

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 23, 2022

**CASE:** 2022-00424N

**Citation:** Metropolitan Toronto Condominium Corporation No. 1002 v. Ruiz, 2022 ONCAT 131

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

**Member:** Nicole Aylwin, Member

**The Applicant,**

Metropolitan Toronto Condominium Corporation No. 1002  
Represented by Julia Sullivan, Agent

**The Respondent,**

Nicole Ruiz  
Not participating

**Hearing:** Written Online Hearing – September 13, 2022 to November 16, 2022

### REASONS FOR DECISION

**A. INTRODUCTION**

- [1] The Applicant, Metropolitan Toronto Condominium Corporation No. 1002 (“MTCC 1002”) alleges that the Respondent, Nicole Ruiz, is smoking cannabis in her unit in violation of its rules restricting the smoking of tobacco and cannabis on condominium property. MTCC 1002 has asked the Tribunal to order Ms. Ruiz to comply with its rules and refrain from smoking cannabis in her unit.
- [2] Ms. Ruiz, who is a tenant of unit 817, not the owner, did not join the case after MTCC 1002 filed this application with the Tribunal.
- [3] This case was accepted by the Tribunal on basis that the respondent was the unit owner. The fact that Ms. Ruiz was a tenant of the unit and not the owner only became apparent during the hearing. Once this fact was identified, MTCC 1002 was asked to explain why they had not named the owner as a party. They submitted that they had tried to contact the owner on multiple occasions and not received any response and that they were only seeking an order against Ms. Ruiz.

[4] It was explained to MTCC 1002's representative, Julie Sullivan, who is the condominium manager for MTCC 1002, that since the owner was not named as a party and not present in the proceeding this would limit the types of orders the Tribunal could make under the *Condominium Act, 1998* ("the Act"). She acknowledged this fact and again confirmed MTCC 1002 was not seeking any orders against the unit owner but rather seeking the Tribunal's help in having Ms. Ruiz "follow the rules and stop smoking within her suite". Ms. Sullivan also confirmed they were not seeking any costs. Thus, the case was allowed to proceed with Ms. Ruiz as the sole Respondent. No orders are made that affect the unit owner.

[5] MTCC 1002 confirmed that they had served Ms. Ruiz with the three Notice of Case forms required by the Tribunal. I also asked the Tribunal staff to reach out to Ms. Ruiz to make sure she was aware of this case. Once I was satisfied that Ms. Ruiz was aware of this case, the hearing proceeded in her absence and with no evidence or submissions from her. My decision is based solely on the evidence and submissions provided by MTCC 1002.

[6] The issues to be decided are:

1. Is the Respondent, Nicole Ruiz in breach of MTCC 1002's rules regarding tobacco and cannabis, specifically the rules which prohibit smoking?
2. If so, should the Tribunal order Ms. Ruiz to stop smoking cannabis in her unit?

[7] Based on the evidence before me, I find, on the balance of probabilities, that Ms. Ruiz is smoking cannabis in her unit in breach of MTCC 1002's rules and I order her to comply with MTCC 1002 rules and immediately stop smoking cannabis in her unit.

## **B. BACKGROUND**

[8] In September 2018, the owner of the neighbouring unit to that of Ms. Ruiz, complained that she could smell marijuana or other "toxic" odours and fumes in her unit. According to MTCC 1002, this complaint prompted a series of inspections by management, board members, and other MTCC 1002 employees, to determine what the odour was and where it was coming from.

[9] In March 2019, MTCC 1002 determined that the odour being smelled by the neighbouring unit owner, was marijuana odour and was emanating from the suite in which Ms. Ruiz resides. MTCC 1002 submits that this determination was first made when the superintendent, Jose Alatorre, along with other technicians

entered Ms. Ruiz's unit to perform some semi-annual maintenance and upon entering were exposed to the strong odour of marijuana. In its submissions, MTCC 1002 notes that the odour was so strong one of the technicians accompanying Mr. Alatorre had to leave and could not complete the service. At this time, Mr. Alatorre called the property manager Ms. Sullivan to the unit to be a witness to the odour.

[10] After this event, on March 28, 2019, management sent a letter to Ms. Ruiz explaining that smoking both cannabis and tobacco in the suite was prohibited as per MTCC 1002's Rules.

[11] MTCC 1002 has a number of rules that prohibit the smoking of cannabis and tobacco on condominium property ("Rules Regarding Tobacco and Cannabis"). These rules came into force on June 25, 2018, and read:

19.1 Due to the irritation and known health risks of exposure to second-hand tobacco or cannabis smoke, increased risk of fire and increased maintenance and cleaning costs, all forms of smoking (as defined in Section 19.2 of these Rules) are prohibited on the condominium property, including:

- a) In all units;
- b) In or on all exclusive use common elements appurtenant to the units (i.e. balconies, patios and terraces);
- c) In or on all common elements provided that smoking is permitted in or on any outdoor smoking areas, as designated by the Board (from time to time) in its sole and absolute discretion.

19.2 The term "smoking" shall include, but not be limited to, the inhaling, exhaling, burning or carrying of ignited tobacco, cannabis or any other substance that contains tobacco or cannabis and the inhaling or exhaling of vapour containing tobacco or cannabis.

19.3 Any existing resident or occupant of a unit shall be permitted to smoke tobacco (but not cannabis) in the unit or in or on the exclusive use common elements appurtenant to the unit (the "Grandfathered Resident/Occupant") if the resident or occupant of the unit provides notification, in writing, to the Corporation within thirty (30) days of these Rules being effective of his/her intention to smoke. In the event a Grandfathered Resident/Occupant ceases to smoke or moves out of the unit, then the Grandfathered Resident/Occupant shall be subject to and must comply with Section 19.1 of these Rules.

19.4 Notwithstanding Section 19.3 of these Rules, the Grandfathered Resident/Occupant shall be subject to and must comply with all applicable

legislation and the Declaration, By-laws and Rules of the Corporation, including but not limited to, those with respect to causing a nuisance or hazard to another person and unreasonably interfering with the rights of another person to use and enjoy the units, common elements or exclusive use common elements.

19.5 No one shall cultivate, produce, process, or test on cannabis or substances that contain cannabis in the units or on the common elements, including the exclusive use common elements.

- [12] The March 28, 2019, letter sent to Ms. Ruiz drew attention specifically to Rule 19.1 and contained a request that she stop smoking cannabis within her suite immediately. MTCC 1002 received no response to this letter.
- [13] MTCC 1002 continued to receive complaints from Ms. Ruiz's neighbour and requests from this neighbour that the board address her concerns.
- [14] MTCC 1002 also recorded at least one other incident when during scheduled maintenance the superintendent noticed the strong smell of marijuana and reported it to management when entering the unit.
- [15] As a result of this incident and continued complaints, two more letters were sent to Ms. Ruiz one in June 2019 and another in May of 2020. Both letters advised Ms. Ruiz of her obligation to follow the rules, outlined the no smoking rule and indicated they would be seeking legal advice should Ms. Ruiz continue to smoke in her unit. Again, MTCC 1002 received no response to the letters.
- [16] In November of 2020, management was finally able to speak directly with Ms. Ruiz regarding the marijuana odours and the complaints at which time Ms. Ruiz told management that she worked in a marijuana plant factory and cooked with cannabis. Ms. Ruiz suggested that this might be the reason for the odours.
- [17] Despite having an explanation for the odour, the complaints regarding the odours continued and in December 2020 the corporation sent yet another letter to Ms. Ruiz. However, instead of reiterating the no smoking rule, this letter reminded Ms. Ruiz of section 21(a) and s. 10(1) of its Declaration which prohibits unit owners and residents from creating any nuisance which interferes with the comfort and quiet enjoyment of the property of any Resident. They indicated the marijuana odours from her unit were interfering with her neighbour's enjoyment of their unit. This letter also indicated that MTCC 1002 would be seeking legal advice and invites Ms. Ruiz to contact them to discuss possible solutions. No response to this letter was received.

- [18] Another similar letter was sent from management in January 2021. When, once again, there was no response to its letter, MTCC 1002 had its legal counsel send a letter in March 2021 to Ms. Ruiz. In addition to reiterating all the rules and provisions of the declaration, by-laws and parts of the Act that MTCC 1002 believed Ms. Ruiz needed to abide by, this letter expressly addressed Ms. Ruiz's claim she was cooking cannabis in her unit. The letter advised her that she should take steps to limit the odours that may be resulting from cooking cannabis in her unit. The letter recommended she use the kitchen exhaust fan and that she should take all necessary steps, at her own expense, to ensure the odour did not interfere with her neighbour's enjoyment of her unit.
- [19] MTCC 1002 submits that after this March 2021 letter was sent, Ms. Ruiz indicated to management through email correspondence and through conversation that she used marijuana for medical reasons. This exchange confirmed to MTCC 1002 that Ms. Ruiz was smoking and vaporizing marijuana in her unit, albeit potentially for medical reasons; however, MTCC 1002 submits that no medical documentation was provided to support this claim.
- [20] In June 2021 another letter was sent to Ms. Ruiz, which again reiterated the rules. However, this letter also acknowledged Ms. Ruiz's claim that she has a medical reason for using marijuana in her unit, but further noted that no medical evidence to demonstrate that need had been provided. The letter then informed Ms. Ruiz that if she required an accommodation on the basis of disability pursuant to the *Human Rights Code* ("the Code") that she provide a written letter or report from her regular physician that details the same.
- [21] MTCC 1002 states that after this letter was sent, Ms. Ruiz submitted a medical note to the office. The note, which was provided in evidence is vague at best. It does not contain information about the nature of the disability for which an accommodation may be required, nor does it contain any information to suggest that Ms. Ruiz has a medical need to smoke cannabis. Rather, the note is simply a prescription for cannabis, which indicates that the dry cannabis should be vaporized or inhaled.
- [22] After receiving this medical note, MTCC 1002 sent one final letter to Ms. Ruiz asking she further review her medical need with her doctor as complaints regarding odour were continuing and had expanded from complaints from her direct neighbour to other residents on the floor and again asked for a letter or report to be provided to the management office regarding her needs.
- [23] According to MTCC 1002, no further communication was received from Ms. Ruiz and a final letter was sent to her in March of 2022 advising her of the continued

complaints and MTCC 1002's intention to proceed with seeking further legal advice. No response was received and MTCC 1002 commenced this Tribunal proceeding.

### **C. ISSUES & ANALYSIS**

#### **Issue no 1 & 2: Is the Respondent, Nicole Ruiz in breach of the MTCC 1002's "Rules Regarding Tobacco and Cannabis." Should Ms. Ruiz be ordered to refrain from smoking cannabis in her unit?**

- [24] MTCC 1002 Rules Regarding Tobacco and Cannabis prohibit the smoking and or burning of cannabis on all condominium property. Based on the evidence before me, I find that on the balance of probabilities, Ms. Ruiz is smoking marijuana in her unit, which is not permitted under MTCC 1002's rules.
- [25] However, having found this to be the case the question is what should be done? MTCC 1002 has asked that I make an order under s. 1.44 of the Act that Ms. Ruiz comply with the MTCC 1002's rules and refrain from smoking in her unit.
- [26] Normally, this order would be unnecessary, as all residents are required to abide by a condominium's rules. However, while I may have found Ms. Ruiz is likely smoking in her unit in contravention of the rules, there is evidence before me that Ms. Ruiz has claimed a medical reason for using marijuana and has claimed she is entitled to an accommodation to smoke (or vaporize) marijuana within her unit despite the rules.
- [27] According to MTCC 1002's submissions, they only came to understand through conversations with Ms. Ruiz that she may have a medical reason for using marijuana after over a year of attempting to communicate with her regarding the complaints of marijuana odours by her neighbours and the determination that the odour was emanating from her unit. Prior to the spring of 2021, Ms. Ruiz had not claimed any need for accommodation but rather had attributed the odours to her workplace and her cooking of cannabis. According to MTCC 1002's submissions and evidence, when MTCC 1002 was made aware of Ms. Ruiz's claim they sought to engage with her about this request for an accommodation. Upon being informed of the fact that she may have a medical reason for smoking cannabis, they requested medical information from Ms. Ruiz so that they might properly consider an accommodation. In response to this request, they were provided with the medical note referenced previously and nothing further.
- [28] While Ms. Ruiz is not required to prove a disability requiring accommodation to MTCC 1002 or to this Tribunal, she is required to provide the information to the

satisfaction of the board to enable it to make a decision about its obligations under the Code to provide accommodation. The evidence before me demonstrates that the condominium has attempted to solicit this information from Ms. Ruiz to determine if and what kind of accommodation might be necessary and reasonable. However, Ms. Ruiz has not actively participated in these conversations. Having indicated she had a medical need and providing a medical note that contained very limited information, she did not respond to a follow up letter from the board asking her further medical documentation regarding her needs.

- [29] When in search for reasonable accommodation, all parties have an obligation to engage and cooperate, meaning that in this case Ms. Ruiz also had a duty to participate in the process and respond to reasonable requests for information that may provide evidence of her needs and what a reasonable accommodation may look like. The evidence in front of me does not suggest that Ms. Ruiz has made any meaningful attempt to participate in the process required when seeking an accommodation.
- [30] In the absence of this participation, the Board appears to have made the decision that Ms. Ruiz is not entitled to an accommodation and thus has asked this Tribunal to find her in breach of the Rules Regarding Tobacco and Cannabis.
- [31] The Tribunal has accepted that deference should be given to the decisions of a condominium corporation's board of directors provided the decisions are neither unfair or unreasonable. In this case, there is no evidence in front of me to suggest that MTCC 1002 has made an unfair or unreasonable decision in asking Ms. Ruiz to comply with the rules. They have received multiple complaints about the odour from residents and they sent letters to Ms. Ruiz for over a year asking for her compliance. When presented with a potential request for accommodation they followed up and continued to ask for the information they required to make a proper decision about accommodation. This information was not forthcoming.
- [32] I find that Ms. Ruiz is likely smoking marijuana in her unit and in doing so is breaching MTCC 1002's Rules Regarding Tobacco and Cannabis, which restricts the smoking of cannabis in all units and on all exclusive use common elements. I order that she immediately refrain from smoking cannabis in her unit or anywhere on MTCC 1002's property.
- [33] However, I note conversations regarding accommodation under the Code, are not timebound. Should MTCC 1002 be provided with information to support a request for accommodation, I would encourage them to respond as required by the Code and carefully consider any such request.

[34] MTCC 1002 has made no request for costs so none are awarded.

**D. ORDER**

[35] The Tribunal Orders that:

1. Ms. Ruiz comply with all of MTCC 1002 Rules Regarding Tobacco and Cannabis, and that she immediately refrain from smoking cannabis in her unit.
2. Within 14 days of this decision, Ms. Ruiz is to provide the owner of unit 817, the unit in which she resides as a tenant, with a copy of this decision.

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Nicole Aylwin  
Member, Condominium Authority Tribunal

Released on: November 23, 2022