

Decisions from the CAT: Human Rights & Pet Prohibitions

April 5, 2022:

Niagara South Condominium Corporation No. 12 v. Spicer, 2022 ONCAT 21.

Introduction

While our animal companions may provide us with comfort and ease the stresses of everyday life, a neighbour's yapping dog or curious cat may have the opposite effect. For this reason, pet ownership in a condominium may not be in accordance with the condominium's declaration. Such a situation was considered in *Niagara South Condominium Corporation No. 12 v. Spicer* ("Spicer"). In that case, the Condominium Authority Tribunal (the "CAT"), provides guidance on the interplay between the *Human Rights Code* (the "Code") and a condominium's obligation to enforce animal prohibitions in a declaration.

Facts of the Case

In *Spicer*, the Condominium's Declaration contained a blanket prohibition on the retention of animals within the units. Notwithstanding this prohibition, an owner brought a dog into their unit and then requested an exemption to the prohibition for an emotional support dog, pursuant to the Code. The request was supported with letters from medical professionals recommending a dog for medical reasons relating to emotional distress.

As the condominium considered the request, it requested further medical documentation from the owner establishing the existence of a disability and the need for this specific mode of accommodation. The owner refused to provide this information, forcing the condominium to seek resolution at the CAT.

The CAT's Reasoning

In Ontario, the Code has primacy over the *Condominium Act, 1998*, meaning that despite prohibitions in a condominium's governing documents, should an individual's disability or medical condition require an animal, condominiums may be required to permit such as an accommodation.

However, a request for an accommodation is not the end of the matter, but only the beginning. The Code, as well as the Human Rights Commission's *Policy on Ableism and Discrimination*, provide that accommodation is meant to meet individuals' medical needs and not preferences. Therefore, condominiums are permitted to request supporting documentation.

The CAT agreed with the Condominium in this case and found that the unit owner bore the onus to establish a disability and therefore an exemption to the Declaration's prohibition on animals. The owner's medical letters provided did not establish a disability and the corresponding need for an emotional support animal. Therefore, accommodation was not required and the owner was ordered to remove the dog.

Bottom Line

In sum, the CAT is not prepared to allow a unit owner an exemption to a condominium's declaration to keep a support animal in their unit without a documented disability and corresponding need for accommodation.

Upon receiving a request for accommodation under the *Human Rights Code*, such as for a support animal, condominiums are obligated to work with the requester in a respectful and collaborative fashion. However, the condominium is also entitled to request proof of the following: (i) a disability/condition; (ii) the related need for accommodation; and (iii) a connection between the disability/condition and the accommodation requested. The requester is obligated to provide this information to adequately support their accommodation request with documentation. If the requester fails to do so, the CAT will not require the condominium to provide the unit owner with an exemption to the declaration.

With that being said, human rights requests also have a highly individualized component. Upon receipt of such requests, condominiums should consider seeking appropriate legal advice to address such.

*Written by Christopher Mendes, edited by R. Mullin, Jamie Cockburn, and Fiona Burnett. *This article does not constitute legal advice, always consult legal counsel.*

