



January 2016

Simcoe Condominium Corporation No. 89 v. Dominelli, 2015 ONSC 3661

This case involved a request for accommodation pursuant to the *Human Rights Code*. By way of a brief overview, the Condominium's Rules contained a restriction on the size of cats and dogs that a unit owner could keep within the units; namely, any dogs or cats could not exceed twenty-five pounds. The Occupant in this case had a dog that exceeded the twenty-five pound weight restriction contained within the Rules. Given the attending Rule violation, the Condominium sent several letters to the Occupant requesting that the dog be removed from the premises by specified deadlines. The Occupant requested accommodation pursuant to the *Human Rights Code*, alleging that the dog was a service dog. Letters from the Occupant's doctor noted that the dog assisted her with her medical and emotional needs. No further details or medical evidence was provided. Several attempts were made by the Condominium's solicitor to obtain objective medical evidence that identified the Occupant's disability and the need for a service dog. No such evidence was provided, and therefore the Board denied the Occupant's request for accommodation.

The Condominium applied to Court primarily seeking: (a) an Order requiring the Occupant to permanently remove the dog from the unit; and, (b) a declaration that the Condominium had not violated the *Human Rights Code*.

With reference to a decision made by the Human Rights Tribunal, namely, *Crowley v Ontario (Liquor Control Board)*, 2011 HRT0 1429, the Court found that the Occupant did not provide sufficient medical evidence which established that she had a disability as defined in the *Human Rights Code*. Specifically, the Occupant neglected to provide medical evidence with any substantive diagnosis or working diagnosis. The doctor's notes lacked specificity. As a result, the Occupant was ordered by the Court to remove the dog from the Unit. The Court held that the Condominium had not violated the *Human Rights Code*.

Bottom Line: This case offers some guidance on what medical documentation may be requested by a condominium from an occupant seeking accommodation pursuant to the *Human Rights Code*. Specifically, we now know that more than a doctor's note may be needed in order to identify an occupant's disability and need for accommodation. This case also reinforces the complexities involved in these types of accommodation requests.

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