

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 13, 2018

CASE: 2018-00128R

Citation: Terence Arrowsmith v Peel Condominium Corporation No. 94, 2018 ONCAT 10

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

Adjudicator: Laurie Sanford, Member

The Applicant

Terence Arrowsmith

Self-Represented

The Respondent

Peel Condominium Corporation No. 94

Hafeez Mohamad, Agent

1100 Caven Street

Mississauga, Ontario L5G 4N3

Hearing: September 22 to October 29, 2018

REASONS FOR DECISION

A. OVERVIEW

- [1] Mr. Terence Arrowsmith is a unit owner of Peel Condominium Corporation No. 94 (“PCC#94”). He requested records from PCC#94 on two subjects. First, he requested paper copies of the Minutes of the Board meetings of PCC#94 for the 12 months prior to March 1, 2018. Second, he requested paper copies of the receipts and records relating to the removal of mould from the sauna. During the hearing, Mr. Arrowsmith clarified that he was requesting paper copies of the contracts and payments made to two subcontractors, Spectrum Building Services and Respond Plus, for mould removal work done in the sauna and mailroom, respectively, during the month of November, 2017.
- [2] Mr. Mohamad, the agent for PCC#94, advised that the condominium corporation did not dispute that Mr. Arrowsmith was entitled to the records he requested. PCC#94’s position is that Mr. Arrowsmith has not correctly completed the form

used to request the records. After stating the position of PCC#94, Mr. Mohamad did not participate further in this proceeding.

[3] For the reasons set out below, I find that Mr. Arrowsmith is entitled to the records he has requested. I find that PCC#94's objections to giving Mr. Arrowsmith the requested records are without merit. Mr. Arrowsmith is also entitled to the costs as detailed below. PCC#94 must pay the penalty set out below for their failure to provide the requested records without reasonable excuse.

B. PRELIMINARY MATTERS

[4] This hearing concerned a records request under section 55 of the *Condominium Act, 1998* (the "Act"). The online hearing was held from September 22 to October 29, 2018. Mr. Mohamad joined the hearing but, after setting out the position of PCC#94, did not participate further in the proceeding.

[5] The Users agreed that there were two issues in dispute between the parties, namely:

1. Is Mr. Arrowsmith entitled to receive paper copies of the minutes of the Board meetings of PCC#94 for the 12 months prior to March 1, 2018?
2. Is Mr. Arrowsmith entitled to receive paper copies of contracts and payments made to two subcontractors, Spectrum Building Services and Respond Plus, for mould removal work done on the sauna and mailroom, respectively, during the month of November, 2017?

[6] At the conclusion of the hearing, Mr. Arrowsmith requested costs against PCC#94 and asked the Condominium Authority Tribunal (the "Tribunal") to impose a penalty on PCC#94 for their failure to provide the records he requested without a reasonable excuse. The question of costs and penalties are also issues that will be considered in this Decision.

C. ISSUES & ANALYSIS

Issue 1: Is Mr. Arrowsmith entitled to receive paper copies of the minutes of the Board meetings of PCC#94 for the 12 months prior to March 1, 2018?

[7] PCC#94 acknowledges that Mr. Arrowsmith is entitled to receive paper copies of the minutes he requests. However, PCC#94 takes the position that Mr. Arrowsmith did not properly complete the mandatory Records Request Form and therefore, PCC#94 was justified in refusing to provide them. PCC#94 cites missing fields and pages in the form.

- [8] The form mandated under subsection 13.3(3) of Ontario Regulation 48/01 (the “Regulation”) is available online. There are two methods of completing the form. If the form is completed online, it is “dynamic,” and sections may be added or removed depending on the answers given on the form. Alternatively, the form may be printed. Mr. Arrowsmith chose to print his form and the print-out consisted of two pages. Mr. Arrowsmith completed the form and properly identified the records requested.
- [9] I find that Mr. Arrowsmith is entitled to receive paper copies of the minutes of the board meetings of PCC#94 for the 12 months prior to March 1, 2018. His entitlement arises under subsection 55(3) of the Act. His records request was in accordance with the Regulation.

Issue 2: Is Mr. Arrowsmith entitled to receive paper copies of contracts and payments made to two subcontractors, Spectrum Building Services and Respond Plus, for mould removal work done on the sauna and mailroom, respectively, during the month of November, 2017?

- [10] In the case of these records, Mr. Arrowsmith is entitled to receive them under subsection 55(3) of the Act. PCC#94 acknowledges this but again takes the position that Mr. Arrowsmith did not properly complete the form mandated under the Regulation.
- [11] Mr. Arrowsmith printed out a two-page form and correctly completed it. He requested “Documents pertaining to mould removal relating to mould removal from Spectrum and Respond Plus” for the months of November and December, 2017. Mr. Arrowsmith requested paper copies of these records. While the request might have raised questions about which specific documents Mr. Arrowsmith was seeking, he had identified the nature of the documents in sufficient detail to initiate the request. It was open to PCC#94 to request clarification prior to assembling the records. There is no evidence that PCC#94 sought this clarification. PCC#94’s objections to the Records Request Form related to alleged fields and pages missing, not lack of clarity about the request.
- [12] I conclude that Mr. Arrowsmith is entitled to receive paper copies of contracts and payments made to two subcontractors, Spectrum Building Services and Respond Plus, for mould removal work done by the sauna and mailroom, respectively, during the month of November, 2017. PCC#94 was not justified in refusing these documents. Mr. Arrowsmith completed the request form in sufficient detail to initiate his request for the records.

Costs and Penalties

- [13] Mr. Arrowsmith is requesting \$500 in costs. He submits that he should be reimbursed \$200 for the cost of the application to the Tribunal, \$25 for registered mail and \$275 for the time he has spent since the case started.
- [14] The award of costs is in the Tribunal's discretion under paragraph 1.44(1) 4 of the Act. In exercising the Tribunal's discretion concerning costs, it is necessary to consider first, if costs are appropriate and second, what amount of costs should be awarded. In this case, the factors affecting the decision to award costs and the amount of those costs are the same. PCC#94's conduct in advancing a reason for refusing Mr. Arrowsmith the records he seeks and then declining to participate further in the proceeding had the effect of forcing Mr. Arrowsmith to proceed through all three stages of the Tribunal's dispute resolution process. This was despite the fact that Mr. Arrowsmith was clearly entitled to the records, as PCC#94 acknowledged. I am mindful of the fact that by raising an objection and then refusing further participation, PCC#94 limited its costs while obliging Mr. Arrowsmith to incur expenses to advance his claim. It is appropriate in these circumstances for PCC#94 to pay Mr. Arrowsmith a reasonable amount for the costs he assumed. This includes the cost incurred by Mr. Arrowsmith in initiating each stage of this proceeding, in the amount of \$200. It is also appropriate for PCC#94 to reimburse Mr. Arrowsmith for his out-of-pocket expenses, in this case, \$25 for registered mail. While Mr. Arrowsmith did not provide documentary evidence for this expense, I accept Mr. Arrowsmith's statement that the expense was incurred and note that it was open to PCC#94 to contest the amount, which was not done. Concerning the time that Mr. Arrowsmith has spent in pursuing this claim, Mr. Arrowsmith did not provide details about the hours he spent and how he calculated the cost of his time. However, I find that his claim of \$275 is reasonable. I base this conclusion on the interaction I had with Mr. Arrowsmith during Stage 3 and an estimate I made of the time he would have spent in previous stages, given the straightforward nature of the issues in this case. Again, it should be noted that it was open to PCC#94 to contest the cost claim and the condominium corporation chose not to raise any issue. I find that \$275 is an appropriate award of costs for the time involved. Therefore, I find that PCC#94 must pay Mr. Arrowsmith's costs in the amount of \$500, within 30 days of the date of this Decision.
- [15] Paragraph 1.44(1) 6 of the Act gives the Tribunal the jurisdiction to order a penalty be paid by PCC#94 to Mr. Arrowsmith if the Tribunal considers that PCC#94 refused to provide Mr. Arrowsmith the records he requested without reasonable excuse. Mr. Arrowsmith had a clear entitlement to the records and PCC#94 had no reasonable excuse to deny those records. The imposition of a penalty lies in the discretion of the Tribunal and, therefore, the Tribunal is called upon to establish the factors it will consider in determining whether a penalty is appropriate. Not

every refusal, even those without an excuse being provided, will give rise to a penalty. Whether or not a penalty is appropriate will be a function of the facts in each case. In this case, PCC#94 gave a reason for denying the claims that was without merit. As a result, Mr. Arrowsmith was obliged to apply to the Tribunal. Even during the course of the hearing, it was open to PCC#94 to acknowledge that it had no reasonable excuse for refusing to provide the requested records and to provide the records at any time. In failing to do so, PCC#94 persisted in denying the records without a reasonable excuse. In these circumstances it is appropriate to impose a penalty on PCC#94.

[16] The next question to be determined is the amount of the penalty. Under subsection 1.44(3) the quantum of the penalty shall not exceed \$5,000. The specific amount of the penalty is also in the discretion of the Tribunal. In setting the appropriate amount, the Tribunal should consider the purpose of a penalty. In the absence of a specific purpose set out in the Act, I note that generally penalties operate to do two things. First, they operate to sanction conduct that is considered undesirable. Second, they communicate to the class of interested people and organisations that some conduct is unacceptable. The Tribunal is committed to providing dispute resolution that is fair, convenient and timely. These are some of the values that the Tribunal should consider in establishing the appropriate amount of the penalty. Here it was unfair to require Mr. Arrowsmith to go through all three stages of the Tribunal's proceeding to obtain records to which he was entitled. On the other hand, PCC#94 did not deny that Mr. Arrowsmith was entitled to the records, which narrowed the issues and shortened the proceeding. As well, it was not possible in this case to determine what PCC#94's motives were in advancing an objection and not defending it; only the effect could be determined. Finally, I note that I had no evidence before me that PCC#94 had engaged in this conduct in any other instance, which might have constituted an aggravating factor. I find that \$500 is a reasonable penalty in the circumstances of this case. This amount should be payable within 30 days of the date of this Decision.

D. CONCLUSION & ORDER

[17] The Tribunal directs PCC#94 to provide to Mr. Arrowsmith the following records within 14 days of the date of this Decision:

1. paper copies of the minutes of the Board meetings of PCC#94 for the 12 months prior to March 1, 2018, and
2. paper copies of contracts and payments made to two subcontractors, Spectrum Building Services and Respond Plus, for mould removal work done

on the sauna and mailroom, respectively, during the month of November, 2017.

- [18] These records will be provided without cost to Mr. Arrowsmith.
- [19] The Tribunal directs PCC#94 to pay costs to Mr. Arrowsmith in the amount of \$500 within 30 days of the date of this Decision.
- [20] The Tribunal also directs PCC#94 to pay a penalty in the amount of \$500 to Mr. Arrowsmith within 30 days of the date of this Decision.

Laurie Sanford
Member, Condominium Authority Tribunal

RELEASED ON: November 13, 2018