

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 10, 2025

CASE: 2024-00360N

Citation: Asiaei v. Toronto Standard Condominium Corporation No. 2371, 2025 ONCAT 6

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

Member: Laurie Sanford, Member

The Applicant,

Elham God Asiaei

Self-represented

The Respondent,

Toronto Standard Condominium Corporation No. 2371

Represented by Lazar Ilic, Counsel

Written Online Hearing dates: – July 29, 2024 to December 17, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Ms. Asiaei owns a unit in Toronto Standard Condominium Corporation No. 2371 (“TSCC 2371”). She acknowledges that she violated a provision of TSCC 2371’s Declaration requiring dogs to be kept on leash (the “Pet Provision”) in the non-exclusive common elements of TSCC 2371. Ms. Asiaei says that her violations were minor and ended in February 2024. Despite that, Ms. Asiaei says, TSCC 2371 sent her a legal letter, in May 2024, alleging violations of the Pet Provision (the “Compliance Letter”). Ms. Asiaei says TSCC 2371 charged her for the Compliance Letter and threatened to put a lien on her apartment if she did not pay. TSCC 2371 changed the time required for payment after the Compliance Letter was issued, according to Ms. Asiaei. She wants to be repaid some or all of the amount she paid for the letter on the grounds that the charge was unreasonable and unreasonably imposed.

[2] TSCC 2371 challenges the jurisdiction of the Tribunal to address issues concerning the Compliance Letter and to give Ms. Asiaei the remedy she is requesting. TSCC 2371 alleges that Ms. Asiaei was also in violation of the

prohibition against Airbnb rentals in TSCC 2371's governing documents (the "Airbnb Provisions"). The parties agreed during the Stage 2 – Mediation that the Tribunal does not have the jurisdiction to deal with the alleged violations of the Airbnb Provisions. TSCC 2371 submits that the primary purpose of the Compliance Letter was to deal with the Airbnb Provisions and that the two types of violations are so intertwined that the Tribunal cannot sever the compliance actions taken for the alleged violation of the Pet Provision from the alleged violation of the Airbnb Provisions without severe prejudice to it. TSCC 2371 also challenges the Tribunal's jurisdiction to award Ms. Asiaei the remedy she seeks on the grounds that the Tribunal cannot award damages in these circumstances. TSCC 2371 also asserts that its actions in seeking compliance are entitled to deference under the business judgement rule.

- [3] For the reasons set out below, I conclude that the Tribunal has the jurisdiction to decide the issues in this matter and to award a remedy to Ms. Asiaei. TSCC 2371 behaved unreasonably in several respects in seeking compliance with its Pet Provision. Ms. Asiaei paid \$1,326.33 for the Compliance Letter. I am awarding Ms. Asiaei the amount of \$500 as a partial refund of the amount she paid for the Compliance Letter and the amount of \$200 on account of the filing costs she paid to the Tribunal.

B. PRELIMINARY MATTERS

- [4] At the outset of the hearing, TSCC 2371 moved to have the application dismissed on the grounds that the Tribunal lacks the jurisdiction to hear the matter or to award Ms. Asiaei the relief she seeks. At the time, I ruled that the Tribunal had the jurisdiction to hear the matter. The jurisdiction to deal with disputes with respect to "Provisions that prohibit, restrict or otherwise govern pets or other animals in a unit, the common elements or assets, if any, of the corporation" is set out in subparagraph 1 (1) (d) (i) of Ontario Regulation 179/17 (the "O. Reg. 179/17") to the *Condominium Act, 1998* (the "Act"). Likewise, subparagraph 1 (1) (d) (iv) of O. Reg. 179/17 confers on the Tribunal the jurisdiction to hear disputes with respect to "Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in this clause." TSCC 2371 has reframed its jurisdictional challenges in its closing submissions and the question of jurisdiction will be dealt with below.

[5] During the hearing, it became clear that Ms. Asiaei, who was self-represented, lacks an understanding of legal processes or procedure, although she was able to clearly articulate her position. She repeatedly made assertions of fact in her various postings, but her actual witness statement was very brief and only partially addressed her concerns. TSCC 2371 objected to Ms. Asiaei attempting to introduce new evidence in her closing submissions and I ruled that this proposed new evidence would be disregarded. Where Ms. Asiaei made statements of fact before the closing submission phase of the hearing, I have considered those statements to the extent that they are relevant to the issues I must decide. When the statements were credible and plausible, I have accepted them, even though they were not made under affirmation.

[6] In May 2024, TSCC 2371 enacted a new rule (Rule 9) against dogs playing in the corridors. There is no evidence that Ms. Asiaei has violated this new rule since it was enacted. Therefore, although this was raised as an issue, I will not address it further.

C. ISSUES & ANALYSIS

[7] The issues in this case may be summarised as follows:

1. During what time was Ms. Asiaei non-compliant with Article 3.6 of TSCC 2371's Declaration regarding the necessity of leashing her pet when the pet is present on the non-exclusive common elements of TSCC 2371?
2. Concerning TSCC 2371's issuance of letters seeking Ms. Asiaei's compliance with TSCC 2371's governing documents regarding the leashing of her dog, and the amount charged and collected for letters written by TSCC 2371's counsel:
 - a. Does the Tribunal have the jurisdiction to decide issues concerning the issuance of these letters and the amount charged and collected for them?
 - b. If so, was the practice followed by TSCC 2371 appropriate?
 - c. Is TSCC 2371 entitled to deference in its actions seeking compliance under the business judgement rule?
3. Does the Tribunal have the jurisdiction to award Ms. Asiaei an amount equal to all or part of the amount she paid for the issuance of the letters referred to above? If so, is Ms. Asiaei entitled to this remedy?

4. Should any costs be awarded in this matter?

Issue 1 – During what time was Ms. Asiaei non-compliant with Article 3.6 of TSCC 2371’s Declaration regarding the necessity of leashing her pet when the pet is present on the non-exclusive common elements of TSCC 2371?

- [8] The Pet Provision is contained in Article 3.6 of TSCC 2371’s Declaration. It requires dogs to be “under leash” on the non-exclusive common elements of the condominium. I interpret the phrase “under leash” to mean that the owner must be holding the leash. Ms. Asiaei owns a dog named Daisy which she characterises as a very friendly dog that never barks. As a result, she concedes, she was not always careful about holding Daisy’s leash when passing through the common elements of TSCC 2371. On one occasion, she says, she rolled a ball down the corridor while talking with a neighbour and permitted Daisy to chase it.
- [9] The Property Manager testified that on or about August 31, 2023, Ms. Asiaei was seen by TSCC 2371 security to be walking in the hallways while her dog was not on a leash. The Property Manager testified that the staff of TSCC 2371 wrote to Ms. Asiaei on September 1, 2023, advising her that Daisy needed to be on a leash at all times on the common elements. This incident appears to be the first recorded instance of Ms. Asiaei violating the Pet Provision.
- [10] Concerning when the violations ended, Ms. Asiaei provided an email which she wrote to the board of TSCC 2371 dated February 27, 2024, in which she advised the board that she would do her best to comply with the Pet Provision. Ms. Asiaei testified that since February 27, 2024, she has not violated the Pet Provision. Several of Ms. Asiaei’s neighbours provided corroborating testimony. The Property Manager characterised Ms. Asiaei’s February email as an “undertaking” and provided no evidence that Ms. Asiaei violated the Pet Provision after February 2024. Thus, the period of non-compliance with the Pet Provision was from late August 2023 to February 27, 2024.
- [11] While the dates of Ms. Asiaei’s non-compliance with the Pet Provision are straightforward, what is less clear is how many times Ms. Asiaei was non-compliant. TSCC 2371’s witness testimony speaks to five reported times that Ms. Asiaei was in violation of the Pet Provision but adds that there were other violations that were not reported and were dealt with verbally. The five reports are comprised of three reports made by TSCC 2371’s security staff and two private complaints. Ms. Asiaei does not contest this testimony, and I accept it.

[12] As a result of the reported incidents, three warning emails were sent from TSCC 2371 to Ms. Asiaei. The first was dated September 1, 2023, and was in response to a security report of late August. In it, Ms. Asiaei was warned to keep Daisy on a leash at all times in the common elements. The second warning email dated September 18, 2023, refers to unspecified violations of the Pet Provision. In this email, Ms. Asiaei was advised to bring herself into compliance. The letter ended "You do not want the board asking you to remove the dog permanently and they have a full right to do so, with two weeks' notice." There were a number of email exchanges after that which principally addressed how alleged violations were being reported and what evidence, if any, TSCC 2371 was relying on. The next warning email came in February 2024 in which Ms. Asiaei was advised of the incident in which she was playing ball with Daisy in the corridor. She was told that her conduct was being referred to the board for consideration. Her response was to send the email referred to above to the board members advising them that she would try her best to comply with the Pet Provision. The fourth formal notice was the May 24, 2024, Compliance Letter from TSCC 2371's counsel, which will be considered below.

[13] Ms. Asiaei stated that her violations of the Pet Provision were minor. TSCC 2371 takes the position that the Pet Provision was a strict requirement and that is its prerogative. However, I note that some of the violations do appear to have been minimal. In one incident, in January 2024, Ms. Asiaei appears to have dropped Daisy's leash momentarily at the security's desk while she was picking up a package. There is no evidence that Daisy moved away during this time. However, TSCC 2371 security filed a report of the incident.

[14] Ms. Asiaei's responses to the actions of TSCC 2371 in seeking compliance may have begun reasonably but her conduct became increasingly hostile. The growing hostility appears to date from the September 18, 2023, warning letter in which Ms. Asiaei is advised that TSCC 2371 had the authority to have Daisy removed from the property in the event of further violations. On receiving this email, Ms. Asiaei responded by asking if the people complaining of her conduct might supply a photograph. When the Property Manager responded by saying that this would not be acceptable, it was the Property Manager's testimony that Ms. Asiaei became increasingly belligerent, asking how she was to defend herself against unfounded complaints. At one point, in an email exchange with the Property Manager, Ms. Asiaei wrote "This is the Last time you bother me with inaccurate reports. I want yo [sic] see who and how you can get my dog away from me without having evidence." The Property Manager testified that Ms. Asiaei denied breaching the Pet Provision despite the complaints of at least one other resident and, on three occasions, the observations of a security guard. As noted above,

during this hearing, Ms. Asiaei acknowledged violating the Pet Provision on a few occasions but not since the end of February 2024.

- [15] After the January 2024 incident at the security's desk, in which security filed a report of her dropping Daisy's leash to pick up a package, Ms. Asiaei returned to the desk and verbally abused the security person on the desk for reporting the violation of the Pet Provision. According to the Property Manager, Ms. Asiaei began posting increasingly hostile statements on social media. These posts were subsequently deleted, according to the Property Manager, who gave no details about them. The account of Ms. Asiaei's increasing hostility was corroborated by a board member of TSCC 2371 who also testified about these social media posts.
- [16] I conclude that Ms. Asiaei violated the Pet Provision on five reported occasions between September 2023 and February 2024. Her initial responses to TSCC 2371's efforts to enforce compliance may have been appropriate. However, Ms. Asiaei escalated her responses beyond what was reasonable. Her verbal abuse of the security person in January 2024 was wrong. Verbal aggression has no place in the communal living of a condominium.

Issue 2 (i) – Does the Tribunal have the jurisdiction to decide issues concerning the issuance of these compliance letters and the amount charged and collected for them?

- [17] There is no jurisdictional issue concerning the warning emails written by TSCC 2371 to Ms. Asiaei. They address only the violations of the Pet Provision, which are clearly within the Tribunal's jurisdiction under O. Reg. 179/17.
- [18] As noted above, TSCC 2371 takes the position that the Tribunal lacks the jurisdiction to decide issues concerning the May 24, 2024, Compliance Letter without greatly prejudicing TSCC 2371. It is TSCC 2371's submission that the Compliance Letter deals primarily with alleged violations of TSCC 2371's Airbnb Provisions. The violations of the Pet Provision were a secondary issue. These two issues are so intertwined, in TSCC 2371's submission, that they cannot be separated. Since the Tribunal does not have the jurisdiction to address the primary dispute concerning the Airbnb Provisions, it follows, in TSCC 2371's submission, that the Tribunal must decline the jurisdiction to deal with the Pet Provision portions of the Compliance Letter.
- [19] The premise of TSCC 2371's argument is that the violations of the Pet Provision and alleged violations of the Airbnb Provisions are inexorably intertwined. The problem with TSCC 2371's argument is that it is factually incorrect. The portion of the Compliance Letter that deals with the Pet Provision is separate and severable

from that dealing with alleged violations of the Airbnb Provisions. The Pet Provision is different in content. The violations of the Pet Provision occurred at a different time, from August 2023 to February 2024. The alleged violations of the Airbnb Provisions began in April 2024. The reporting of the two matters by the security of TSCC 2371 was different. The correspondence between TSCC 2371 and Ms. Asiaei about the Pet Provision was separate.

[20] The only intertwining of the two issues stems from the fact that counsel for TSCC 2371 takes the position that it cannot break out its costs in preparing the Compliance Letter between that portion relating to the Pet Provision from that related to the Airbnb Provisions. This, however, is not a jurisdictional barrier.

[21] As I stated in the earlier jurisdictional motion brought by TSCC 2371, the Tribunal has the jurisdiction to deal with the issues surrounding Ms. Asiaei's violations of the Pet Provision and TSCC 2371's attempts to secure compliance with it. It would not be appropriate for the Tribunal to decline its jurisdiction when, as here, the two issues referred to in the Compliance Letter are quite separate.

Issue 2 (ii) – Was the practice of TSCC 2371 in seeking compliance with the Pet Provision appropriate?

[22] As noted above, Ms. Asiaei's violations of the Pet Provision ended in February 2024. She wrote to the board saying she would do her best to comply with the Pet Provision, although she continued to contest some of the incidents. There is no evidence that TSCC 2371 responded to Ms. Asiaei. The board did not advise her that it did not accept her intention to comply. On the contrary, the Property Manager testified that Ms. Asiaei's email was an undertaking. The board did not advise Ms. Asiaei that they continued to have concerns about her willingness to comply with, or her understanding of, the Pet Provision. This silence was in contrast to the regular email correspondence between the parties before February 2024 about the interpretation and application of the Pet Provision. I conclude that Ms. Asiaei was entitled to assume that, as long as she complied with the Pet Provision, the matter had been resolved.

[23] One of the board members of TSCC 2371 gave evidence. He testified that in April 2024 the board was advised that Ms. Asiaei was renting her unit out on a short-term basis in violation of the Airbnb Provisions which had been enacted on March 29, 2024.

[24] The board member testified that the board instructed its lawyers to write to Ms. Asiaei about the alleged violations of the Airbnb Provisions. While that was the principal purpose of the letter, the board member testified as follows:

In addition to addressing the short-term rental issue, the Board elected to have its solicitors also address the pet-related issues because while there had been no further breaches, the Board and Property Management did not feel there was an adequate understanding by the Applicant of what was required of her with respect to her dog and the common elements.

- [25] On May 14, 2024, counsel for TSCC 2371 wrote the Compliance Letter to Ms. Asiaei. While the Compliance Letter was primarily concerned with the alleged violation of the Airbnb Provisions, counsel wrote the following:

The Corporation is in receipt of complaints from other residents that you walk and play ball with your unleashed dog in the hallways and building entrances. We are advised that the Corporation's past efforts demanding you leash your dog has [sic] been met with resistance, denial and spread of misinformation on social medial outlets.

- [26] The letter goes on to reference the Pet Provision, advises Ms. Asiaei that this is her final notice and ends:

In the event of a single further instance of ... contravention of the pet provisions, we will seek instructions to take further legal action to secure your compliance. Such enforcement steps may include an application before the Condominium Authority Tribunal (CAT), mediation, arbitration and/or commencement of a court application for a compliance order pursuant to Section 134 of the Act. The Corporation will seek to recover all associated costs from you.

With respect to costs, we direct you to Articles 4.1 ... and 10 of the Declaration ...

In accordance with these provisions, you are responsible for the costs associated with our review of the file and preparation of this letter. A copy of our related invoice will be delivered to you in due course. We require that you reimburse the Corporation in full for the invoice by delivering to the management office your certified cheque or money order payable to TSCC 2371 in the full amount of the invoice within thirty (30) days of receipt. Should you fail to do so, we will obtain the Board's instructions to register a lien against the Unit to secure payment of legal costs, as authorised by the Declaration.

- [27] Counsel for TSCC 2371 acknowledged in closing submissions that, despite the assertion in the Compliance Letter to the contrary, TSCC 2371 lacked the authority to register a lien against Ms. Asiaei's unit without a court order. There is no evidence that TSCC 2371 corrected this error in communications with Ms. Asiaei.

[28] On May 30, 2024, counsel provided TSCC 2371 with an invoice in the amount of \$1,326.33 and advised that TSCC 2371 had 30 days to pay without interest. This letter was forwarded to Ms. Asiaei by TSCC 2371 on the same day. However, instead of giving Ms. Asiaei 30 days to pay, TSCC 2371 accompanied the invoice with a request to pay it “by June 6, 2023 [sic]”.

[29] Ms. Asiaei stated at the outset of the hearing that she felt “forced” to pay the amount of the legal invoice by June 6 and paid it under protest to avoid the “lien costs”. When Ms. Asiaei questioned why the payment due date had been changed from one month to one week, the Property Manager replied, on June 7:

... as you are fully aware, as a result of your short term on the board of directors, the corporation’s process when requesting reimbursement from owners is a three letter [sic] process. Each letter contains a request for payment to be made within one week. That way, if the owner does not pay after the first or second request for payment, by the time we get to the third letter and the due date, it brings us to the 30 day [sic] period as requested in the lawyers letter.

Ms. Asiaei says that she had only been a board member for one month and, during that time, no one advised her of the board’s practice in seeking reimbursement. I accept Ms. Asiaei’s statement.

[30] TSCC 2371 was within its rights to insist on strict compliance with its Pet Provision. However, it had a choice of approaches. TSCC 2371 chose to take a very heavy-handed approach to enforcing compliance. What is of particular concern is that the board approved, and counsel issued, the Compliance Letter about violations of the Pet Provision, three months after Ms. Asiaei had given notice to the board that she intended to comply with the Pet Provision and three months after the violations had ceased. As noted above, I conclude that Ms. Asiaei was entitled to assume that the matter was at an end, barring any further violation of the Pet Provision.

[31] The result was that TSCC 2371 issued a legal Compliance Letter for breaches that had occurred in the past and that had stopped. The Property Manager testified that Ms. Asiaei ought to have anticipated the Compliance Letter, given her resistance to earlier attempts to enforce the Pet Provision. This is obviously opinion evidence and of little weight. However, it is also at odds with the chronology of events. The lack of contact between the board or the management of TSCC 2371 and Ms. Asiaei after February 2024, coupled with Ms. Asiaei’s compliance with the Pet Provision, gave Ms. Asiaei reason to suppose that no further action would be taken.

[32] To make matters worse, the Compliance Letter threatened the registration of a lien if the legal costs of the letter were not paid, despite having no authority to do so without a court order. TSCC 2371 then shortened the time to pay the invoice from 30 days to 7 days without explaining that it expected its first two notices to be ignored. These actions were inappropriate and unreasonable under the circumstances. They resulted in Ms. Asiaei feeling compelled to make the payment in full of the legal costs.

Issue 2 (iii) – Is TSCC 2371 entitled to deference in its actions seeking compliance under the business judgement rule?

[33] The business judgement rule provides that a board of a corporation, in this case a condominium corporation, is entitled to deference in the conduct of its business provided it is acting reasonably and within its authority. In the authorisation and issuance of the Compliance Letter, insofar as it related to the Pet Provision, TSCC 2371 was acting unreasonably in the circumstances of this case. The business judgement rule does not apply.

Issue 3 (i) – Does the Tribunal have the jurisdiction to award Ms. Asiaei an amount equal to all or part of the amount she paid for the issuance of the letters referred to above?

[34] TSCC 2371 argues that, since Ms. Asiaei has paid the invoice, what she is now seeking are damages and the Tribunal lacks the jurisdiction to award general damages except where there has been a violation of the Act or regulations. The problem with this argument is that it assumes that because Ms. Asiaei has paid the invoice, she is thereby restricted to seeking damages. Ms. Asiaei is entitled to seek a refund of all or part of the invoice if she can demonstrate that she is entitled to that refund. Under subsection 1.44 (7) of the Act, the Tribunal has the jurisdiction to make “An order directing whatever other relief the Tribunal considers fair in the circumstances.” That would include a refund, where appropriate.

Issue 3 (ii) – Is Ms. Asiaei entitled to an amount equal to all or part of the amount she paid for the issuance of the Compliance Letter?

[35] Ms. Asiaei paid the amount of \$1,326.33 for the Compliance Letter. She says she felt forced to make the payment and made it under protest. TSCC 2371 disputes Ms. Asiaei’s statement that she made the payment under protest as Ms. Asiaei did not lodge a protest. Despite the fact that Ms. Asiaei did not formally protest and therefore the principles that apply to payments made under protest do not apply, I accept her statement that she felt forced to make the payment and to make it within the shortened time. As noted above, Ms. Asiaei does not have legal

expertise. When counsel in the Compliance Letter advised her that it would seek instructions to register a lien on her unit if payment was not made, “as authorised by the Declaration”, she did not question that authority.

[36] TSCC 2371 acted unreasonably in its conduct towards Ms. Asiaei in several respects. Its decision to issue a Compliance Letter for past violations that had ceased was unreasonable, particularly given that Ms. Asiaei was not notified of any concerns about her ongoing compliance. The threat to register a lien in the event of non-payment and the reference to doing so under authority of the Declaration, when that authority did not exist, was unreasonable. In all the circumstances of this case, the Compliance Letter, insofar as it related to the Pet Provision, should not have been sent. The change in the time for payment for the Compliance Letter was also unreasonable. Ms. Asiaei is entitled to a refund of that portion of the cost of the Compliance Letter that relates to the enforcement of the Pet Provision. Since TSCC 2371 declines to fix that cost, I have reviewed the Compliance Letter, and I am estimating the cost of the Pet Provision portion at \$500. This estimate is based on my assessment of the proportion of the total cost represented by the parts of the letter which deal with the Pet Provision. Under subsection 1.44 (7) of the Act, I conclude that a refund to Ms. Asiaei in the amount of \$500 is fair in the circumstances.

Issue 4 – Should any costs be awarded in this matter?

[37] TSCC 2371 is not entitled to its costs of this proceeding. Therefore, no order for costs in its favour will be issued.

[38] Under Rule 48.1 of the CAT’s Rules of Practice, Ms. Asiaei is entitled to be reimbursed for the Tribunal fees she paid. These were \$200.

D. ORDER

[39] Under the authority of section 1.44 of the Act, the Tribunal orders that:

1. TSCC 2371 shall pay Ms. Asiaei the amount of \$500 as a partial refund for the amount she paid for the Compliance Letter;
2. TSCC 2371 shall pay Ms. Asiaei the amount of \$200 to reimburse her for the Tribunal fees she paid in bringing this Application; and
3. Under subsection 1.45 (1) of the Act, all amounts awarded shall be paid to Ms. Asiaei within 30 days of the release of this Order.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: January 10, 2025