

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 18, 2025

CASE: 2024-00749N

Citation: Toronto Standard Condominium Corporation No. 2143 v. Kara, 2025
ONCAT 103

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Toronto Standard Condominium Corporation No. 2143
Represented by Justin McLarty, Counsel

The Respondent,

Sameer Kara
Not appearing

Hearing: Written Online Hearing – March 31, 2025 to June 4, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Toronto Standard Condominium Corporation No. 2143 (“TSCC 2143”) alleges that Sameer Kara (the “Respondent”), a unit owner, has not complied with its rules, and particularly, its rules related to pets and the creation of a noise or nuisance resulting from loud disputes between the Respondent and his partner in their unit and on the common elements. It seeks an order that the Respondent refrain from certain conduct and comply with specific rules, and that he pay its costs incurred in this case.
- [2] The Respondent did not participate in this case. I am satisfied that TSCC 2143 sent the required notices of the case to the Respondent. I find that the Respondent had proper notice of the case when it was commenced in January 2025 and chose not to participate. The case proceeded to Stage 3 - Tribunal Decision in default and the hearing began on March 31, 2025. The case has been decided on the basis of the evidence provided by TSCC 2143.

- [3] On May 29, after final submissions, in response to a question from me, TSCC 2143 advised that the Respondent vacated his unit sometime in early March 2025 and that the unit was listed for sale on May 28, 2025. I have factored this information into my decision on remedy and costs.
- [4] I find that the Respondent has violated rules related to his dog and activities on his balcony as well as a rule related to noise and will order that he comply (should he move back into his unit). I order the Respondent reimburse TSCC 2431 the Tribunal fees in the amount of \$150.

B. BACKGROUND

- [5] The Respondent moved into his unit in late 2023. TSCC 2143 received the first of many complaints about his conduct in mid-March 2024. The primary complaints seemed to be about noise arising from verbal altercations/disputes between the Respondent and his partner. In addition, there were complaints about the Respondent allowing his dog to urinate in the elevator (and not cleaning up after it) and allowing the dog to urinate and defecate on his balcony and bark in the unit. There were also complaints that the Respondent was not cleaning up cigarette butts from his balcony, impacting the use and enjoyment of the balconies below. In its letter to the Respondent on May 4, 2024, TSCC 2143 referred to complaints received on March 14 and 25, April 6 and 8, and May 3, 2024.
- [6] Six incident reports dated between April 6 and November 1, 2024, were submitted into evidence. Four of the incident reports relate to noise complaints arising from quarrelling between the Respondent and his partner. Police were called on two occasions. The other two incident reports relate to the dog. In addition, Shalav Saluria, the security supervisor at TSCC 2143, stated that noise complaints were also made on November 27 and December 11, 2024, one of which was about the dog barking. Counsel confirmed in submissions that there have been no noise complaints in 2025.
- [7] Regarding the alleged violations of pet related rules, the owner of the unit below the Respondent's stated that their balcony was frequently littered with dog excrement. Dog urine runs down the glass railing on their balcony. As well, a large amount of cigarette butts fall from the Respondent's balcony. As a result, they have to contend with the foul smell all this creates on their balcony, all of which they state negatively affects their use and enjoyment of the balcony.

C. ISSUES & ANALYSIS

[8] The issues to be addressed in this case are:

1. Has the Respondent failed to comply with provisions in TSCC 2143'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 TSCC 2143's declaration and/or rules?

[9] 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. TSCC 2143 asserts that the Respondent has repeatedly and persistently violated several provisions in its declaration and rules. The provisions relevant to this dispute, given the evidence before me, are:

Article 3.1(c) (of the declaration). ...no condition shall be permitted to exist, and no activity shall be carried on, within any unit or upon any portion of the Common Elements that will unreasonably interfere with the use and enjoyment by other Owners of the Common Elements and/or their respective Units.

Rule 2(a) Owners and their families, guests...shall not create nor 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 5(j) Each pet owner must ensure that any defecation by such pet must be cleaned up immediately by the pet owner, so that the common elements are neat and clean at all times.

Rule 13(e) No owner...shall do or permit anything to be done on a balcony or exclusive use area which does or may unreasonably disturb, annoy or interfere with the comfort and/or quiet enjoyment of the units and/or common elements by other owner, occupants or tenants.

[10] I note that TSCC 2143 has not relied on s. 117(2) of the Act regarding noise issues in this case; however, it does rely on the provisions in its governing documents, set out above, on the basis that these fall within the Tribunal's jurisdiction pursuant to section 1(1)(d) of Ontario Regulation 179/17 ("O. Reg 179/17") under the Act. The types of disputes relating to provisions of a condominium's governing documents within the Tribunal's jurisdiction, relevant to

this case, 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.

...

(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.

(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.

[11] The issues related to the Respondent's dog and the cigarette butts on the balcony, specifically as they relate to Rules 5(j) and 13 (e) and Article 3.1(c) of the declaration are straightforward. I accept the evidence provided that cigarette butts, dog excrement and urine have fallen onto the balcony below the Respondent's as well as the evidence about what that owner and his family have experienced as a result. Photographs show both excrement and mounds of cigarette butts on the neighbour's balcony as well as urine-streaked balcony glass. It is not at all surprising that this has impacted the owner's use and enjoyment of their unit.

[12] Based on the evidence, the Respondent, in failing to clean up after his dog, is in violation of Rule 5(j). Further, it appears that this activity (or rather inaction by the Respondent in properly cleaning up after his dog and in failing to clean up cigarette butts of his balcony such that they fall to the balcony below) has been unreasonable, frequent and not trivial as indicated by the other owner's description of the impact on use of their balcony. It has resulted in a substantial interference with their use and enjoyment of their balcony in violation of Rule 13 (e) and Article 3.1 (c) resulting in a nuisance, falling within the Tribunal's jurisdiction under section 1(1)(d) (iii.2) of O. Reg 179/17.

[13] The issues related to the loud quarrelsome disputes - the screaming and crying, which I find, based on the evidence, occurred on approximately 10 occasions between May 14 and December 11, 2024, are somewhat problematic. The evidence clearly shows that the various incidents arose from highly charged domestic issues between the Respondent and his partner. Police were called on several occasions, and at least one of the incident reports indicates that the police attendance was for a 'welfare' check.

- [14] It is reasonable to infer that the screaming, yelling and crying were disturbing for other unit owners to hear (all but one of the documented complaints appear to be from the unit below the Respondent's) and for the security personnel to witness. At times, the domestic discord between the Respondent and his partner played out in front of security personnel. Was this to some extent the result of people living in community within a condominium where very unfortunate aspects of people's lives can become all too apparent to others? Likely, yes. This is not a situation like that of the owner who plays their music at a high volume at 2 am for example, in a flagrant disregard of their neighbours. The incident reports do not support the conclusion that the Respondent was deliberately creating noise. However, the consequent noise from their disputes occurred with sufficient frequency to render the noise unreasonable. Did this interfere with the comfort and quiet enjoyment of their units by another owner? Likely, also yes.
- [15] Section 1(1)(d) (iii.1) of O. Reg 179/17 refers to provisions that prohibit, restrict or otherwise govern activities described in s. 117(2) of the Act, such as, in this instance, unreasonable noise. Here, the evidence is that nuisance from noise emanating from the unit, due to the disputes between the Respondent and his partner results in disturbance to the quiet enjoyment of others contrary to Article 3.1.(c) and Rule 2(a) falling within the Tribunal's jurisdiction under section 1(1)(d)(iii.1) of O. Reg 179/17.
- [16] The evidence related to the dog barking, thereby creating unreasonable noise is much less compelling. I note that there were only two complaints about this in 2024 (from the unit below the Respondent's). There is no evidence about how loud the barking was nor how sustained – whether it occurred for two minutes or over hours. These seemed to be isolated incidents. I cannot conclude that this was unreasonable noise sufficient to support a finding of a violation of Rule 2 (a).

Issue: What remedy should be ordered?

- [17] TSCC 2143 alleges in its submissions that the Respondent "has continued to engage" in the noncompliant behaviors in contravention of the governing documents. However, there is no evidence of noncompliance after December 2024, which is noteworthy given that the Respondent did not, according to TSCC 2143, move out until early March 2025.
- [18] I have found that the Respondent did contravene Article 3.1(c), Rules 2 (a), 5(j) and 13(e); however, the question to be answered is what remedy would be reasonable based on the evidence before me. TSCC 2143 has requested an order that Mr. Kara:

1. may not create or allow the creation of the emanation of loud noises from the unit;
2. may not spill, or allow the spilling of water off of the balcony;
3. may not allow dogs to urinate and defecate on the balcony;
4. may not allow any dog defecation or urine to spill off of the balcony;
5. may not allow dogs to soil other common element areas; and
6. may not flick, or allow the flicking of, cigarette butts off of the balcony.

[19] I understand that TSCC 2143 has a concern that the Respondent may move back into his unit, despite having listed it for sale. However, the specific orders (and I note there is no evidence that the Respondent was spilling water off the balcony) requested are moot given that he has moved out of the unit. I will order, in light of the findings I have made, that in the event that the Respondent does return to live in the unit, that he must comply, as required by s. 119 of the Act, with TSCC 2143's declaration, by-laws and rules.

Issue: Should an award of costs be assessed?

[20] TSCC 2143 submits that the Respondent "...failed to participate in this case at any stage and his conduct, both before and during this case, has caused the Corporation to incur the expense of pursuing this case."

[21] Submissions must be considered in the factual context. Here, the last notice of the case was sent to the Respondent on February 3, 2025. At that time, based on the evidence before me, the last noise complaint was on December 11, 2024. There was no clear evidence before me that the issues on the balcony below the Respondent's continued into 2025. The case went directly to Stage 3 – Tribunal Decision because the Respondent did not join the case, perhaps not surprisingly if he was intending to move out. By the time this Stage 3 – Tribunal Decision hearing began on March 31, 2025, the Respondent no longer lived in the unit, a fact known to TSCC 2143. Yet, despite these facts, TSCC 2143 chose to proceed with this hearing and incur legal costs, in the amount of \$7002.55.

[22] It is 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. I will not comment on the amount claimed for costs other than to note that the issues were straightforward and the Respondent did not participate resulting in a very streamlined hearing, but the decision to incur costs of this nature must also be, in the

first instance, reasonable. In the circumstances of this case, and in particular, the timelines noted about when the Respondent moved out, a question arises about the reasonableness of pursuing the case at that point. Therefore, I will not award legal costs to TSCC 2143.

[23] Regarding the Tribunal fees paid, in this instance, \$150, Rule 48.1 of the Tribunal's Rules of Practice states that if a case is not resolved by settlement agreement or consent order and the Tribunal makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the Tribunal member decides otherwise. While arguably, it may have been reasonable for TSCC 2143 to commence the case when the Respondent was living in the unit, I question whether it needed to be pursued to Stage 3 - Tribunal Decision when it was aware that he had moved out. However, as I have made findings in TSCC 2143's favour, I will award it the costs in the amount of \$150 representing the Tribunal fees paid.

D. ORDER

[24] The Tribunal Orders that:

1. In the event that the Respondent moves back into his unit, he shall comply with the TSCC 2143's declaration, by-laws and rules.
2. Pursuant to s. 1.44(1) 4 and Rule 48 of the Tribunal's Rules of Practice, the Respondent shall, within 30 days of the date of this Order, pay \$150 in costs to TSCC 2143.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: June 18, 2025