units in the condominium.

- [10] According to TSCC 1767, although it did not receive an objection or requisition for a meeting from owners, the board decided that a meeting to discuss the rule changes should nevertheless be scheduled and it was held on June 8, 2022. The notice of this meeting is dated April 27, 2022.

- [11] The notice indicated that 15% of the owners had requested a meeting, although it appears that this was not correct. The notice indicated that the purpose of the June 8 meeting was to discuss the proposed rules “and to gather enough feedback prior to holding a 2nd and final meeting (Virtual Requisition Meeting)”. However, it went on to indicate that a Virtual Requisition Meeting would be held “if necessary”.
- [12] According to a witness statement from Donna Leong, a member of the TSCC 1767 board, at the June 8 meeting, the board agreed to undertake a further review of the proposed new rules “in light of the owners’ comments and concerns at the meeting.” It is not clear if the respondents attended the meeting. According to Ms. Leong’s witness statement, no concerns were raised at the meeting about the proposed smoking rules although there was concern about some of the other rule changes.
- [13] On October 7, 2022, a new set of proposed rules was distributed. This notice set out the requirements in section 46 of the Act concerning the process for requesting a meeting, including the requirement that the owners of at least 15% of the units must make the request. The notice indicated that if a requisition was not received from 15% of the owners, the new rules would take effect.
- [14] According to Ms. Leong, after the October 7, 2022, distribution of the revised rules, the only objection that was received was from Ms. Gomes who said she disputed the process for consultation on the rule changes. In particular, she disputed why a second meeting was not held since the April 27, 2002, notice indicated a second meeting would occur. She did not submit a requisition for a meeting of owners and no other such request was received.
- [15] In the absence of a requisition for a meeting, and in accordance with section 58(7) of the Act, the new rules took effect on the 30th day after the October 7, 2022, notice.
- [16] The Annual General Meeting (AGM) of owners was held on November 30, 2022, a few weeks after the new rules took effect. Ms. Gomes attended the meeting and challenged the rule review process, noting that the April 27 notice about the June 8 meeting had indicated that there would be a second meeting to ratify changes. Ms. Gomes noted that a second meeting was not called.
- [17] The November 30, 2022, AGM was chaired by Ms. Polis, counsel for the applicant. The minutes of the AGM indicate that Ms. Polis advised that the second meeting was not called because 15% of owners did not request a meeting.
- [18] I find that some confusion was created by the April 27, 2022, notice of the June 8,

2022, meeting. The notice indicated that there would be a subsequent meeting to ratify the proposed rule changes, although it also indicated that a subsequent meeting would occur “if necessary”.

- [19] The confusion and ambiguity related to the April 27, 2022, notice could be a cause for concern if the proposed rules had been adopted at the June 8, 2022, meeting. However, instead, the board agreed to consider questions raised at the June 8, 2022, meeting and to produce a revised set of proposed rules. The revised set of rules was distributed on October 7, 2022.
- [20] The notice accompanying the October 7 distribution was not fully compliant with section 58 of the Act. Section 58(6) states that the notice of a rule change shall include a copy of the text of section 46 of the Act and the text of section 58. The notice summarized the provisions of section 46 but did not include the full text of section 46 or section 58.
- [21] I find that this defect is not sufficient to invalidate the rule changes. The notice made clear that there was a process in place if any owner wished to challenge the proposed rules. It appears that the process leading to the adoption of the rules was raised by Ms. Gomes at the AGM, shortly after new rules took effect. As discussed above, her complaint was about whether the process was consistent with the earlier April 27, 2022, notice. That issue had nothing to do with the failure to include the text of sections 46 and 58 of the Act.
- [22] A minor issue is that while TSCC 1767 determined that the new rules took effect on November 6, 2022, pursuant to section 58(7)(2) of the Act, in the absence of a requisition for a meeting, a new rule becomes effective the day after the 30th day that the notice of the changes was sent. The effective date of the new rules should therefore have been November 7, and not November 6, 2022.
- [23] I find that the rules distributed on October 7, 2022, were legally adopted by TSCC 1767 and took effect on November 7, 2022.

### The Smoking Rules

- [24] Rule 1.10 of the November 7, 2022, rules provides that smoking is prohibited in the parking garage and all other common elements including, but not limited to, exclusive use common elements such as balconies.
- [25] Rules 3.2 – 3.4 provide as follows:
- 3.2 Smoking is prohibited in or upon the units of the Corporation.

- 3.3 Vaping is prohibited in or upon the units of the Corporation.
- 3.4 Smoking and vaping is prohibited in the parking garage, courtyard, hallways, party room, rooftop, and all other Common Elements including but not limited to, exclusive use Common Elements such as balconies, terraces and patios.

[26] Smoking and vaping are broadly defined and include smoking or vaping cannabis.

[27] The rules contemplate an exemption regarding the consumption of cannabis for medical purposes:

[T]he Corporation may grant a medical exemption to an Owner or Resident authorizing the smoking and/or vaping of cannabis in a unit (the "Medically Exempt Individual") provided that such Owner or Resident:

(i) notifies the Corporation of the medical requirement for an exemption in writing;

(ii) provides the Corporation with medical evidence confirming the need to consume cannabis by means of smoking and/or vaping, and other such evidence that may be reasonably requested by the Corporation; and

(iii) signs the Corporation's form of Cannabis Smoking and/or Vaping Exemption Agreement, as provided by the Board from time to time.

[28] Mr. Kiziltas has not asked for a medical exemption and has not suggested that there is any medical need for his consumption of cannabis. I note that even if he were eligible for an exemption, the rule indicates that the exemption would only allow him to smoke cannabis in his unit. It does not permit smoking or vaping on the balcony. In addition, Rule 3.10 provides that a person with a medical exemption who is permitted to smoke or vape cannabis in their unit must not allow smoke, vapour, or related odours to result in an annoyance, nuisance or disruption to other owners or residents.

Is the rule reasonable?

[29] Under section 58(2) of the Act, rules must be reasonable and consistent with this Act, the declaration and the by-laws.

[30] As noted, the smoking rules are comprehensive and apply to smoking and vaping tobacco as well as cannabis. I confine my analysis to the question of whether the rule prohibiting smoking or vaping cannabis on exclusive use common elements balconies is reasonable and consistent with the Act and the TSCC 1767

declaration and by-laws.

- [31] I find no inconsistency between the smoking rules regarding consumption of cannabis on exclusive use common elements balconies and the Act, the declaration or by-laws.
- [32] The intention of the rule is to ensure that the right of other owners to the quiet enjoyment of their units and exclusive use common elements is not infringed by recreational cannabis users. There was an opportunity for the community of owners to address the rule changes, including the smoking rules, at the June 8, 2022, meeting. The available evidence indicates that while the respondents later objected to the smoking rule, the objection was with regard to the process leading to the adoption of the rule. According to TSCC 1767, no other owners indicated any objection to the smoking rule. The adoption of the rule by the owners creates a reasonable expectation that owners and residents will not experience odour or smoke for vaping or smoking cannabis.
- [33] I find that the rule regarding the consumption of cannabis on balconies is reasonable. It prohibits smoking or vaping cannabis on balconies or in units but creates a process for an exemption to allow someone who requires cannabis for medical reasons to smoke in their unit but not on the balcony.
- [34] I find that this is a reasonable objective and conclude that the rule is reasonable.

Have the respondents violated the smoking rules?

- [35] The smoking rules are quite broad and deal with limitations on smoking or vaping tobacco and cannabis. In this decision, I focus only on the issue of whether Mr. Kiziltas is in violation of the rule prohibiting smoking or vaping cannabis on the exclusive use common element balcony.
- [36] Evidence provided by TSCC 1767, which is not disputed by the respondents, establishes that Mr. Kiziltas smokes cannabis on the balcony several times a day. The evidence shows that people in neighbouring properties complain that smoke from the respondent's balcony migrates to other balconies and units through open windows negatively impacting their quiet enjoyment of their unit.
- [37] The respondents do not dispute that Mr. Kiziltas regularly smokes cannabis on their exclusive use balcony. The respondents argue that since cannabis is a legal substance, Mr. Kiziltas is entitled to consume it. This is not correct. A feature of condominium living is that rules can be adopted and enforced that restrict the rights of residents in ways that would not happen in other living arrangements. The

Act sets out the process for adopting rules, including how proposed rules can be challenged. Once rules are adopted, the Act requires owners and residents to comply with them and requires condominium boards to enforce them.

- [38] In this case, the rules prohibit anyone from smoking or vaping cannabis on exclusive use balconies. Mr. Kiziltas is in violation of the rules when he smokes cannabis on the balcony.

### Harassment

- [39] Both parties allege that the other party has harassed them. TSCC 1767 seeks an order directing the respondents to stop harassing others.

- [40] The Tribunal has limited jurisdiction to deal with complaints of harassment. As noted in *York Condominium Corporation No. 444 v. Ryan*, 2023 ONCAT 81, referred to in final submissions from TSCC 1767:

While harassment is not a prescribed and prohibited activity under subsection 117 (2), harassing conduct may be prohibited in the governing documents of a condominium. Depending on the wording of the provision and the actual conduct in issue, the conduct may fall within the Tribunal's jurisdiction.

- [41] In this case, TSCC 1767 did not point to any provisions in the TSCC 1767 governing documents that address harassment.

- [42] I also note that for the most part, the negative interactions between the respondents and others have been related to the dispute about whether Mr. Kiziltas is permitted to smoke cannabis on the balcony. Now that this dispute is resolved, it may be hoped that all residents can treat each other with respect.

- [43] For these reasons, I am not making an order regarding harassment.

- [44] The respondents suggest that they have been unfairly targeted. They allege that other owners are in violation of rules, including rules about pets. I find no evidence of discriminatory targeting. If other owners are in violation of other rules, this does not excuse the respondent's violation of the rules about smoking or vaping cannabis on exclusive use common element balconies.

### Compensation and costs

- [45] TSCC 1767 seeks \$553.70 for compensation for costs associated with attempts to enforce the rules and legal costs of \$11,341 for participating in the Tribunal's process.

- [46] TSCC 1767 has earlier assessed additional costs related to attempts to enforce the rules but advises that the unpaid amount is \$553.70. Under section 1.44(1) of the Act, the Tribunal may order compensation for damages incurred by a party resulting from non-compliance with a condominium's rules. The amount of \$553.70 relates to letters sent by counsel to the respondents seeking compliance. I find that this amount is reasonable. The respondents are ordered to pay TSCC 1767 \$554 within 30 days of this decision.
- [47] Rule 48 of The Tribunal's Rules of Practice provide that a successful applicant is entitled to reimbursement of the Tribunal filing fees, which in this case were \$200.
- [48] Rule 48.2 provides that the Tribunal will generally not order legal costs for participation in the Tribunal's process. Costs may be ordered if the respondent's conduct during the hearing is unreasonable or causes delay.
- [49] While it is clear that the respondent's conduct that led to this application was problematic, I find that the circumstances in this case do not warrant an award of costs under Rule 48.2.

**C. ORDER**

[50] The Tribunal Orders that:

1. Mr. Kiziltas shall not smoke or vape cannabis on their unit's exclusive use common element balcony.
2. Within 30 days of the date of this decision, the respondents shall pay TSCC 1767 \$200, representing the Tribunal filing fees, and \$554 as compensation for legal costs incurred by attempts to seek compliance with the TSCC 1767 rules, for a total of \$754.

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Brian Cook  
Member, Condominium Authority Tribunal

Released on: January 3, 2025