

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 17, 2025

CASE: 2024-00436N

Citation: Ottawa-Carleton Standard Condominium Corporation No. 867 v. Ghafari, Fizeeli, Ghafari, 2025 ONCAT 47

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

Member: Brian Cook, Member

The Applicant,

Ottawa-Carleton Standard Condominium Corporation No. 867
Represented by Mitchell Robinson, Counsel

The Respondents,

Abdul-Wahab Ghafari,
Self-Represented

Obaed Fizeeli,
Self-Represented

Lida Ghafari
Self-Represented

Hearing: Written Online Hearing – October 4, 2024 to February 19, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] Ottawa-Carleton Standard Condominium Corporation No. 867 (“OCSCC 867”) alleges that the residents of a unit in the condominium caused or allowed unreasonable noise that is a nuisance, annoyance or disruption to other residents. The unit is owned by Abdul-Wahab Ghafari (“Mr. Ghafari”). Obaed Fizeeli (“Mr. Fizeeli”) and Lida Ghafari (“Ms. Ghafari”) were the residents. They moved out of the unit at the end of January 2025.
- [2] Since the residents are no longer in the unit, the substance of the application has been resolved. The only remaining issue is the claim by OCSCC 867 that it is entitled to compensation for costs incurred in seeking compliance with its rules

regarding noise, and for legal costs incurred in bringing this application. Determination of these issues requires an assessment of whether the Respondents complied with the rules regarding noise and the behaviour of the parties during the hearing of the case. There is also an issue about whether Mr. Ghafari had sufficient notice of the case.

B. NOTICE

- [3] The Respondents assert that Mr. Ghafari did not receive proper notice of this case.
- [4] When OCSCC 867 filed this application, Notice of the Application was delivered to the Respondents as required by the Tribunal's Rules of Practice. The Notice of the Application was sent to Mr. Ghafari by email and regular mail using the contact information he had provided to OCSCC 867. The mailing address that Mr. Ghafari provided to OCSCC 867 was the mailing address of the unit where Mr. Fizeeli and his family were living. Notices were also sent to Mr. Fizeeli and his spouse, Ms. Ghafari, at the unit's address.
- [5] Mr. Fizeeli testified that when the notices for Mr. Ghafari came to his unit in the mail, he marked them "RTS" (return to sender). He explained that he did this because the unit address was not Mr. Ghafari's mailing address. The emails that were sent to Mr. Ghafari did not bounce back.
- [6] The Respondents suggest that OCSCC 867 should have realized that Mr. Ghafari did not live in the unit because on a leasing form signed when Mr. Fizeeli moved in, a different mailing address was indicated. They also suggest that OCSCC 867 should have realized that Mr. Ghafari did not live in the unit when the mailed notices were returned and by the unit's small size.
- [7] The *Condominium Act, 1998* (the "Act") sets out the responsibilities of an owner and a condominium corporation with respect to the owner's address for service. Section 47 of the Act requires a condominium corporation to deliver a notice to the owner personally or by mail to the unit's address or mailbox unless the owner has provided a different address for service, or by email. Rule 20 of the Tribunal's Rules of Practice provides that notice is to be sent to the address for service of the unit owner as shown in the Record of owners and mortgagees that the condominium corporation is required to maintain under section 46.1 of the Act.

- [8] The onus is thus on the owner to provide their address for service of a legal notice. The condominium corporation is required to send notice to the unit's address unless the owner has provided a different address for service. The fact that Mr. Ghafari provided a different physical address on a lease notification does not satisfy the requirement to provide an alternative mailing address for service if he does not want delivery of service to the unit's address.
- [9] In this case, Mr. Ghafari did not provide an address for service other than the unit's address. He did provide an email address. Notice was sent to the unit's address and Mr. Ghafari's email address.
- [10] The notice sent by email was not returned. Mr. Fizeeli received the Notice of Application that was sent to him and joined the case. This shows that Mr. Fizeeli knew or ought to have known what the notices that were mailed to the unit and addressed to Mr. Ghafari were about.
- [11] Before the application was filed, Mr. Ghafari was sent two letters from the condominium manager and a letter from the condominium's lawyer. That letter, dated April 16, 2024, set out details of the noise complaints and noted that if the noise problem continued, an application to the Tribunal would be made. There is no suggestion that Mr. Ghafari did not receive this letter, which was sent to the unit's address.
- [12] When Mr. Fizeeli joined the case, he posted a message that advised that Mr. Ghafari would not be joining the case, and that Mr. Fizeeli would act as his representative.
- [13] I find that the Notices of the case were sent in accordance with the legal requirements. I find that Mr. Ghafari had notice of the application. If he did not, it was because Mr. Fizeeli refused to accept service on his behalf by returning the mailed notices.
- [14] There were two video conference calls during the hearing of this case. At the first, the unit owner who made the noise complaints (the "complainant") was not available, but there were some discussions about things that could be done to reduce sound transmission. Mr. Fizeeli advised that he anticipated moving out of the unit within the following months (he and his family ultimately moved out before the hearing was concluded). At the second conference call, on December 12, 2024, there was more discussion about things that might be done to help resolve the dispute and I heard evidence from the parties. Mr. Fizeeli noted that it would not be reasonable for him to purchase more rugs and underlay that might not be of use in a later residence.

[15] I then wrote a message to Mr. Ghafari and asked him if he was prepared to engage with the situation as the owner of the unit. Mr. Ghafari did not immediately respond but he did join the case. He then sent a submission noting that he owns several units in the condominium corporation and that there were no complaints of noise from the other units, suggesting that the problem was with the complainant. There was no further discussion about a possible settlement, and I invited final submissions. Mr. Fizeeli and Mr. Ghafari then confirmed that Mr. Fizeeli and his family would be moving out of the unit by the end of January 2025.

C. ISSUES AND ANALYSIS

Section 117 (2) of the Act and OCSCC 867 rules

[16] Section 117 (2) of the Act provides as follows:

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;

[17] Rule 19 (c) of OCSCC 867's rules provides as follows:

No owner or occupant shall create or permit the creation of or continuation of any noise or nuisance which, in the sole discretion of the Board, may or does disturb the comfort or quiet enjoyment of the property by other owners or occupants or their families, guests, visitors and persons having business with them. No noise resulting from the Owner's use of a Unit shall be permitted to be transmitted from one Unit to another. If the Board determines that any noise is being transmitted to another unit and that such noise is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall at his expense take such steps as shall be necessary to abate such noise to the satisfaction of the Board. If the Owner of such Unit fails to abate the noise, the Board shall take such steps as it deems necessary to abate the noise and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating the noise (including solicitor's fees).

Evidence

[18] The complainant moved into her unit in December 2021. Her evidence is that she was not bothered by noise from the unit above until June 2022, when Mr. Fizeeli and his family moved into their unit.

[19] OCSCC 867 relies on the evidence of the complainant. Documents provided by OCSCC 867 initially included about 50 recordings the complainant made on her phone. I advised that there were too many recordings and asked that the “top 10” recordings be provided. After listening to the recordings, I advised the parties that they appeared to consist mostly of white noise with some muffled sounds which could be consistent with the complainant’s evidence that she hears bumping noise, for example, from people jumping or dropping objects.

[20] OCSCC 867 also provided logs completed by the complainant with dates and times when she heard loud noise from the unit above. Most of the complaints were of noise from people “running and jumping around” but also included noise that seemed to be from someone pounding on the floor. The logs mostly concern noise in the evening, often extending to the early hours of the next day.

[21] The log for March 30, 2024, describes what the complainant characterized as an “insanely loud/disruptive evening”:

7:30-11:30pm – lots of running (see videos), repeatedly dropping hard objects, knocking on floor, sounds like they’re dragging something on the floor while running – see videos – it sounded like they were either dragging a toy car or rolling chair or playing some sort of game with a ball and running after it – Even after 11:30pm, until around 11:50pm they were dropping hard object(s) on the floor repeatedly, lots of weird stomping/dropping things or moving things (see video) Were still running around as of 11:50 pm The noises this night were actually shaking my entire apartment – could physically feel the apartment shaking while on my couch.

[22] She says that on other occasions, she also felt shaking in her unit from noise above.

[23] As indicated, the recordings taken by the complainant and filed with the Tribunal are not clear but do include muffled noises that could be consistent with some of the noise complained of.

[24] Ms. Marples, the condominium manager, said that she had listened to the recordings made by the complainant and found them to be convincing evidence of unreasonable noise. She also testified that she had never investigated the noise complaints directly and that no other investigation, such as a noise study, was conducted.

- [25] Mr. Fizeeli alleges that the complainant made noises directed at his unit. This included tapping on her ceiling (his floor). On at least two occasions, the complainant held a vibrating massage gun device against her ceiling which caused a lot of noise in his unit. The complainant indicated that she did this out of frustration. In his evidence and submissions, Mr. Fizeeli made a number of unsubstantiated and disparaging personal comments about the complainant and asserted that the complainant is especially and unreasonably sensitive to noise. He made other allegations including that she videoed his family moving out.
- [26] Mr. Fizeeli alleges that the complainant harassed him and his family. This included an allegedly false report to the police that there was a domestic dispute. For his part, Mr. Fizeeli issued a “cease and desist” notice to the complainant threatening legal action if she persisted in making noise directed at his unit.
- [27] Mr. Fizeeli testified that he and his family took steps to reduce noise transmission. For example, he sold a sub-woofer TV speaker and purchased some area rugs. He also indicated that he and his spouse stopped having more than two guests at any one time. They typically visited others rather than inviting people to their place. In his submissions, Mr. Ghafari indicated that he also suggested area rugs to help dampen the noise. Mr. Fizeeli indicated that the area rugs did not have any underlay and did not cover all the traffic areas in the unit.
- [28] The Respondents’ position is that the noises complained of were noises of normal activities of daily living and were not unreasonable. Mr. Fizeeli believes that many of the complaints were related to activities of his young son. He agreed that some of these activities occurred late in the night.
- [29] Mr. Fizeeli submits that if there was transmission of unreasonable noise from the unit it was because of construction deficiencies. He noted that they often heard noises of regular activities of daily living from other units including the complainant’s. Ms. Marples testified that while stairwells and supporting pillars are made of concrete, floors and ceiling are separated by wood rather than concrete. However, she also said that there have been no complaints of unreasonable noise from any of the other units.

Was the noise from the Respondent’s unit unreasonable?

- [30] The Tribunal’s case law establishes that the determination of whether noise is unreasonable cannot be based only on the subjective experience of the person complaining of the noise. There must be evidence that the noise is objectively unreasonable, and this can be best determined by considering whether other people in the same condominium would find the noise to be unreasonable.

- [31] As suggested by Mr. Fizeeli's submissions, this analysis may include information about the building construction. Some condominium buildings are built to minimize sound transmission. Noise produced in a unit in such a building may not be noticeable whereas the same noise in a differently constructed building may not only be noticeable but also unreasonable. Ms. Marples confirmed that the construction of the building in question here was not designed to minimize noise.
- [32] Other aspects of the analysis of whether noise is unreasonable include when the noise occurs and how often it occurs.
- [33] The complainant's evidence is that the noise she experienced was excessive, sometimes causing items in her unit to shake, and that it happened regularly, often on a daily basis.
- [34] Mr. Fizeeli asserts that the noises complained of are related to ordinary activities of daily living, especially with a toddler. However, he agreed that some of his child's activities may have resulted in noise transmission to the unit below and may have occurred late at night.
- [35] As noted, the evidence provided by OCSCC 867 to support the allegation of unreasonable noise is not conclusive as it relies on unsubstantiated complaints from the complainant and recordings that are not clear. I accept that much of the noise complained of were from normal activities of daily living, especially from a family with a young child. However, I found the complainant's evidence to be credible and accept that some of the noise complained of was excessive, especially when it occurred late at night. Mr. Fizeeli agreed that there may have been activities, including late at night, that may have resulted in noise transmission to the unit below.
- [36] I find that it is more probable than not that while some of the noises complained of were related to normal activities of daily living, some of the noises complained of, especially noises that were caused late at night, were unreasonable. I accept that the unreasonable noises resulted in an annoyance or nuisance.
- [37] I agree with Mr. Fizeeli that it is possible that some of the noise experienced by the complainant may have come from other units, since her unit has a unit below and to either side. However, I accept that the complainant would be able to discern noises that were coming through her ceiling, especially with respect to loud noise.

D. COMPENSATION AND COSTS

Is OCSCC 867 entitled to compensation for damages for pre-application costs?

- [38] OCSCC 867 seeks compensation in the amount of \$1,331.70 for costs incurred before the application was filed. These costs were for counsel's preparation of the April 16, 2024 letter that was sent to Mr. Ghafari. That letter was preceded by two letters from Ms. Marples also addressed to Mr. Ghafari.
- [39] The evidence indicates that Mr. Ghafari did not respond to any of these letters. As discussed above, when the application was filed and notices of it were sent to Mr. Ghafari at the address he had provided for service, Mr. Fizeeli essentially attempted to refuse service on Mr. Ghafari's behalf. It is not clear if the letters from Ms. Marples or from the counsel were received by Mr. Ghafari but if they were not, it is because Mr. Ghafari had not provided an address for service other than the unit's address, and/or because Mr. Fizeeli elected to not inform Mr. Ghafari about them, which seems unlikely, especially as Mr. Fizeeli is related by marriage to Mr. Ghafari.
- [40] An owner of a condominium unit has important obligations to the corporation and other owners. If the unit is leased, the owner is ultimately responsible for ensuring that their tenants comply with the Act and the condominium's rules.
- [41] I find that the escalation of a letter from counsel to Mr. Ghafari was appropriate since two letters from management had not resolved the issue. I find that the time billed by counsel was reasonable. I order Mr. Ghafari to pay OCSCC 867 \$1,331.70 as compensation.

Tribunal filing fees

- [42] Rule 48.1 of the Tribunal's Rules of Practice provides that if the Tribunal issues a decision following adjudication of the case, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.
- [43] The CAT fees in this case were \$150. I order Mr. Ghafari to reimburse OCSCC 867 \$150 for the CAT filing fees.

Legal costs incurred in the course of the hearing

- [44] OCSCC 867 seeks \$11,322.97 representing legal fees, disbursements and HST for legal work done during the course of the hearing.

- [45] Rule 48.2 of the Tribunal's Rules of Practice pertains to legal costs incurred by a party in the course of a proceeding. The Rules states that the CAT will generally 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
- [46] Had Mr. Ghafari responded to the letters from Ms. Marples it is possible that the issues could have been resolved without the need for the application to the Tribunal. Mr. Ghafari appears to have received the letters from Ms. Marples or was aware of them as he indicates in final submissions that he advised Mr. Fizeeli to purchase some rugs to dampen noise, indicating that he was aware that there were complaints of excessive noise.
- [47] As noted, as the owner of the unit, Mr. Ghafari is ultimately responsible for things done or not done by tenants. Even if he believed that the complaints of noise were not valid, he had a responsibility to engage in the process, and his initial failure to engage prolonged the hearing. His initial failure to join the case meant that it proceeded to the adjudication stage in the Tribunal's process and the parties did not have the benefit of the Tribunal's negotiation or mediation processes. While I introduced the possibility of a negotiated settlement during the adjudication process, Mr. Ghafari did not respond. He instead joined Mr. Fizeeli in submitting that the problem lay with the complainant.
- [48] The bill of costs provided by counsel indicates that there were extra costs associated with Mr. Ghafari's failure to join the case. These included measures to prepare and deliver the additional notices, discussed earlier, and discussions with OCSCC 867 about how to manage the case in the absence of the unit owner.
- [49] With respect to the claimed \$11,322.97 for legal costs during the hearing, I find that they appear reasonable for the work done, although some of the work could have been avoided, for example, having to review and upload over 50 sound recordings.
- [50] An award of costs is discretionary, and costs can be awarded on a full indemnity basis – meaning that the full costs are awarded – or a partial indemnity basis – meaning that a part of the costs are awarded.

[51] In consideration of all the circumstances, including the fact that the Tribunal's Rules of Practice provide that the Tribunal will not generally award costs, I find that costs on a 50% indemnity basis are appropriate, and I order Mr. Ghafari to pay \$5,661 to OCSCC 867.

E. ORDER

[52] Pursuant to section 1.44 of the Act, the Tribunal orders Mr. Ghafari to make the following payments within 30 days of the date of this decision:

1. \$1,331.70 as compensation for efforts to seek compliance with the OCSCC 867 rule regarding noise and section 117 (2) of the Act.
2. \$150 representing the Tribunal filing fees.
3. \$5,661 for costs incurred in the course of the hearing.

Brian Cook
Member, Condominium Authority Tribunal

Released on: March 17, 2025