

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 4, 2025

CASE: 2024-00741N

Citation: Thunder Bay Condominium Corporation No. 25 v. Foster, 2025 ONCAT 94

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Thunder Bay Condominium Corporation No. 25

Represented by Jeremy Kirk, Counsel

The Respondent,

Judith Foster

Self-Represented

Hearing: Written Online Hearing – April 7, 2025 to June 2, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Thunder Bay Condominium Corporation No. 25 (“TBCC 25”), alleges that Judith Foster, a unit owner, (the “Respondent”) is not complying with its rules; and particularly, rules related to pets. TBCC 25 alleges that the Respondent’s noncompliance has caused a nuisance to other owners. It seeks an order for the permanent removal of the Respondent’s dog from her unit as well as its costs incurred in pursuing compliance with its rules.
- [2] Possible removal of a pet is a serious matter. The impact on the pet owner can be considerable and it is therefore very desirable that an owner participate in the hearing where these issues will be determined. The Respondent participated in the Stage 2- Mediation, though, based on the Stage 2 Summary and Order, she appears to have stopped participating when no resolution was reached. In this Stage 3 hearing, she only sent one message, on April 12, 2025, at which time she indicated that she had some difficulties accessing the CAT-ODR platform and would contact Tribunal staff. Tribunal staff provided the Respondent with the steps required to rectify the issues and subsequently also contacted her by email. She has, however, not communicated further with staff nor has she participated in this hearing in any way since April 12, though she was given every opportunity to do so. I find that the Respondent had notice of this hearing and chose not to participate. This case has therefore been decided on the basis of the evidence

provided by TBCC 25.

- [3] For the reasons set out below, I am ordering that the Respondent shall permanently remove her dog from her unit within 30 days of the date of this decision. I also order that until the dog is removed, she shall not allow it to relieve itself on her balcony. Costs are awarded to TBCC 25 in the amount of \$200.

B. BACKGROUND

- [4] Charlene Curran is the owner of a unit directly below the Respondent's. She moved into her unit in March 2023. In the summer of 2023, Ms. Curran noticed water dripping from the balcony above onto her balcony, often striking her balcony railing. From her inquiries of other owners, she learned that the Respondent allows her dog to relieve itself on the balcony and then cleans her balcony by dumping buckets of water onto it. The water runs off, onto Ms. Curran's balcony. Though Ms. Curran reported the issue to TBCC 25 management in September 2023, it appears that no action was taken. Her attempts to discuss the issue with the Respondent have been unsuccessful. The issue abated through the winter of 2023 but resumed again in the spring of 2024.
- [5] When a new condominium manager took over in June 2024, Ms. Curran contacted them about her concerns.
- [6] Leyla Malawi, of Mirabelli Corporation, the condominium management company, wrote the first of six letters to the Respondent on September 3, 2024 asking her to refrain from allowing her dog to relive itself on her balcony and then cleaning her balcony in a manner that impacts the units below. TBCC 25 set out in the various letters the rules with which it believed the Respondent was not complying. The rules relevant to this dispute will be referred to later in this decision.
- [7] In September 2024, TBCC 25 retained a company, Custom Enhanced, to assess the rusting on the balconies (both Ms. Curran's and the Respondent's) affected by the Respondent's activities. Using a liftgate to access the balconies, Custom Enhanced could see the dog feces scattered across the Respondent's balcony and took photographs (submitted into evidence) of what was observed. This precipitated the second letter to the Respondent dated September 18, 2024. In that letter, TBCC 25 reminded her that pursuant to the TBCC 25 rules, owners are responsible for immediately cleaning up any mess left on the common elements by their pets and pointed out that the balcony is an exclusive use common element.
- [8] The issue persisted through the fall of 2024. Letters were sent to the Respondent on October 10, 11, and November 4. Attempts to speak with her about the issue were unsuccessful. In the letter dated November 4, TBCC 25 stated that the board had deemed the dog to be a nuisance and requested that it be removed by November 18.
- [9] The dog remains in the unit. In January 2025, Paul Sequeira, the president of TBCC 25, attended at the Respondent's unit in relation to a water leak in the unit.

He spoke to her about the ongoing pet issue. He stated in his evidence that the Respondent confirmed to him that she had received the letters and was planning to respond. However, Ms. Curran testified that in March 2025 she noticed water dripping from the balcony above onto her railing. Where the water froze on the railing, it was yellow in colour, resembling urine.

C. ISSUES & ANALYSIS

[10] The issues to be addressed in this matter are:

1. Has the Respondent failed to comply with provisions in TBCC 25's declaration and /or rules?
2. If so, what remedy should be ordered?
3. Should an award of costs be assessed?

Issue: Has the Respondent failed to comply with provisions in TBCC 25's declaration and/or rules?

[11] Section 119(1) of the *Condominium Act, 1998* (the "Act") requires all unit owners to comply with the Act, and their condominium's declaration, by-laws and rules. TBCC 25 alleges that Ms. Foster has failed to comply with the following rules.

Rule 1.8. Owners and their families, guests, visitors...shall not create or permit the creation 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 Units or Common Elements by other Owners...

Rule 1.9 Nothing shall be thrown out of the windows or off the balconies of the building.

Rule 1.30 Owners of pets shall be responsible for immediately cleaning up any mess left on the Common Elements by such pets.

In addition, Article IV.2(d) of the declaration states that no animal that is deemed by the board in its absolute discretion to be a nuisance is to be kept on the property and shall be permanently removed within two weeks of written notice provided by the board.

[12] When considering provisions cited by an applicant, it is important to look at the CAT's jurisdiction; the facts may indicate a breach of a provision in the governing documents, but that provision may not be within the Tribunal's jurisdiction as set out in section 1(1)(d) of Ontario Regulation 179/19 ("O. Reg 179/19") under the Act. The Tribunal has no jurisdiction to deal with disputes other than those which are set out in this regulation. The types of disputes relating to provisions of a condominium's governing documents within the Tribunal's jurisdiction are:

- (i) Provisions that prohibit, restrict, or otherwise govern pets or other animals

in a unit, the common elements or the assets, if any, of the corporation.

(ii) Provisions that prohibit, restrict or otherwise govern an automobile, motorcycle, van, truck, trailer, bus, mobile home, farm tractor, bicycle, motorassisted bicycle, motorized snow vehicle, motorboat, rowboat, canoe, kayak, punt, sailboat, raft, aircraft, device used to facilitate the transport of a person with a disability, or any other vehicle drawn, propelled or driven by any kind of power, including muscular power, in a unit, the common elements or the assets, if any, of the corporation.

(iii) Provisions that prohibit, restrict or otherwise govern the parking or storage of items in a unit, an asset, if any, of the corporation, or any part of a unit, an asset or the common elements, that is intended for parking or storage purposes.

(iii.1) Provisions that prohibit, restrict or otherwise govern the activities described in subsection 117 (2) of the Act or section 26 of Ontario Regulation 48/01 (General).

(iii.2) Provisions that prohibit, restrict or otherwise govern any other nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

(iv) Provisions that govern the indemnification or compensation of the corporation, an owner or a mortgagee regarding a dispute described in this.

[13] The evidence before me supports a finding that the Respondent allows her dog to defecate on the balcony; the photographs show that clean-up is by no means immediate; there has been an accumulation of dog feces on the balcony. This is in violation of Rule 1.30, a provision that governs pets as set out in s. 1(1)(d)(i) of O.Reg 179/19.

[14] Further, the Respondent, when she does clean up after her dog, appears to pour water onto the balcony to wash down the pet waste which results in the contaminated water dripping onto Ms. Curran's balcony. Regarding Rule 1.9 and the question of whether the Respondent's activity of washing down her balcony constitutes a violation of that rule - that is, whether water is being "thrown" off the balcony - I am not persuaded that this is a provision that falls within the Tribunal's jurisdiction as set out in O. Reg 179/ 19. Therefore, I make no finding about a possible violation of Rule 1.9.

[15] However, I do accept Ms. Curran's evidence that this activity by the Respondent of washing the dog feces and urine off her balcony, which has occurred through all but the winter months, since 2023, has impacted her use and enjoyment of her balcony. She is reluctant to spend time on her balcony. She does not touch the railing because the waste water drips on it, and instead of sitting on her balcony will use the gazebo on TBCC 25's property. The activity has been frequent, is not trivial as indicated by the fact that Ms. Curran has little use of her balcony. It has

resulted in a substantial interference with her use and enjoyment of her balcony in violation of Rule 1.8, and results in a nuisance, falling within the tribunal's jurisdiction under s. 1(1)(d)(iii.2) of O. Reg 179/19.

- [16] Each of TBCC 25's witnesses indicated that reports had been made by Ms. Curran to the Thunder Bay District Health Unit. Mr. Sequeira stated that TBCC 25 was advised that they could be subject to a fine if the issue was not resolved, citing concerns about continued water runoff and the presence of fecal matter affecting another unit. While this is a serious issue, to the extent that there is a health concern (or as also referred to by the witnesses, any structural impact on the balconies) that may cause an injury or illness to another person, these are issues that may fall within s. 117(1) of the Act, which is not within the Tribunal's jurisdiction.

Issue 2: What remedy should be ordered?

- [17] Having found that the Respondent is in violation of both Rules 1.8 and 1.30, and that her activities continue unabated, I conclude that the board's determination that the dog is a nuisance, pursuant to Article IV 2(d) of the declaration, is reasonable. The fact that the Respondent has allowed her dog to defecate and urinate on the balcony and that when she does attempt to clean up the mess she appears to do so without concern or regard to the impact on her neighbours, is unacceptable. TBCC 25 sent four letters to her about their concerns before the November 4 letter requesting that she permanently remove the dog. TBCC 25 and Ms. Curran also attempted to discuss the matter with her.
- [18] TBCC 25 took steps to enforce its rules and gain voluntary compliance before seeking the removal of the dog in November 2024 and before seeking an order from the Tribunal. On the basis of its evidence, I find that TBCC 25 is entitled to require that the dog be removed.
- [19] TBCC 25 did not take this step lightly nor do I in making an order for the dog's removal. There is some indication in the evidence that the Respondent seldom leaves her unit and is averse to interactions with other people. The attachment to her dog is likely very strong. However, the expectations of the unit owner who has a pet, as set out in the rules, are not particularly onerous. There were, and perhaps still could be, ways to resolve this issue short of removal of the dog. But at this point, and particularly in light of the Respondent's lack of participation, I conclude that removal of the dog is the appropriate remedy to order. In making this order, I take note of the Tribunal's decision in *Middlesex Vacant Land Condominium Corporation No. 605 v. Cui* 2021 ONCA 91 where at paragraph 30, the Tribunal wrote:

As the Court recognized in *Ramadani*, it is a serious matter to require that the Respondent's dogs be removed but it is also a serious matter when condominium residents do not conduct themselves in a way that is considerate of their neighbours and other owners. In order to ensure protection of the interests of other condominium owners and residents, a

condominium corporation must be able to enforce compliance with its governing documents.

Issue 3: Should an award of costs be assessed?

- [20] TBCC 25 is requesting that, pursuant to the indemnification provisions of its declaration and under Rule 48 of the Tribunal's Rules of Practice that it be awarded its costs, both the \$200 Tribunal filing fee and its legal fees of \$6151.73, on a full indemnity basis.
- [21] TBCC 25 has been successful in this case and therefore, in accordance with Rule 48.1, I will order that the Respondent reimburse TBCC 25 the \$200 Tribunal filing fee.
- [22] While the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner has been clearly articulated by the courts and this Tribunal, it is also well-established law that an award of costs is discretionary; it must be an amount that is proportional, fair and reasonable in the particular case. An award for full indemnity is relatively unusual and awarded in only very narrow circumstances. The Tribunal has also stated in its jurisprudence that, in effect, the cost associated with the condominium corporation's carrying out its duty to enforce compliance under the Act and its governing documents is reasonably anticipated to be part of the common expenses paid by all owners.
- [23] In making its request for legal costs on a full indemnity basis, TBCC 25 referred to the case of *Peel Condominium Corporation No. 95 v. Psofimis* 2021 ONCAT 48 (CanLII), a case frequently cited by condominium corporations, often with little attention to the specific facts of that case. In *Psofimis*, the Tribunal awarded full indemnity (which was \$3926.72, in a case like this one where the respondent did not participate in the hearing). The Tribunal noted that for a period of three years, the respondent had deliberately and consciously defied the condominium's rules, blatantly breaching an agreement he had made with the corporation and showed a lack of good faith. A careful consideration of the facts in that case shows it bears little resemblance to this one.
- [24] It is true that the Respondent has not brought herself into compliance with the rules despite receiving several letters requesting that she do so. Her noncompliance has had a significant impact on her neighbours, and Ms. Curran in particular. All of this led TBCC 25 to file this application. Based on the evidence from Mr. Sequeira, the Respondent has been generally unresponsive with maintenance personnel on other issues and the board has had to speak to her sister, who appears to also have a unit in the building, to assist them on occasion when they have needed to enter her unit. Her lack of engagement is somewhat consistent – Ms. Curran was unable to discuss the issues with her, and her participation before the Tribunal has been minimal. Mr. Sequeira suggested that there were indications of hoarding in her unit. His evidence suggests that there may be other factors affecting the

Respondent's actions, or inaction, other than her "deliberately ignoring the Corporation's efforts to resolve the issue informally".

[25] While the costs claimed are not unreasonable, I am not persuaded that the costs claimed are proportional given that the issues in this case were uncomplicated and straightforward and that the Respondent did not participate, which resulted in a much more streamlined process. Weighing the various considerations set out above, I will exercise my discretion and not award legal costs against the Respondent.

D. ORDER

[26] The Tribunal orders that:

1. Pursuant to s. 1.44(1)2 of the Act, within 30 days of the date of this Order, the Respondent shall permanently remove her dog from her unit.
2. Until the dog is removed, the Respondent shall not allow her dog to relieve itself on the balcony.
3. Pursuant to s. 1.44(1)4 of the Act and Rule 48 of the Tribunal's Rules of Practice, the Respondent shall, within 30 days of the date of this Order, pay \$200 in costs to Thunder Bay Condominium Corporation No. 25.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: June 4, 2025