

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 7, 2025

CASE: 2024-00389N

Citation: Samms v. McDavid, 2025 ONCAT 73

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

Member: Nicole Aylwin, Member

The Applicant,

Claire Samms

Represented by Terry Philp, Paralegal

The Respondent,

Marcielea McDavid

Represented by Jora Kuner, Counsel

The Intervenor,

Peel Condominium Corporation No. 632

Represented by Eric Plant, Agent

Hearing: Written Online Hearing – December 12, 2024 to April 21, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] Claire Samms (the “Applicant”) is the owner of a unit in Peel Condominium Corporation No. 632 (the “Intervenor”). She claims that she is experiencing unreasonable noise from the unit next to hers, which is owned by Marcielea McDavid (the “Respondent”). The Applicant states that she is subjected to noises from the Respondent’s unit daily. She perceives the noise as a loud thumping or pounding which causes vibrations in her unit. She has requested an order requiring the Respondent to cease making the noise, particularly between the hours of 10 p.m. and 7 a.m. She has also requested costs in the amount of \$1700.00.
- [2] The Respondent, who resides in the unit with her roommates, Pilar Hernandez (her sister) and Tripp Smith, denies making any such noises. She submits that

neither she nor her roommates are making the noise complained of by the Applicant. She asserts she has gone to great lengths to demonstrate this, both by using decibel readers in all rooms to ensure the noise levels remain low and cooperating with all independent investigations of the noise complaints by the Intervenor, none of which have concluded that the noise is coming from the Respondent's unit. The Respondent asks that this application be dismissed and seeks an order for costs in the amount of \$7449.53.

- [3] For the reasons set out below, I dismiss the application, with no costs to either party.

B. BACKGROUND

- [4] The Applicant and the Respondent live next to each other in townhouses which share an adjoining wall. The condominium is located close to railway tracks. The Respondent has lived in her unit with her sister since 2003. Prior to 2020, there were no complaints of noise from the Applicant about the Respondent's unit. According to the Applicant, who has lived in her unit since 2006, in November 2020, she began hearing loud thumping noises, often during the night and overnight, for hours at a time.

- [5] In December 2020, Mr. Smith and the Applicant had a conversation about the Applicant's noise concerns. At the end of the conversation, Mr. Smith offered the Applicant his phone number and invited her to call if and when she heard the noise(s). The Applicant and Mr. Smith have different impressions of this conversation. The Applicant suggests that this conversation amounted to Mr. Smith admitting that the noise was coming from the Respondent's unit. Mr. Smith denies he admitted anything of the sort but rather offered his number in the hopes of deescalating an increasingly tense situation and to show he and his roommates sought to be 'good neighbours' who would work with the Applicant to address any concerns (to the extent that they could, given their position that they were not producing the noise). After this exchange the relationship between the residents of the two units appears to have deteriorated as the noise continued. Based on the evidence provided, it is clear the Applicant was certain the noise was coming from the Respondent's unit, and the Respondent was certain that they were not responsible for the noise.

- [6] In December 2020, the Applicant wrote to the Intervenor's condominium manager at the time about the noise. In the letter she outlined her issues with the noise. In response, the condominium manager asked the Applicant to keep a log of the noise and indicated she would send a letter to the Respondent, making her aware of the complaints. According to the evidence provided, the manager sent a total of

two letters to the Respondent's unit, although there is no evidence before me that any investigation about the source of the noise was undertaken prior to sending the letters.

- [7] In October 2021, after the Intervenor had changed management providers, the Applicant wrote a letter to the new condominium manager, Eric Plant, detailing her complaints to date. The letter describes that she has been hearing a "loud, repetitive, pounding noise" that causes vibration in her unit since November 2020. She indicates this noise has seriously disturbed her sleep and was impacting her enjoyment of her unit. She also indicates she had attempted to address her complaints with both the Respondent and the Respondent's grandparents, Mr. and Mrs. Thorpe, who also own a unit in the building. She indicates that based on the conversations she has had with the Respondent and Mr. and Mrs. Thorpe she has concluded that the Respondent is involved with "some type of operation that involves the usage of equipment that creates this loud aggressive pounding and vibration." She also outlines other actions she has taken, such as making a complaint to the City of Brampton By-law Enforcement Services.
- [8] According to the submissions of the Intervenor, who was represented by Mr. Plant, upon receiving the Applicant's letter he worked with Mr. Thorpe, who by this time had been elected to the board of directors, to compare some of the dates of the Applicant's complaints to video and audio recordings taken in the Respondent's unit during the times of the complaints. Mr. Plant, testified that upon review of the video, he felt there was strong evidence "that the noise was not originating from the adjacent unit." He wrote back to the Applicant, in November 2021 to inform her of such, and speculated that perhaps the sounds were originating from the local train, an appliance in the Applicant's own unit, the pipes or perhaps even another neighbour. He submits he had no further communication from the Applicant about the noise for two years until March 2023, when he received an email from the Applicant's son, Mr. Hinds, who again raised the Applicant's concerns over noise, likely from a machine, and identified the Respondent's unit as the specific unit responsible for the noise.

- [9] In response to this exchange, in May 2023, Mr. Plant conducted an inspection of the Respondent's unit. Mr. Thorpe, in addition to the Respondent, was in unit while Mr. Plant conducted the inspection. However, Mr. Plant submits he gave no warning to anyone as to the date or time that the inspection was to take place. Mr. Plant submits he inspected the entire unit, including closets and basement spaces, and, in his opinion, found no evidence of any machinery or other indication that there was anything in the unit that was making or was capable of making the sounds complained of by the Applicant. He advised Mr. Hinds of his findings and had no further interaction with the Applicant or her son regarding the noise until the Applicant's legal representative sent a letter to the Intervenor in 2024. In response, Mr. Plant provided the legal representative with an overview of the steps the Intervenor had taken to address the noise and its opinion that the Respondent was not making the noise. According to Mr. Plant, he has offered on several occasions to visit the Applicant's unit to hear the noise for himself, but has been told that is not possible, as it only happens at night. The Applicant says she does not recall such an offer being made.
- [10] Between when the first complaint was made in the fall of 2020 and this hearing, the relationship between the Applicant and the other parties deteriorated to the point where there is now significant animosity and distrust between the Applicant and the Respondent, and the Applicant and the Intervenor. The Applicant has accused the Intervenor's board of directors and condominium management of showing favouritism (due to the position of the Respondent's grandfather on the board) and ignoring her complaints. She has also repeatedly alleged that the Respondent is operating an illegal business out of their unit (one of the bases for this allegation being the fact that the Respondent receives frequent deliveries to her door from various companies, Amazon, Purolator, etc.). For the Respondent's part, she and her roommates accuse the Applicant of targeting them, harassing them, making threats, and in fact disturbing their enjoyment of the unit by banging on the shared wall between the units and yelling at them through the walls (an action that the Applicant admits to doing out of frustration on at least one occasion).

C. ISSUES & ANALYSIS

Issue No. 1: Is the Respondent creating or allowing the creation of unreasonable noise that is a nuisance contrary to s. 117 (2) of the *Condominium Act, 1998* (the "Act")?

- [11] Although the background and the relationship between the parties provide context for this dispute, the issues in this application relate solely to the Applicant's claims

that the Respondent is carrying on an activity or allowing an activity to be carried on that causes unreasonable noise. Therefore, the issue to be determined by me is whether the Respondent is creating or allowing the creation of unreasonable noise that is a nuisance contrary to s. 117 (2) of the Act.

[12] Section 117 (2) of the Act states:

(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.

[13] Section 26 of Ontario Regulation 48/01 sets out unreasonable vibration as one of the other prescribed nuisances, annoyances or disruptions.

[14] The Applicant has presented evidence of a history of noise complaints made by her to the management as well as a complaint made to the City of Brampton By-law Enforcement Services. She has also provided testimony about her experience and provided noise logs that record the time and date of the noise and what it sounded like. The noise is consistently described in the logs as “repetitive pounding” causing vibration. In many instances, the log records this noise happening every single day for hours overnight and in the morning. For example, one log of the noise during June 2021 records the noise to be ongoing nearly every night between 9:30 p.m. and 2 a.m. – 3 a.m. and several days in the morning beginning at approximately 6 a.m. – 6:30 a.m. and ending at approximately 9 a.m. – 10:30 a.m. This is consistent with the logs that recorded her noise experiences in November and December 2020, and January and February 2021. There are no logs detailing the noise beyond 2021, but the Applicant testifies that the noise continues with the same frequency/pattern. The Applicant also provided witness statements from her son and three friends who described hearing the noise when either visiting or staying overnight in the Applicant’s unit.

[15] The Respondent does not challenge the fact that the Applicant is hearing noises, rather she disputes the fact that the noise is coming from her unit and that she or her roommates are making the noise. The Respondent, as well as her roommates, testified that they are not making the noises complained of and have no knowledge

of where the noise is coming from. They all testified to the fact that they now record audio and video in their unit 24 hours a day, seven days a week, so that they may have evidence to prove, at any given moment, that they are not making the noise.

- [16] I do not doubt that the Applicant is hearing the noises she and her witnesses described, nor do I question that these are very distressing to her. However, to make a finding that the Respondent is responsible for creating unreasonable noise that is a nuisance, I must first be persuaded that the Respondent is carrying on an activity or permitting an activity to be carried on in her unit that is the cause of the unreasonable noise.
- [17] There is no objective evidence that the noise complained of by the Applicant is coming from Respondent's unit. The only evidence of any noise are the Applicant's descriptions and complaints supported by the statements of her family and friends. While I accept that these witnesses did hear noises that they believed were emanating from the Respondent's unit, their testimony doesn't prove this fact on a balance of probabilities. Nor do the complaints made by the Applicant to the City of Brampton By-law Services or the police provide the required level of proof.
- [18] The complaint to the City of Brampton only demonstrates that the Applicant made a complaint against the Respondent; it does not amount to proof that the Respondent is making the noise. Additionally, in reference to an occasion in which the Applicant called the police regarding noise from the Respondent's unit, the Applicant's own evidence is that when the police attended the Respondent's unit, they only found that the residents of the unit were playing music (there is no indication of even how loud the music was). The Respondent denies the police reported this to the Applicant; however, even if they did, it is not proof that the Respondent is making the noises as described by the Applicant. There is no evidence that the police or the City of Brampton By-Law Services validated any of the complaints of pounding and banging that are the source of the Applicant's complaints.
- [19] Additionally, based on the Applicant's repeated allegations that the Respondent's unit is the source of the noise and that the noise is coming from some type of machine or business operation in the unit, the condominium manager, Mr. Plant, has inspected the Respondent's unit for sources of the noise (and any machine that may be causing the noise). In one instance, Mr. Plant stated that he inspected the Respondent's unit in direct response to a request from the Applicant's son that he do so. He found no evidence of a machine or other item that he believed could be responsible for the noises described by the Applicant. As noted above,

Mr. Plant has also reviewed video footage with audio taken within the Respondent's unit and compared that to the noise log provided by the Applicant. He concluded that the video did not substantiate the repeated claims that the noise was coming from the Respondent's unit.

- [20] I understand that the Applicant believes that Mr. Thorpe's (the Respondent's grandfather) position on the board calls into question Mr. Plant's credibility and the Intervenor's ability to conduct an unbiased investigation. However, there is no evidence that the Intervenor has failed to take the Applicant's complaints seriously and investigate them without bias. Mr. Plant has provided a detailed account of the actions he has taken since assuming the manager's role in 2021 and his findings, as described in his statements, are consistent with those he has provided to the Applicant over the course of several years. While to date, the Intervenor's investigations have focused solely on the Respondent's unit, rather than more broadly on trying to ascertain where the noise is coming from, this is likely due to the fact that the Applicant herself has insisted the Respondent and her roommates are responsible for the noise, and that the Respondent's unit ought to be the focus of the Intervenor's investigations.
- [21] To refute the Applicant's claims, the Respondent asked to submit three years' worth of video evidence to demonstrate that the Respondent was not responsible for the noise. On direction from me, they were instructed to choose a selection of videos to submit as it was not necessary or proportionate to submit hundreds of hours of video recordings.
- [22] The Respondent submitted three 10-minute video recordings, with full audio. Each video captures a different date and time. Each recording shows a decibel reader set up in either the living room or one of the bedrooms. The Respondent provided a sworn statement that the videos are true copies. She testified that these videos were chosen as they match up to specific dates and times where the Applicant logged noise incidents and in one case the video corresponds to a date and time in which one of the Applicant's witnesses identified having heard the noises.
- [23] I reviewed each of the videos. In the videos, the decibel reader moves up and down in apparent accordance with the background noise that can be heard on the video. The decibel reader stays in the range of between 40-70 decibels – although there a few spikes to higher numbers that last only seconds.
- [24] The Applicant challenges the validity of decibel readings in these videos since the Respondent provided no make or model of the devices used or evidence that they are being used to manufacturing specifications. That is true, and I give little weight to the actual decibel readings. Rather, what is more persuasive about the videos is

that no noises such as those described by the Applicant can be heard. In the videos you can hear talking/voices and background noise – but no thumping and/or pounding or banging as is consistently described by the Applicant. Certainly, one might expect to hear something of the sort of noises described by the Applicant if the sound is loud enough to cause vibration in the Applicant's unit.

- [25] Nonetheless, even if I were to give no weight to the video evidence at all, I find that the Applicant has not met her burden of proof, which requires her to prove on the balance of probabilities that the Respondent is creating or permitting unreasonable noise that is a nuisance. Based on the above, I find there is insufficient evidence for me to conclude that the Respondent is creating or permitting unreasonable noise that is a nuisance.
- [26] Finally, I wish to note that the way in which noise transmits within a building is not always straightforward. This appears to be a case where perhaps at one time the Applicant had a reasonable belief that the noises being experienced were coming from the adjoining unit. However, this appears to have morphed into an entrenched position that is not supported by evidence and is now perhaps standing in the way of finding a resolution to her noise complaints. I would encourage the Applicant to consider other possibilities and encourage the Intervenor to continue to do their due diligence and seek to investigate sources of the noise beyond the Respondent's unit, in the hopes that the origin of the noise may be identified and addressed accordingly.

Issue No. 2: Is any party entitled to costs?

- [27] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act.
- [28] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing a party to the proceeding to pay the costs of another party to the proceeding."
- [29] Section 1.44 (2) of the Act states that an order for costs "shall be determined in accordance with the rules of the Tribunal".
- [30] 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.

- [31] 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; the potential impact an order for costs would have on the parties; the indemnification provisions in a corporation’s governing documents; and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.
- [32] The Applicant requested costs in the amount of \$200 for her Tribunal fees and \$1700 in legal costs. The Applicant has not been successful in this case and is not entitled to costs.
- [33] The Respondent has requested costs in the amount of \$7449.53. She submits that this proceeding was unnecessary as the Applicant refused to accept the evidence offered to her prior to this hearing as ‘proof’ that the Respondent was not making the noise. She also cited various instances during the Tribunal’s Stage 2 – Mediation that she believed showed the Applicant’s refusal to take actions suggested to her that might resolve the issues. Attempts to resolve the dispute during mediation are confidential and I have not considered these.
- [34] The Applicant was entitled to have her case heard. Not accepting the Respondent’s position or evidence in advance of a hearing does not amount to grounds for a costs award in this case. While the conclusions reached in this decision support the Respondent’s claim that she is not responsible for the noise and perhaps demonstrate that the Applicant has lost some perspective on how this might be addressed, it is clear, given the distrust and animosity between the parties, that this case likely needed a third-party decision maker to assess the evidence and to make a determinative decision.
- [35] Both parties were represented in this hearing, and I find there was no unreasonable conduct that delayed or otherwise added time and/or expense to this hearing.

[36] Cost awards are discretionary. For the reasons above, I decline to award costs to either party.

D. ORDER

[37] The Tribunal orders that:

1. This application be dismissed. Each party will bear their own costs.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: May 7, 2025