

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 8, 2025

CASE: 2025-00133N

Citation: Carleton Condominium Corporation No. 476 v. Smalldridge, 2025 ONCAT 74

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

Member: Mary Ann Spencer, Member

The Applicant,

Carleton Condominium Corporation No. 476

Represented by Mitch Robinson, Counsel

The Respondent,

Debbie Smalldridge

No appearance

Hearing: Written Online Hearing – March 31, 2025 to May 1, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Respondent, Debbie Smalldridge, is the owner of a unit of the Applicant, Carleton Condominium Corporation No. 476 (“CCC 476” or “the corporation”). CCC 476 alleges that Ms. Smalldridge, by feeding pigeons from her balcony, has created a nuisance in breach of section 117 (2) (a) of the *Condominium Act, 1998* (the “Act”) and Rule 4.01 of the corporation’s rules.
- [2] Ms. Smalldridge did not join this matter at any stage of the proceedings. At the outset of the Stage 3 – Tribunal Decision hearing, at my request, Tribunal staff contacted her by e-mail to advise her both of how to join the case on the Tribunal’s online CAT-ODR system and of the consequences of not participating. Counsel for the Applicant confirmed that three notices of its application to the Tribunal were served on Ms. Smalldridge by regular mail. I am satisfied that Ms. Smalldridge was properly served and is aware of this matter. Therefore, the hearing proceeded without her participation and my decision is based solely on the evidence and submissions of CCC 476.

- [3] I find that Ms. Smalldridge has created a nuisance by feeding pigeons from her balcony in violation of section 117 (2) (a) of the Act and Rule 4.01 of CCC 476's rules. I order her to immediately cease this activity, to clean her balcony, and to install a bird deterrent on her balcony. I also order her to pay CCC 476 \$4,000 in costs and \$734.50 as compensation for damages.

B. BACKGROUND

- [4] CCC 476 is a high-rise condominium building. Ms. Smalldridge has owned her unit, which is on an upper floor, since 2010.
- [5] The corporation has received complaints from building residents that Ms. Smalldridge feeds pigeons from her balcony which has resulted in noise from the birds roosting and flocking and damage to other balconies and patios from their droppings. In response to these complaints, Valerie Nabipour, the administrative assistant to the corporation's condominium manager, in an e-mail dated February 10, 2023, advised Ms. Smalldridge that feeding birds was not allowed at CCC 476 and that this was also a violation of a municipal by-law. On April 14, 2023, Ms. Nabipour sent a second e-mail which again advised that feeding birds was not allowed. The e-mail requested that Ms. Smalldridge remove all food and bird droppings from her balcony and noted that if she did not comply, the matter would be referred to legal counsel and she would be held responsible for any associated costs. In an e-mail reply, Ms. Smalldridge acknowledged receipt of this message. Ms. Nabipour sent a third e-mail on December 12, 2023. Ms. Smalldridge acknowledged its receipt in an e-mail dated December 21, 2023, in which she wrote:

Since it's now winter and pretty cold, I would prefer to attempt to clean the balcony early in the Spring - but I will do what I can. Perhaps some of the other tenants who convinced/encouraged me to begin feeding the birds in the first place could get some ladders and give me a hand ...

- [6] In her e-mail response, Ms. Smalldridge also expressed concern that cameras were recording her activity. Monie Alahdab, CCC 476's condominium manager, replied to her on January 8, 2024, and advised that there were no cameras. He reiterated the request that she stop feeding the pigeons, recommended that she install pigeon deterrents on the balcony and referred her to government sources with information about potential health risks from exposure to pigeon droppings. I note that none of the e-mails sent by the corporation referred to any specific provision of the corporation's governing documents or the Act which prohibited Ms. Smalldridge's activity.

- [7] Notwithstanding Ms. Smalldridge's acknowledgment of receipt of Ms. Nabipour's e-mails, the bird-feeding activity continued and CCC 476 referred the matter to its legal counsel. On April 17, 2024, Counsel for the Applicant sent a letter to Ms. Smalldridge in which he advised that her bird-feeding activity was a violation of both CCC 476's rule 4.01 and section 117 of the Act and requested that she immediately cease feeding the birds and remove all food and bird droppings from her balcony. The letter advised her to contact counsel if she was "struggling with mental health-related issues or other disability or medical condition" which impacted her ability to comply. It also noted that she would be responsible for the corporation's costs and requested payment of legal fees of \$734.50.
- [8] A second letter from Counsel for the Applicant was sent on January 22, 2025. Counsel noted that the corporation continued to receive complaints about Ms. Smalldridge's feeding of the birds. The letter repeats the demands that she cease feeding pigeons and clean her balcony of food and bird droppings. It again encourages her to contact Counsel if she has a medical condition which might be impacting her ability to comply. Finally, it notes her responsibility for the corporation's legal costs and requests payment of \$1469.00, the cost of both legal letters, by no later than February 5, 2025. Ms. Smalldridge did not comply and the corporation subsequently filed its application with the Tribunal.

C. ISSUES & ANALYSIS

- [9] The issues to be addressed in this matter are:
1. Has the Respondent created a nuisance in violation of s. 117 (2) (a) of the Act and/or Rule 4.01 of CCC 476's rules? If so, what order should the Tribunal issue?
 2. Should the Tribunal award costs in this matter?
- [10] While the correspondence sent to Ms. Smalldridge by Ms. Nabipour, Mr. Alahdab and Counsel for the Applicant contains reference to the potential negative health effects caused by exposure to pigeon droppings, this case was brought only with respect to the alleged nuisance caused by the bird feeding. The Tribunal's jurisdiction, which is established in Ontario Regulation 117/79, does not extend to s. 117 (1) of the Act which prohibits activities that cause property damage or result in injury or illness to an individual. Therefore, while the witnesses in this matter presented evidence related to property damage, I have not considered that evidence in making my decision.

Issue 1: Has the Respondent created a nuisance in violation of Section 117 (2) (a) of the Act and/or Rule 4.01 of CCC 476's rules? If so, what order should the

Tribunal issue?

- [11] Section 119 (1) of the Act requires all unit owners and occupants to comply with the Act and a corporation's declaration, by-laws and rules. CCC 476 alleges that by feeding pigeons from her balcony, Ms. Smalldridge has violated s. 117 (2) (a) of the Act and Rule 4.01 of the corporation's rules. Section 117 (2) (a) of the Act states:

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;

Rule 4.01 of CCC 476's rules states:

No owner shall create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or the manager, may or does disturb the comfort or quiet enjoyment of the property by any other owner.

- [12] The Act does not define 'nuisance'. In its decision in *Carleton Condominium Corporation No.132 v. Evans*, 2022 ONCAT 97 (CanLII), summarizing *Antrim Truck Centre Ltd. V. Ontario (Transportation)* 2013 SSC 13 (CanLII), the Tribunal wrote at paragraph 20:

...it is instructive to consider the well-established jurisprudence on the law of nuisance. To support a claim of nuisance, the interference must be substantial and unreasonable; the requirement for substantial interference can incorporate a component of frequency and duration of the interference. A 'trivial' interference will not suffice to support a claim in nuisance.

- [13] Mr. Alahdab has been CCC 476's condominium manager since the spring of 2022. He testified that in the winter of 2022-2023, he began to receive numerous reports from residents about Ms. Smalldridge's feeding of pigeons which was resulting in noise, property damage from their droppings and health and safety concerns. He noted that CCC 476's residents' handbook has a specific section addressing pigeons that asks residents not to feed them and warns of the health issues potentially associated with contact with their droppings. He stated that he instructed Ms. Nabipour to send the e-mails dated February 10, April 14 and December 12, 2023, to Ms. Smalldridge asking her to cease feeding the birds. However, he continued to receive complaints from residents and consequently

referred the matter to legal counsel, resulting in the legal letters sent on April 17, 2024, and January 22, 2025. He testified that Ms. Smalldridge's behaviour continues and that the excessive number of birds and animals attracted to the property is creating noise and causing property damage.

- [14] The only resident complaint filed as an exhibit in this matter was sent by resident Tracey Matthews on January 5, 2025. In it, Ms. Matthews notes that this "formal" complaint was "long overdue" after there had been several discussions about the bird-feeding behaviour. The complaint states that the birds flocked daily (and sometimes multiple times a day) to Ms. Smalldridge's balcony with the result being food falling to Ms. Matthews' patio and the accumulation of excessive bird droppings on it. The complaint indicates that on a daily basis Ms. Matthews was sweeping the patio and picking up food by hand to discourage the birds. It also states that bird droppings had damaged her furniture, causing her to discard some of it. Finally, it notes that she was unable to enjoy the full use of her patio during the preceding summer because of the presence of the birds and other animals attracted by the food. She enclosed photographs of the tarp on her furniture which was covered with bird droppings.
- [15] Ms. Matthews testified that the patio of her ground-floor unit, which is located directly beneath Ms. Smalldridge's unit, extends out beyond the balconies. She stated that seed and bread fall on the patio, attracting not only pigeons but also squirrels and raccoons, thereby limiting her use of it. Her testimony was supported by numerous photographs taken in January, February and March of 2025 which show pigeons, squirrels, food, and pigeon droppings on her patio. A copy of a log which she maintained of incidents of food falling to her patio was also entered as evidence. The log dates from January 5, 2025, to February 7, 2025, and records incidents on 22 of the 28 days Ms. Matthews was present in her unit with several incidents occurring on a number of those days. She indicated that she has spent a significant amount of time cleaning the balcony. She further testified that she must keep her patio door and windows closed because of the noise created by the birds and the fact that animals attracted by the food approach her door and windows. She stated that the situation has caused her stress and that she is no longer able to enjoy the use of the patio which she indicated was one of the features which attracted her to purchase her unit. Finally, she indicated that her patio continues to be covered with "food, feces and an excessive presence of animals."
- [16] Emily Dare resides in a unit with a clear view of Ms. Smalldridge's unit. She testified that she initially contacted the building's superintendent about the bird disturbance in September 2024. She testified that she works from home and is disturbed by the noise of the birds swooping by her unit and flocking to Ms.

Smalldridge's balcony. She testified that because her unit is hot, she frequently leaves a window open and must wear headphones to avoid the disturbance. She also testified that she has been awakened by the sound of the birds. She indicated that she has placed an owl decoy on her balcony as a deterrent and that while the birds no longer perch there, she still must clean up bird droppings. Multiple photographs and two videos she took in February and March 2025 show numerous birds perched and eating on Ms. Smalldridge's balcony and swooping by her own unit to reach Ms. Smalldridge's.

[17] The evidence persuades me that Ms. Smalldridge is in breach of s. 117 (2) (a) of the Act which forbids activities which result in the creation of unreasonable noise that is a nuisance, annoyance or disruption. Ms. Dare's testimony is that the birds disturb her sleep and her ability to work and that she wears headphones to avoid the noise. Ms. Matthews testified that she keeps her patio door and windows shut not only because animals approach them but also because of the noise the pigeons create. Mr. Alahdab also testified that noise was among the disturbances that residents reported to him. The photographs and videos entered as evidence indicate a large number of birds flocking to or perched on Ms. Smalldridge's balcony or roosting on the building, presumably awaiting feeding. In one such photograph, I count over 40 pigeons. While no outdoor space can reasonably be expected to be immune from all bird activity, Ms. Smalldridge's decision to feed pigeons has clearly persistently attracted an excessive number of birds. I accept the witnesses' testimony that this large congregation of pigeons on what Ms. Matthews' log indicates is essentially a daily basis is creating unreasonable noise that comprises a nuisance.

[18] The evidence also persuades me that Ms. Smalldridge has breached CCC 476's Rule 4.01 which states that no resident shall create or permit the continuation of any "noise or nuisance" that disturbs the "comfort or quiet enjoyment" of the property by any other owner. In addition to the noise created by the large number of birds attracted to Ms. Smalldridge's balcony, Ms. Smalldridge's bird-feeding activity results in food being dropped on Ms. Matthews' patio on an almost daily basis, thereby attracting unwanted animals to the patio and requiring Ms. Matthews to regularly remove it. Ms. Matthews is also required to regularly clean what the photographs indicate is an excessive amount of droppings. Similarly, Ms. Dare testified that she too has to clean her balcony of bird droppings. The fact that Ms. Smalldridge's activity results in the fouling of the outdoor spaces of other residents is an unreasonable and substantial interference with those residents' enjoyment of their units. Residents should not be required to constantly remove food from their outdoor spaces or regularly clean them because of another resident's activity.

[19] I have found that Ms. Smalldridge's bird-feeding activity is in breach of section 117 (2) (a) of the Act and Rule 4.01 of the corporation's rules. Therefore, I will order that she immediately cease feeding the birds. I recognize that this may not immediately stop the birds from congregating on or near her balcony. Therefore, I will also order her to install a bird deterrent (for example, an owl decoy) on her balcony.

Issue 2: Should the Tribunal award costs in this matter?

[20] CCC 476 requests its costs of \$9,310.34, comprised of \$150.00 in Tribunal fees, \$1,469.00 incurred with respect to two legal letters sent to the Respondent and \$7,691.34 in legal fees and disbursements incurred with respect to the Stage 3 – Tribunal Decision proceeding, on a full indemnity basis in accordance with the indemnification provisions of its By-Law No. 1.

[21] The cost-related rules of the Tribunal's Rules of Practice applicable 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.

[22] The corporation was successful in this matter and therefore, in accordance with Rule 48.1, I will order Ms. Smalldridge to pay \$150.00 with respect to its Tribunal filing fees.

[23] Costs not awarded by the Tribunal will form part of a corporation's expenses and ultimately be paid by all of CCC 476 owners. Counsel submits that it would be neither reasonable nor fair for owners to pay costs incurred because of Ms. Smalldridge's ongoing act of non-compliance.

[24] In considering whether costs should be awarded, I am guided by the "Tribunal's Practice Direction: Approach to Ordering Costs" which, among the factors to be considered, includes: the conduct of all parties and representatives; whether the parties attempted to resolve the issue in dispute before the CAT case was filed,

the potential impact an order for costs would have on the parties and the provisions of the corporation's governing documents.

- [25] In this case, notwithstanding their lack of specificity with respect to violations of the governing documents, Ms. Smalldridge did not comply after she was sent three e-mails by the corporation, two of which she acknowledged she had received. She also did not comply after receiving two letters from the corporation's Counsel, both of which invited her to contact him if there were any medical reasons impacting her ability to do so. Further, had she participated in this proceeding, it is conceivable that the matter might have been resolved at an earlier stage without the necessity of a hearing and its associated costs.
- [26] The Tribunal's Rules of Practice are clear that legal fees incurred in the course of a proceeding are not generally awarded. However, in these circumstances, where Ms. Smalldridge did not comply after receiving multiple warnings, I find that it would be inappropriate for other owners to bear the entire cost of this proceeding. The corporation incurred legal fees and disbursements totalling \$7,691.34 associated with this proceeding. I order costs of \$3,850.00 to be paid by Ms. Smalldridge in respect of these expenses. Therefore, with the addition of the \$150.00 to be paid in respect of filing fees, the cost award totals \$4,000.00.
- [27] The corporation also requests compensation of \$1,469.00, the legal fees it paid for two letters Counsel sent to Ms. Smalldridge. As noted in paragraph 25, Ms. Smalldridge had three opportunities to comply with the corporation's demand that she stop feeding birds before this matter was escalated to counsel. However, it was not until the first legal letter was sent that she was advised that her activity was breaching s. 117 of the Act and the corporation's Rule 4.01. The corporation did not have to incur legal costs to inform Ms. Smalldridge that her activity was causing a nuisance and to cite the relevant parts of its governing documents and the Act she was breaching. Therefore, I find that the corporation is entitled to recoup only the cost of the second legal letter and I will order Ms. Smalldridge to pay \$734.50 as compensation for damages in accordance with s. 1.44 (1) 3 of the Act.

D. ORDER

- [28] The Tribunal Orders that:

1. Under section 144 (1) 2 of the Act, Debbie Smalldridge shall immediately and permanently cease feeding birds and shall clean all food and bird droppings from her unit's balcony.

2. Under section 1.44 (1) 2 of the Act, within 21 days of the date of this decision, Debbie Smalldridge shall install a bird deterrent on her balcony.
3. Under section 1.44 (1) 4 of the Act, within 30 days of the date of this decision, Debbie Smalldridge shall pay \$4,000.00 in costs to CCC 476.
4. Under section 144 (1) 3 of the Act, within 30 days of the date of this decision, Debbie Smalldridge shall pay \$734.50 to CCC 476 as compensation for damages.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: May 8, 2025