

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 23, 2022

CASE: 2022-00389N

Citation: Peel Condominium Corporation No. 166 v. Sithamparanathan, 2022 ONCAT 130

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

Member: Brian Cook, Member

The Applicant,

Peel Condominium Corporation No. 166

Represented by Victor Yee, Counsel

The Respondent,

Vathabaruvan Sithamparanathan

Represented by Ira Greenspoon, Counsel

Hearing: Written Online Hearing – September 22, 2022 to November 14, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] This is an application brought by Peel Condominium Corporation No. 166 seeking an order that the Respondent remove a dog, named Simba, that has been living with the Respondent and his family since January 2022.

[2] This hearing was conducted in writing and by a video conference held on October 14, 2022.

[3] The condominium's declaration states:

All present and future owners, tenants and residents of units and their families shall not keep dogs, cats, reptiles, or rodents in their units or any part of the common elements.

[4] The Respondent lives with his spouse and children and his mother. His father, who was also living in the unit, passed away in January 2020. The Respondent's evidence is that his mother had significant grief, experiencing anxiety, loneliness, and depression after the death of her husband. In January 2022, two years after

the death, a member of the extended family gave the Respondent's family a Pomeranian puppy hoping that it might help with the grieving process. The Respondent's evidence is that the dog, Simba, has helped his mother as well as the other family members in dealing with their grief. His evidence is that his mother and children would be very upset if Simba is not allowed to stay with the family.

- [5] On behalf of the Respondent, counsel submits that the family should be allowed to keep the dog despite the "no pets" rule as an accommodation under the Ontario Human Rights Code ("the *Code*"). In the alternative, counsel submits that the dog should be allowed to stay as there are several other dogs in the condominium.
- [6] On the basis of the evidence before me, I find that the Respondent has not established a basis for an accommodation under the *Code* and has not shown that the fact that there are other dogs living in the building means that they should be allowed to keep their dog in contravention of the condominium's rules.

B. ANALYSIS

How many dogs are living in the building?

- [7] The issue of the number of dogs who are in the building was explored during the October 14th video conference. The Respondent disputed the evidence of the condominium manager who stated in her witness statement that there were only four other dogs living in the building, and maintained that there are many dogs in the building, possibly as many as 30. They suggested that they have been unfairly targeted.
- [8] In her witness statement, the condominium manager stated that there are currently five dogs living in the building, including the Respondent's dog. Three of these have been permitted as an accommodation under the *Code*. The other dog is a "legacy" dog. The evidence of the condominium manager is that in 2002, the condominium realized that there were a number of pets in the building, contrary to the declaration. A special meeting was held to discuss the situation, and it was agreed that pets who were living in the building at that time could continue to live in the building as long as the pets were registered with the condominium. In 2016, it was again recognized that there were pets in the building that had not been registered. A notice was sent to owners to remind them of the need to register pets. Those registered pets were allowed to stay as "legacy" pets. The notice indicated that going forward, the no pets rule in the declaration would be enforced.
- [9] The evidence of the Condominium Manager is that the rule has been enforced, with the exception of the three dogs that have been allowed to be in the building as

an accommodation under the *Code* and the one remaining legacy dog.

- [10] After the conference call, I issued a direction to the parties. On the issue of the number of dogs in the building, I stated:

If the respondents wish to pursue the argument that they are being targeted from among other dog owners, it will be necessary for them to provide some evidence to support that argument. There was some mention that this issue was explored in Stage 2. While no one should refer to the contents of any discussions in Stage 2 that were about possible settlement, documents, including photos, that may have been produced in Stage 2 can be produced in this hearing.

- [11] The condominium manager provided a supplementary witness statement and confirmed that at present there are only the same five dogs in the building – three have been permitted as an accommodation under the *Code*, one is a legacy dog, and the other is Respondent's dog. She indicated that she had reviewed photographs previously submitted by the Respondent and indicated that many of the photos are of the same dogs.

- [12] In final submissions on behalf of the Respondent, counsel submitted that the Respondent still believes that there are up to 10 other dogs in the building. However, no evidence was provided to support this contention.

- [13] I find that the Respondent has not provided evidence to refute the evidence of the condominium manager that there are currently only five dogs living in the building. I accept the evidence of the condominium manager and find that there are four other dogs in the building in addition to the Respondent's dog, and that one of these is a legacy dog and the other three have been accepted as accommodations under the *Code*. I find that the Respondent has not shown they have been unfairly targeted.

Accommodation under the *Code*

- [14] The issue of whether the Respondent, or his mother, is entitled to an accommodation under the *Code* was discussed during the video conference. In my direction after the video conference, I said:

On behalf of the respondents, Mr. Greenspoon asked that consideration be given to allowing the dog to remain as an accommodation as an issue in this hearing. Mr. Yee advised that he would need to get direction from his client about whether the applicant would oppose this.

I note that the issue of a possible accommodation under the Human Rights Code was not identified earlier in this case. There has not been a request for accommodation either. I therefore think that if the respondents wish to pursue this issue, they should make a request for accommodation.

Under the Human Rights Code, if a person with a disability has disability-related needs, those needs must be accommodated unless accommodation would result in undue hardship. Generally, a letter from a treating physician is required to support a request for accommodation.

To pursue this issue, the respondents will need to establish that Mr. Sithamparanathan's mother has a disability that results in needs that are met by Simba, the dog.

The first step is for the respondents to confirm if they wish to pursue this issue. If they do, they should put the request for accommodation in a letter addressed to the Board of Directors. The letter should provide information about the disability, any disability related needs, and how Simba addresses those needs. It is not necessary to provide information about a diagnosis. The letter should indicate whether a letter from a doctor will be provided.

- [15] The Respondent did not make a request to the condominium board for accommodation and did not provide any medical evidence that might support such a request.
- [16] In final submissions on behalf of the Respondent, counsel submits that the evidence from the Respondent and his daughter during the video conference establishes that Simba is a "de facto" emotional support animal to the family, and particularly the Respondent's mother, and should be allowed to remain on that basis. Counsel submits that a requirement that they remove the dog will result in the same sadness, loneliness and depression that was experienced following the death of the Respondent's father, this time from the removal of the dog.
- [17] I accept that Simba has provided emotional support to the family and particularly the Respondent's mother after the death of her husband. I also accept that it will be emotionally difficult for everyone if Simba is not permitted to stay. However, these facts in themselves are not enough to establish entitlement to an accommodation under the *Code*.
- [18] As noted in the direction sent after the video conference, under the *Code*, if a person with a disability has disability-related needs, those needs must be accommodated unless accommodation would result in undue hardship. A letter from a treating physician is usually required to support a request for accommodation because of disability. I appreciate that in the time before this

application was filed, the Respondent and their family may not have understood the concepts behind *Code*-related accommodation. However, they have since retained counsel and the things that they had to do to ask for an accommodation were explained in the direction following the video conference.

[19] “Disability” is defined in section 10 of the *Code*:

“disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997;

[20] While this is a broad definition of disability, it does not include all emotional issues a person experiences. The experience of sadness, loneliness and depression that the Respondent’s mother experienced after the death of her husband might be a “mental disorder” and therefore be a disability within the definition, but this is not clear from the evidence I have been presented with.

[21] This condominium was established by the declaration as a “no pets” building and the board is required to ensure that the rules are applied and owners and residents are required to follow the rules as set out in the declaration.¹ A blanket prohibition against pets could be discriminatory if an owner or resident has disability-related needs and requires an animal because of those needs. The evidence indicates that this condominium has allowed people to have dogs as an accommodation under the *Code*. However, allowing people to keep dogs who have not established

¹ Section 119 (1) of the *Condominium Act*, 1998

they have a disability under the *Code* would be contrary to the no pets provision of the declaration. This could lead to many residents acquiring pets in what is supposed to be a no-pets building. It appears that this occurred in the past, leading to the legacy approach.

- [22] Most pet owners benefit from having a pet. The reasons include companionship and emotional support. However, there are people who do not like other people's pets and others who may have medical reasons for limiting contact with animals. These people may prefer to live in condominiums with "no pets" rules, subject to obligations under the *Code*.
- [23] I accept that having to remove the dog will result in emotional distress for the family but that does not establish a right to accommodation or provide a legal basis to allow the dog to stay.

Conclusion

- [24] I find that the Respondent has not established a basis that would allow the Respondent to keep their dog in contravention of the Declaration.
- [25] The Applicant asked for an order that the dog be removed within three weeks. Noting that the removal of the dog will certainly cause upset for the Respondent and his family members, I find that a period of six weeks is appropriate to allow them to find a new home for the dog.

C. COSTS

- [26] The Applicant wants the Respondent to pay its legal costs with respect to this proceeding and for the attempts before the Application to enforce compliance with the declaration. The Respondent submits that no costs should be awarded to either party.
- [27] For the period after the application was filed, costs are \$6977.76, not including the CAT filing fees of \$200. For the period before the application was filed, costs were \$788.18.
- [28] The Tribunal's Rule 48.1 provides:

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.

[29] The Respondent, as the unsuccessful party, shall pay the condominium's CAT filing fees in the amount of \$200.

[30] Rule 48.2, provides:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[31] I find that the Respondent's behaviour during the course of the hearing was not unreasonable, undertaken for an improper purpose, and did not cause any delay or additional expense. The Respondent is not responsible for the Applicant's legal costs in respect of the proceeding.

[32] Costs for the period before the Application was filed may be awarded where the declaration and/or rules provide for indemnification of such costs. The declaration in this case includes a general indemnification provision.

[33] Counsel's involvement before the application was filed was limited to a file review and a "compliance" letter. The invoice for this work was for \$710, excluding HST, for 2 hours and 50 minutes of legal services. Although the invoices provided have been redacted, this amount seems reasonable for a review and preparation of a letter from counsel seeking compliance.

[34] There is, however, a serious problem with the compliance letter. In the letter, counsel indicated that if the Respondent wished to seek accommodation under the *Code*, it would be necessary for the Respondent to provide medical evidence in support of a request for accommodation. Counsel added:

Please be aware that our office, on behalf of the Corporation, may contact the author(s) of your submitted documentation to verify its authenticity and require further, potentially personal and/or intimate details from the author(s) about the person requesting accommodation, so that the Corporation may properly assess the request for accommodation.

[35] This significantly overstates the ability to verify medical information. While a health care provider can be asked for information, the health care provider would be forbidden by law and ethical requirements to provide any information without the

express consent of the patient.² The person or entity from whom accommodation is requested is entitled to request clarification or additional information from a health care provider,³ but only with the express consent of the patient. The suggestion in the compliance letter that a request for accommodation under the *Code* could allow counsel to obtain “personal and/or intimate details” without consent is misleading and could have created an unfair and inappropriate barrier impacting the Respondent and his family’s rights under the *Code*. The implied threat that a request for accommodation under the *Code* could allow counsel to access personal or intimate medical information could potentially be seen as an infringement of section 8 of the *Code* which states:

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

[36] For these reasons, I will not order the Respondent to pay the Applicant’s legal costs for the period before the application was filed.

D. ORDER

[37] The Tribunal orders:

1. The Respondent shall remove their dog Simba within six weeks of the date of this Decision, or such longer period as the condominium may permit.
2. The Respondent shall pay the CAT filing fees paid by the Applicant in the amount of \$200.

Brian Cook
Member, Condominium Authority Tribunal

Released on: November 23, 2022

² Section 29 of the Personal Health Information Protection Act, 2004, College of Physicians and Surgeons of Ontario Policy: Protecting Personal Health Information

³ See: Ontario Human Rights Commission Policy on Ableism and Discrimination Based on Disability