

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 1, 2019

CASE: 2018-00256R

Citation: Brigid Browne v. Peel Condominium Corporation No. 94, 2019 ONCAT 1

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

Adjudicator: Angelique Palmer, Member

The Applicant

Brigid Browne

Self-Represented

The Respondent

Peel Condominium Corporation No. 94

1100 Caven Street

Mississauga, Ontario L5G 4N3

Hearing: Written electronic hearing September 25, 2018 to December 3, 2018

And teleconference on December 4, 2018.

REASONS FOR DECISION

A. PRELIMINARY MATTERS

- [1] This hearing concerned a records request under section 55 of the *Condominium Act, 1998* (the “Act”). The online hearing was held from September 25, 2018 through to December 4, 2018. The Applicant, Ms. Browne, joined the hearing and made submissions. The Respondent, Peel Condominium Corporation No. 94 (“PCC#94”), did not participate in the proceeding and made no submissions.
- [2] Ms. Browne requests costs for the filing of this application and any further costs allowable related to this case.

B. OVERVIEW

- [3] Ms. Browne is a unit owner of PCC#94. She has owned and lived in her condominium unit for approximately eighteen (18) years. During that time, she became disabled.

- [4] Ms. Browne seeks records from PCC#94 that will help her determine whether it is safe for her to make modifications in her bathroom to make it more accessible. She is aware that PCC#94 had contracted to have a mold inspection done on the property. She would like any and all records related to the mold inspection, so that she can review them before beginning construction in her unit.
- [5] Additionally, Ms. Browne had previously requested that management make efforts to make the building more accessible to persons with disabilities. Specifically, she has spoken with management regarding installation of a ramp for ease of access in and out of the building. She would like a copy of records that would provide her with a status on these initiatives, as she has not received any response from management regarding this installation for almost a year.
- [6] On April 17, 2018, Ms. Browne completed and submitted a request for records to PCC#94 using the Request for Records form.
- [7] On April 18, 2018, PCC#94, through a representative, delivered the records request form back to Ms. Browne. The representative informed her that she used the incorrect form and that the records request was rejected.
- [8] In the records request, Ms. Browne asked for the following records to be produced:
 1. The condominium's declaration;
 2. The most recent financial statement;
 3. Meeting minutes for all meetings held within the last twelve (12) months;
 4. All records, including report results, from the Pinchin Ltd. mold inspection – this was the contractor hired by PCC#944 to conduct a mold test in Ms. Browne's unit on or about January 17, 2018; and
 5. The November 2017 tile removal records – any and all records related to PCC#94's tile removal that took place in the basement of the property.
- [9] For the reasons set out below, I find that Ms. Browne is entitled to the records she has requested. I find that PCC#94's rejection of her records requests was improper. Ms. Browne is also entitled to costs as detailed below.

C. ISSUES & ANALYSIS

Issue: Is Ms. Browne entitled to the records requested?

Analysis

[10] Section 55(1) of the Act requires a condominium corporation to keep adequate records and sets out a list of records, which is not exhaustive and includes: financial records of the corporation; a minute book containing the minutes of owners' meetings and the minutes of board meetings; a copy of the declaration, by-laws and rules; and a copy of all agreements entered into by or on behalf of the corporation.

[11] The right of an owner to examine or obtain copies of the corporation's records is set out in Section 55(3) of the Act:

55(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

[12] Based on the foregoing and having given due consideration to the submissions of the Applicant, I find that the form that Ms. Browne used to make the records request is the proper form mandated under subsection 13.3(3) of Ontario Regulation 48/01 (the "Regulation"), and that the records were properly identified.

[13] I further find that the records requested by Ms. Browne are amongst those that the Respondent is expected to keep under subsection 55(1) 1-3 and 8 of the Act. Ms. Browne is entitled to these records under Section 55(3) of the Act. Her records request was in accordance with the Regulation. There is no evidence that PCC#94 was justified in refusing to produce these documents. Ms. Browne had completed the form with sufficient detail to initiate her request for the records.

[14] The following records will be produced by PCC#94 to Ms. Browne in paper copy:

1. The condominium's declaration;
2. The most recent financial statement;
3. Meeting minutes for all meetings held within the last twelve (12) months;
4. All records, including report results, from the 2018 Pinchin Ltd. mold inspection; and
5. The November 2017 tile removal records.

Costs and Penalties

- [15] Ms. Browne is requesting the costs of filing this application and any other costs allowable related to this claim. Ms. Browne provided no evidence of any other costs incurred.
- [16] The award of costs is in the Tribunal's discretion under paragraph 1.44(1) of the Act and Rule 30.1 of the Tribunal's Rules of Practice (effective November 1, 2017). 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. The Tribunal may order a User to pay any reasonable expenses related to the use of the Tribunal.
- [17] In this case, the factors affecting the decision to award costs and the amount of those costs are the same. PCC#94 provided no reasonable excuse for denying a record's request that was in the proper form and concerned records that fall within the scope of records an owner is permitted to examine or obtain in accordance with the Act. Further, PCC#94, despite being served and joining the case, failed to participate in this proceeding. This has only served to unnecessarily and unreasonably delay the proceedings and the response to the records request.
- [18] By raising an objection and then refusing further participation, PCC#94 forced Ms. Browne to incur the cost of filing the application and her time to advance a claim on a legitimate records request. PCC #94 limited its costs while forcing Ms. Browne to adjudicate this case, without any reasonable basis or defense to non-compliance with the records request ever being asserted or found after review. Accordingly, it is appropriate for PCC#94 to reimburse Ms. Browne for her out-of-pocket expenses in this case. I find that it is appropriate for the costs of filing this application be awarded to Ms. Browne in the amount of \$200.
- [19] Further, paragraph 1.44(1) 6 of the Act gives the Tribunal discretion to order a penalty in the instance where the corporation has without reasonable excuse refused to permit a person to examine or obtain records. Where a penalty is awarded, under subsection 1.44 (3), the specific amount of the penalty is in the discretion of the Tribunal, subject to the statutory limit. The Tribunal should consider the purpose of the penalty, as it communicates to all interested parties and the public what conduct is considered to be unacceptable. The penalty may serve as a reflection of the Tribunal's commitment to providing dispute resolution in a fair, convenient and timely manner. In this case, Ms. Browne had a clear entitlement to the records. PCC#94's reason for denying the request was without merit as there was no reasonable excuse for denying the records request. Moreover, PCC#94's persistence in denying the records request without reasonable excuse, and thereafter, failing to participate in these proceedings was

not justified and unfair. PCC#94's actions caused further delay, as Ms. Browne had to proceed through all three stages of the Tribunal's proceeding to obtain records, to which she was entitled. PCC#94's conduct was not justified and unreasonable. As such, I find that PCC#94 shall pay Ms. Browne a penalty of \$500 for its unreasonable denial of the records request, the lack of good faith in its failure to participate in these proceedings, and for the resulting additional delay incurred, within 30 days of the date of this Decision.

[20] Finally, PCC#94 shall bear all costs to copy and deliver the records to Ms. Browne.

D. CONCLUSION & ORDER

[21] The Tribunal directs PCC#94 to provide to Ms. Browne the following records within 14 days of the date of this Decision:

1. The condominium's declaration;
2. The most recent financial statement;
3. Meeting minutes for all meetings held within the last twelve (12) months;
4. All records, including report results, from the 2018 Pinchin Ltd. mold inspection; and
5. The November 2017 tile removal records.

[22] These records will be provided without cost to Ms. Browne.

[23] The Tribunal directs PCC#94 to pay costs in the amount of \$200, and a penalty in the amount of \$500 to Ms. Browne within 30 days of the date of this Decision.

Angelique Palmer
Member, Condominium Authority Tribunal

Released on: February 1, 2019