CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 7, 2025
CASE: 2024-00615N
Citation: Tartakovsky-Guilels v. York Region Condominium Corporation No. 829, 2025 ONCAT 41

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

Member: Nicole Aylwin, Member

The Applicant,
Yesenya Tartakovsky-Guilels
Represented by Jacob Oziel, Agent

The Respondent,
York Region Condominium Corporation No. 829
Represented by Andrea Lusk, Counsel

Hearing: Written Online Hearing – December 4, 2024, to February 28, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Yesenya Tartakovsky-Guilels is a unit owner of York Region Condominium Corporation No. 829 (the "Respondent"). The Applicant asserts that the Respondent has unreasonably enforced its pet provisions against her and has attempted to enforce non-existent rules related to pets. She has asked the Tribunal to order that the Respondent rescind the two enforcement letters it has sent her and cease trying to enforce rules that do not exist. She has also asked that the Respondent pay her Tribunal filing fees in the amount of $200.

[2] The Respondent takes the position that it has reasonably attempted to enforce its pet provisions and at no time tried to impose upon the Applicant rules that do not exist. It asks that the Tribunal dismiss this application and award it costs in the amount of $2000.

[3] It is clear from the evidence and submissions provided to me that the Applicant and her husband Jacob Oziel, who represented her in this matter, are distrustful of the Respondent's board of directors and that the parties have an increasingly

adversarial relationship (this is their third case before the Tribunal). It is also clear that the animosity between the parties has at times, impacted the communications between them or their agents. However, as set out below, I find that while the Applicant may disagree with the approach taken by the Respondent towards the enforcement of the pet provisions, the Applicant has been reasonable in its enforcement actions and has not tried to enforce non-existent rules. I dismiss this case and award no costs to either party.

[4] Finally, not all the evidence and submissions provided to me were directly related to the issues I must decide. So, while I have reviewed all the submissions and evidence provided, I refer only to that which that which is relevant to the issues to be decided.

B. ISSUES & ANALYSIS

Issue No. 1 & 2: Has the Respondent unreasonably enforced its pet provisions against the Applicant? Has the Respondent attempted to enforce pet provisions that do not exist? If, so what, if any, remedies are appropriate?

[5] The Applicant has been engaged in a dispute with the Respondent over the enforcement of the Respondent's pet provisions since 2022.

[6] The Respondent has two rules that directly address pets: Rule 12 and Rule 13, both of which became effective as part of a package of new rules enacted on August 3, 2024.

[7] Rule 12 reads:

> No exotic or large breed animal, livestock or fowl of any kind shall be kept on the property and no pet that is deemed by the board or management in its absolute discretion, to be a nuisance shall be kept by an owner of any unit or in any other part of the property. Any owner who keeps a pet on the property or any part thereof which is deemed a nuisance shall within two weeks of the receipt of a written notice from the board or management requesting the removal of such pet, permanently remove such pet from the property. No outside kennel or shelter shall be used to keep a pet.

[8] Rule 13 reads:

> An owner with any pet shall ensure that all pet excrement is picked up and removed from all common areas immediately, including exclusive use common areas, and shall immediately dispose of the excrement in their own receptacles.

[9] Prior to the adoption of these rules in August 2024, the Respondent had two similar rules in place: Rule 10 and Rule 11. These rules have nearly the identical wording to Rule 12 and Rule 13.

[10] Before addressing the issues, it is important to note the layout of this condominium community as it is necessary to understanding the basis of some of the complaints about the Applicant's dog that led to the compliance letters.

[11] The Respondent is a 60-unit townhouse complex where the neighbours share a common-element area (i.e. a strip of grass) behind their exclusive-use back yards. This strip of grass is not fenced off, it passes behind each unit and allows anyone walking or using this strip of grass to be seen from each back yard.

[12] On November 17, 2022, the Respondent sent, Mr. Oziel, the Applicant's husband and resident of the Applicant's unit, a letter advising him that the Respondent had received multiple complaints about his dog being off leash on the common elements of the property and relieving itself on the personal exclusive-use front yard of another unit owner. The letter further advised that he had been deemed to be in violation of Rule 10 and 11. The letter concluded by asking that this behaviour cease. It indicated that if the behaviour did not cease, the Respondent may pursue further enforcement actions including asking that the pet be removed from the property.

[13] On receipt of the letter, Mr. Oziel emailed the condominium manager and requested clarification on the rules, and, more specifically, where dogs are allowed to 'do their business'. He also asked whether there was a rule prohibiting his dog from relieving itself on the common element strip of grass behind the units or if was merely "a matter of respect.".

[14] In his response to Mr. Oziel's email, the condominium manager explains that while it is a common area available for use by all unit owners, unit owners are still obliged to ensure they do not damage the common elements, which in this case was being damaged by the urine from the Mr. Oziel's dog (the urine was causing burn marks). The manager questions why Mr. Oziel does not simply ensure the dog uses the area behind his own townhouse to relive itself. The email ends with the request that Mr. Oziel take his dog off the property to relieve itself to keep the corporation's property undamaged and unsoiled.

[15] Aside from a brief email exchange between the condominium manager and Mr. Oziel in September of 2023, when several issues were addressed including the complaints about Mr. Oziel's dog, by all accounts the November 2022 letter of ended this issue. No further compliance actions were taken until September 2024

when the Respondent sent another compliance letter of compliance, this one was addressed to the Applicant. This letter advises that further complaints about the dog in the Applicant's unit had been received. It provides details of the complaint(s) which included: that the dog's long leash allowed the dog to leave the Applicant's exclusive use area, the dog had intimidated other unit owners, and that the Applicant and/or/a resident of the unit continued to allow the dog to urinate on the common element grass behind other owner's exclusive-use back yards. It further reminded the Applicant that previous complaints about the dog had been conveyed to the Applicant in November of 2022. The letter reiterated Rule 12 (previously Rule 10). The letter also cites, for the first time, s. 117(2) of the *Condominium Act, 1998* (the "Act), and advises the Applicant that she has been deemed to be infringing on the quiet enjoyment of a unit owner virtue of the dog's behaviour.

[16] Finally, the letter states:

> … please confine your dog to your own common element area so that it does not infringe on your neighbours' rights to enjoy the privacy of their own backyard. Where possible we ask that you, please take the dog off property for it to relieve itself.

[17] No further compliance actions have been taken by the Respondent since it sent the letter in September 2024. At the time of this hearing, there is no evidence that the Respondent has 'charged-back' any costs associated with the letters (in one email exchange the condominium manager does refer to a $2076 charge-back but this is for an unrelated issue involving the garage door), cleaned up and charged for the removal of any excrement (a potential outcome cited by the condominium manager if the issue did not resolve), or sought to remove the dog from the premises. The only enforcement action taken to date is the issuing of the two letters.

[18] The Applicant argues that in sending the two enforcement letters the Respondent has unreasonably sought to enforce its pet provisions. She takes the position that the Respondent did not adequately investigate the complaints that led to these letters and that no rule has been broken. She also asserts that they are attempting to enforce rules that do not exist, by 'requiring' the Applicant to take the dog off the property to relieve itself. She further asserts that these letters are an attempt to target her as there are other dog owners in the condominium that allow their pets to engage in similar behaviour without sanction.

[19] The Respondent takes the position that both letters were sent in response to verified complaints received by the Respondent and that it responded reasonably

by sending the letters. It also submits that the November 2022 letter appeared to effectively resolve the issue and avoided further action which ought to be the goal of taking incremental enforcement actions.

[20] The evidence confirms that prior to sending the enforcement letter in November 2022, the Respondent did receive a complaint about the Applicant's dog from a neighbour who complained that the dog urinated on the common element strip of grass adjoining to her back yard and her own exclusive use front yard (the latter of which Mr. Oziel admitted to in a text exchange with the neighbour who made the complaint, although he notes in that instance it was an accident). The complainant stated that due to the dog reliving itself on the strip of grass behind her unit, her family was unable to enjoy the common element lawn (i.e. have kids play in that area) as there was urine from the dog in the grass. She also felt the burn marks that resulted from the urine were unsightly.

[21] Similarly, in September 2024, when the second letter was sent, the evidence demonstrates that the Respondent had received and verified another complaint about the Applicant's dog. This complaint related to defecation, the dog's barking and concerns about the dog roaming on the exclusive use patio of another unit owner. The person who made this complaint testified to the details of their complaint. These details are consistent with those outlined in the letter to the Applicant. There is no evidence that the complaint was made in bad faith or to target the Applicant.

[22] I acknowledge the Applicant takes issue with the validity of the complaints and does not believe that the dog is causing a nuisance as suggested in the compliance letters, however, neither party has asked me to make a finding on whether the dog is causing a nuisance, nor do I need to make such a determination to answer the question properly before me, which is: has the Respondent unreasonably sought to enforce compliance with its pet provisions.

[23] The business judgment rule provides that a board of a corporation, in this case the Respondent's board, is entitled to deference in the conduct of its business provided it is acting reasonably. The Respondent is required to enforce compliance with its rules, and in this case, the Respondent did so by sending two letters, nearly two years apart, in direct response to complaints that the dog was being allowed to act in such a way as to, in its opinion, cause a nuisance (i.e. urinating on the common elements, barking, wandering onto other owners exclusive use areas) and/or breach the rules. The evidence shows that the Respondent did investigate and verify these complaints. Thus, its decision to send two enforcement letters, with ample time in between to allow for an opportunity to

come into compliance in this case, is not unreasonable. In fact, such action could be viewed in the opposite, whereby in sending the letters, the Respondent sought to take a measured and reasonable response to the receipt of complaints and prevent an issue of non-compliance from escalating.

[24] Despite the Applicant's claims, there is no evidence that the board sought to target the Applicant when it sent these letters or that it was overly aggressive in it requests for compliance. The fact that the Applicant believes other unit owners are breaking the rules without consequence (a fact that was not supported by any evidence and that I make no finding on), is not evidence that the Respondent acted unreasonably when it sent compliance letters to the Applicant.

[25] As to the question of whether the Respondent has attempted to enforce provisions in its governing documents that do not exist, I find it has not. I find the Applicant exaggerates her claims. The Applicant suggests that the Respondent has attempted to make her take her dog 50 yards off the corporation's property to relieve itself, "forbidden" her to use her "own exclusive-use front yard that is shared with her neighbour", attempted to "confine" her dog to her rear-exclusive use area, and "forbidden" her from having the dog off leash. I agree that the Respondent did suggest and request that the Applicant take the dog off the property to relieve itself and that there is no rule that requires such. However, there is no evidence that the Respondent sought to make the Applicant do so, that they attempted to enforce compliance with such a suggestion or indicated that this was a rule that the Applicant was required to comply with. The evidence also indicates that while the Respondent did suggest other options such as keeping the dog within the confines of the Applicant's exclusive use areas, etc. these were made as suggestions to resolve the issue(s) and were not unreasonable suggestions under the circumstances. Nothing was "forbidden." The only rules cited to the Applicant as requiring compliance are Rules 12 and 13, and s. 117(2) of the Act, which as noted earlier, the Respondent had reason to remind the Applicant of. Thus, I cannot conclude that the Respondent is attempting to enforce rules that do not exist.

[26] It is worth noting that some of the conflict around this issue appears to stem from what is clearly an acrimonious relationship between the board and Mr. Oziel (as noted, this is the third Tribunal case between the parties) and Mr. Oziel and the condominium manager. The tone taken by the condominium manger in his email to Mr. Oziel after the first enforcement letter was sent, which is where the suggestion that Mr. Oziel take the dog off the property to relieve itself appears to have been first made, does convey impatience and hints at a larger conflict between them. This may have contributed to the Applicant's perspective of being

treated unfairly. Nonetheless, the evidence before me does not support the claim that the Applicant is being targeted or treated unfairly. Going forward, it would benefit both parties to reexamine their approach to dealing with each other.

[27] Since I have not found the Respondent to be unreasonable in its enforcement and found no attempt to enforce rules that do not exist, no remedies are necessary.

Issue No. 3: Should either party be awarded costs?

[28] The Applicant requested costs in the amount of $200 for reimbursement of Tribunal fees. The Respondent requested costs in the amount of $2000.

[29] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing another party to the proceeding to pay the costs of another party to the proceeding."

[30] Section 1.44 (2) of the Act states that an order for costs "shall be determined ...in accordance with the rules of the Tribunal".

[31] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

> 48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.
>
> 48.2 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.

[32] The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; and the potential impact an order for costs would have on the parties.

[33] The Applicant was not successful, thus is not entitled to costs.

[34] The Respondent submits that despite evidence of valid complaints about the dog, the Applicant pursued this application because of an entrenched entranced belief

that personal animosity between the parties led to the sending of the enforcement letters. The Respondent further submits that it is a small corporation consisting of only 60 units and all unit owners should not be held responsible for the costs of defending this application.

[35] I note that even with only 60 units, the cost of $2000 when spread between them is $33.33 per unit, which is not an amount likely to significantly impact any owner (individually or collectively). There was also no conduct within the hearing that was unreasonable or caused delay. Finally, while at times the Applicant overstated her claims and on occasion, the Applicant did appear to be fixated on the claim that the board was targeting her unfairly, the history and dynamic between the parties no doubt contributed to the escalation of these issues to the point that it required an objective third-party decision.

[36] Costs awards are discretionary, and, in this case, for the reasons above I will exercise my discretion and not award costs to the Respondent.

[37] This application is dismissed with no costs awarded to either party.

C. ORDER

[38] The Tribunal Orders that:

1. The application is dismissed.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: March 7, 2025