

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 14, 2025

CASE: 2024-00341N

Citation: Metropolitan Toronto Condominium Corporation No. 958 v. TL Properties Holdings Inc., Malcolm, 2025 ONCAT 46

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

Member: Victoria Romero, Member

The Applicant,

Metropolitan Toronto Condominium Corporation No. 958
Represented by Irma Natale, Counsel

The Respondents,

TL Properties Holdings Inc.
Represented by Michelle Kelly, Counsel

Kalvin Malcolm
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] The Respondent Tenant, Calvin Malcolm (the "Tenant"), shall immediately and permanently comply with Section 117 (2) and Section 119 (1) of the *Condominium Act, 1998* (the "Act"), Article X Section 3 of the Declaration of Metropolitan Toronto Condominium Corporation No. 958 ("MTCC 958"), and Rule 8 of the Applicant MTCC 958.

Operation of business including business hours

- [5] The Respondent Tenant will adjust his regular business hours to start after 5 p.m. If the Respondent Tenant has an appointment where a customer would arrive before 5 p.m., the Tenant will provide 24hr advance notice to the Applicant MTCC 958 and the tenants in the surrounding units via one email to the Applicant MTCC 958 property management office.
- [6] As per the governing documents, the Respondent Tenant will not provide a copy of the access fob(s) and/or keys to the unit and/or condominium property to any guests and/or customers except for the sole purpose of the guest and/or customer going to the washroom. The Respondent Tenant commits himself to temporarily providing the fob to the guest and/or client and retrieving it back from them once they have returned from the washroom.
- [7] The Respondent Unit Owner / Landlord, TL Properties Holdings Inc. (the "Respondent Landlord"), shall immediately comply with Section 119 (2) of the Act, along with Article X Section 3 and Article IV Section 1 (c) of the Applicant MTCC 958's Declaration, Rule 4 and Rule 8 of the Applicant MTCC 958's Rules.

Disclosure

- [8] The Respondent Landlord will provide the Applicant MTCC 958 with a summary of the lease in the form prescribed by the Minister in accordance with Section 83 (1) (b) of the Act, within 14 days of this Consent Order. The Respondent Landlord confirms that the Respondent Tenant has been a tenant for the last 13 years.
- [9] The Respondent Tenant will provide the Applicant MTCC 958 with the full acoustic report dated February 2021 and confirm in writing what measures the Respondent Tenant implemented in accordance with the recommendations of said report within 30 days of this Consent Order.
- [10] The Respondent Landlord will provide a copy of the Applicant MTCC 958's Declaration, By-Laws and Rules ("Governing Documents") to the Respondent Tenant within 14 days of this Consent Order and will provide confirmation to the Applicant MTCC 958 within 7 days after delivering the Governing Documents to the Respondent Tenant.

Future Complaint Resolution Process regarding noise

- [11] Upon receipt of a complaint regarding the Respondent Tenant, the Applicant MTCC 958 shall investigate the complaint, which shall include attending at the unit

if the complaint is made contemporaneously with the alleged noise nuisance and gathering such other information as is necessary to assess the complaint.

[12] The Applicant MTCC 958 will install a decibel reader in the hallway near the Respondent Landlord's unit. The Respondents agree to adhere to the applicable municipal restrictions and/or by-laws with respect to noise and decibel levels for commercial properties.

[13] If, after the investigation described in paragraph 11, the Applicant MTCC 958 determines that the Respondent Tenant has created an unreasonable noise nuisance or engaged in other non-compliance with the Act, Declaration, By-laws, or Rules regarding this Application, Applicant MTCC 958 shall provide a written notice of this verified complaint to the Respondent Tenant and the Respondent Landlord that contains the following:

- Date and time of the infraction(s).
- Description of the alleged nuisance or non-compliance.
- Copies of complaints made (redactions pursuant to s. 55 (4) (c) of the Act are permissible).
- Description of steps taken to investigate the complaint prior to issuing the notice.

This letter shall constitute notice of verified complaint to the Respondents. Same must be delivered via email to both Respondents within 30 days of the conclusion of the investigation.

Future Complaint Resolution Process regarding nuisance including disruption, odour, smoke and/or vapour

[14] Upon receipt of a complaint regarding the Respondent Tenant, the Applicant MTCC 958 shall investigate the complaint, which shall include attending at the unit if the complaint is made contemporaneously with the alleged nuisance and gathering such other information as is necessary to assess the complaint.

[15] If, after the investigation described in paragraph 14, the Applicant MTCC 958 determines that the Respondent Tenant has created an unreasonable nuisance or engaged in other non-compliance with the Act, Declaration, By-laws, or Rules regarding this Application, it shall provide a written notice of this verified complaint to the Respondent Tenant and the Respondent Landlord that contains the following:

- Date and time of the infraction(s).
- Description of the alleged nuisance or non-compliance.
- Copies of complaints made (redactions pursuant to s. 55 (4) (c) of the Act are permissible).
- Description of steps taken to investigate the complaint prior to issuing the notice.

This letter shall constitute notice of verified complaint to the Respondents. Same must be delivered via email to both Respondents within 30 days of the conclusion of the investigation.

Steps after written notice

- [16] There will be no repercussions against the Respondents because of the first written notice of a verified unreasonable noise and/or nuisance complaint as per paragraph 11 regarding noise and paragraph 14 regarding nuisance.
- [17] If the Applicant MTCC 958 sends two verified unreasonable noise and/or nuisance complaint notices, as per paragraph 11 regarding noise and paragraph 14 regarding nuisance, within any 6-month period, the parties agree that this will constitute a breach of this Order, and the Applicant MTCC 958 may seek enforcement through the Superior Court of Justice.

Costs

- [18] Within 30 business days of this Order, the Respondent Landlord and Respondent Tenant shall pay the Applicant MTCC 958 the costs (CAT fees) of this Application in the amount of \$75.00. In the event of a breach of any of the terms of this Order, the payment of the CAT fees in accordance with this paragraph is without prejudice to the Applicant MTCC 958 seeking to collect or pursue any other damages, costs and/or penalties, or any other amounts, from the Respondent Landlord and Respondent Tenant pertaining to non-compliance issue underlying this application.

COMPLIANCE

- [19] 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.
- [20] 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 in relation to this application, including legal costs and costs associated with enforcing compliance with the governing documents of the Applicant MTCC 958, including the cost of any acoustical testing conducted because of this Order.

Victoria Romero
Member, Condominium Authority Tribunal

Released on: March 14, 2025