

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 11, 2020

CASE: 2019-00181R

CITATION: Maureen Moloney v. Durham Condominium Corporation No. 124, 2020

ONCAT 3

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

Member: Deborah Anschell, Member

The Applicant

Maureen Moloney

Self-represented

The Respondent

Durham Condominium Corporation No. 124

Wendy Wright, District Manager, Trelawney Property Management, Agent

Hearing: November 21, 2019 - February 2, 2020, written on-line hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] This hearing concerned a records request under section 55 of the *Condominium Act, 1998* (the “Act”). The written online hearing was held from November 21, 2019 to February 2, 2020. Both the Applicant, Ms. Moloney and the Respondent, represented by Wendy Wright, joined the hearing and made submissions.
- [2] Ms. Moloney is a unit owner of Durham Condominium Corporation No. 124 (“Durham 124” or the “Respondent”). She requested two sets of documents from Durham 124, namely the record of owners and mortgagees required to be maintained under section 46.1 of the Act and the record of notices Durham 124 received relating to leases of units, required to be maintained under section 83 of the Act.
- [3] At the Stage 2 – Mediation, Durham 124 agreed to provide these two sets of records, at no cost to the Applicant. These records were to be provided, updated as of November 30, 2019. This Agreement is documented in the Stage 2 Summary and Order.

[4] The sole issues that remained outstanding were:

1. Whether or not a penalty should be imposed against the Respondent?
2. Is the Applicant entitled to costs?
3. Whether the Applicant was entitled to a written letter from the Respondent acknowledging its failure to provide the requested records as required.

B. PRELIMINARY ISSUE

[5] It appears from the Parties' submissions that the Respondent has not yet complied with the agreement reached and documented in the Stage 2 Summary and Order. Based on the agreement made by the parties in Stage 2 that the Applicant is entitled to the records in question, and that these would be provided at no cost to the Applicant, I do not need to address that issue. However, for clarity, the Order will include a term detailing the records to be produced, as agreed at the Stage 2 – Mediation.

C. RESULTS

[6] For the reasons set out below, the Respondent is ordered to pay a penalty in the amount of \$250 for its delay in providing the records without reasonable excuse.

[7] Further, pursuant to s. 1.44(1)4 of the Act, I award costs of \$200 to the Applicant representing the filing fees that she paid to the Tribunal.

[8] With respect to the request that a written letter be provided by the Respondent to the Applicant acknowledging its failure to provide the requested records, I find that the Applicant is not entitled to such a letter.

D. ISSUES AND ANALYSIS

Issue 1: Should a penalty be imposed against the Respondent for its failure to provide the records without reasonable excuse?

[9] The Applicant's evidence was that she initially asked for records of owners/Mortgagees via a generic request form used by Durham 124 dated February 20, 2019 (Exhibit 3). This form states that the Applicant was requesting an up-to-date list of all Owners/Mortgagees for her condo building. The Applicant requested the owners' names, the unit identification (including parking and locker numbers) and the addresses for service.

[10] Emily Wrigglesworth ("Emily"), the Condominium Manager, responded the following day and advised that the Applicant had to put in a Request for Records.

The Applicant then submitted the Request for Records (Exhibit 9) later that same day. The Request for Records sought the records of owners and mortgagees as of January 2019, and records of notices relating to leases of units under s. 83 of the Act, as of January 2019.

- [11] Emily responded on February 22, 2019 as evidenced in Exhibit 12 where she advised that the Request for Records would be put before the Board of Directors. Emily advised the Applicant that the Board had thirty days from the date of the Request for Records to provide an answer. Emily noted that once that answer is issued, the Applicant would have to confirm that she would still like to proceed.
- [12] The Applicant stated that she did not receive any response within the required thirty days from the Board of Directors. The Applicant mentioned this orally to Emily on April 16th. She then sent an email to Emily on April 22, 2019. The Applicant inquired why she had yet to have the required response from the Board of Directors. She anticipated a response by March 25, 2019. She amended her Records Request so that the List of Owners be current as at the end of March 2019.
- [13] The Applicant then sent a further email dated May 4th to Emily's employer, Trelawney Property Management, inquiring why she had not received a reply; Emily received a copy of this email.
- [14] On May 6th Emily replied to the Applicant with respect to the Records Request, stating as follows: "Due to the sensitive nature of this request the Board would like to know the reasoning behind the request."
- [15] The Applicant's evidence was that an email with an attachment of incomplete and out-dated Record of Owners and Mortgagees was sent by Emily to her on May 21st. No information relating to the leases was provided. The Applicant then wrote to Emily on May 22nd advising that the information provided was incorrect. The Applicant also wrote to the President of the Board of Directors, Joan Fenech, on June 2nd with respect to the lack of progress with respect to her Request for Records. The Applicant followed up with Emily on July 23rd.
- [16] On July 31st the Applicant received an email from the Board of Directors' President advising that Emily was working actively to provide the current information and records requested. The Applicant's evidence was that on August 20nd she went again to see Emily for the updated records and was advised that nothing more was available for her.
- [17] Emily's evidence largely confirmed the chronology provided by the Applicant. According to Emily, she received the Request for Records sometime in February

2019. She placed the Request in her “To-Do” tray, intending to scan the document and email it to the Board of Directors. Unfortunately, she then became involved with other matters and failed to process the Applicant’s Request for Records.

- [18] Emily’s evidence was that the Applicant reminded her about the Records Request in early April. Emily apologized and advised that she would bring it up at the next Board of Directors Meeting. Emily advised her Regional Director, Wendy Wright, about her mistake.
- [19] The Applicant’s Records Request was then presented to the Board at its meeting on April 25th as confirmed in the Minutes introduced as Exhibit 5. The Board directed Emily to inquire what use was to be made of the information. Ultimately, Emily retrieved the owner information from the Condominium Manager’s accounting system and provided the requested information to the Applicant on May 21, 2019.
- [20] Emily acknowledged that her actions led to the tardiness of the Respondent’s reply. She inadvertently did not provide the Request for Records in a timely manner. Her evidence was that the owner’s list always had correct information. However, it was the tenant’s list that required updating.
- [21] In her submissions, the Applicant noted that the Act clearly states that owners are entitled to access the list of owners and mortgagees and a list of leased units, both of which must be maintained by Durham 124. The Applicant did not receive the Records within the legally required thirty days as provided for in O.Reg 48/01.
- [22] The Applicant submitted that the delays involved in obtaining the records that she sought caused needless anxiety and damaged her reputation at the condominium.
- [23] Durham 124 submitted that it did not provide inaccurate owner information to the Applicant. Emily acknowledged that she accidentally misplaced the original request for records that she had received in late February 2019.
- [24] It appears clear that this is not a case where Durham 124 actually refused to provide the Applicant with the requested records. In fact, at Stage 2 – Mediation, Durham 124 expressly agreed to provide the requested records, current as of November 30, 2019 at no cost to the Applicant.
- [25] The records were provided to the Applicant on May 21, 2019. The deadline for production of these records expired on March 25, 2019. Thus, the records were provided almost two months late. The delay appears to be entirely due to the inadvertence of Emily, the Condominium Manager.

- [26] Section 1.44 (1) 6 of the Act gives the Tribunal discretion to order a penalty 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.
- [27] In *2342941 Ontario Inc. v. TSCC No 2329*, 2019 ONCAT 44, the Tribunal noted that a penalty may be awarded to encourage condominium corporations to diligently fulfill their legal responsibilities under the Act. In two recent cases, a delay in providing records resulted in a penalty being awarded.
- [28] In *Chai v. TSCC No. 2431*, 2019 ONCAT 45 the Tribunal noted that: “One of the purposes of assessing a penalty is to deter future similar action. O. Reg. 48/01 sets out specific time frames for the provision of records in response to Requests for Records. It should not be without consequence if a corporation fails to meet these time frames without the provision of valid reasons.” The Tribunal ordered a penalty of \$200.
- [29] In *Mariam Verjee v. YCC No. 43*, 2019 ONCAT 37, the Tribunal found that the Respondent’s delay in replying to the Applicant’s request for the Owners’ List was equivalent to an initial refusal to provide the record. The Tribunal awarded a penalty of \$75.
- [30] I am satisfied that the delay of two months before the Respondent provided any records to the Applicant is equivalent to a refusal to provide the record. There was no valid reason for the delay. The evidence clearly demonstrated that it was due only to inadvertence on the part of the Property Manager. The Property Manager did not deny that the Applicant was entitled to a response within thirty days of making her request. In light of this evidence, I find that a penalty in the amount of \$250.00 is reasonable.

Issue 2: Is the Applicant entitled to costs

- [31] Rule 32.1 of the Tribunal’s Rule of Practice (effective July 1, 2018 – December 31, 2019) provides that the Tribunal may order a User to pay any reasonable expenses related to the use of the Tribunal. Rule 33.1 states that legal costs will only be paid where there are exceptional reasons to do this.
- [32] The Applicant was self-represented and therefore incurred no costs for legal fees. However, she sought a personal hourly rate of \$25 per hour multiplied by 56 hours of work. She is seeking reimbursement for over eleven months of her time and expense spent pursuing the requested records commencing on February 21, 2019 which she states totals \$1400.

- [33] The Applicant seeks reimbursement for her time spent writing, photocopying, editing photo files, creating documents, submissions and responses to the Tribunal, seeking advice, and educating herself with respect to Tribunal procedures.
- [34] In deciding this issue I am mindful of the decision of the Tribunal in *Tonu Orav v. YCC No. 344*, 2019 ONCAT 18. In that case, in dealing with a reimbursement for personal time, the Tribunal noted as follows:

I will not award the Applicant recovery of an amount for their time for involvement in this case. The spirit of the Tribunal's structure and rules on cost recovery should discourage users from forming any general expectation that the cost of their time in participating in the Tribunal process will be recoverable.

- [35] I am not prepared to consider reimbursement for the Applicant's time spent in advancing her case.
- [36] I am prepared to order that the Applicant shall recover her \$200 filing fees. This was incurred because of the Respondent's delay in dealing with the Request for Records.

Issue 3: Is the Applicant entitled to a written letter from the Respondent acknowledging its failure to provide the requested records as required

- [37] As noted earlier, this Tribunal Decision will be published on CanLII in accordance with the CAT's publication practices. Thus, there will be a public record detailing the Respondent's failure to respond to the Request for Records on a timely basis. Any further acknowledgement would be redundant. There is no entitlement for such a letter under the records request process. I am therefore declining to provide this further relief.

E. ORDER

- [38] Pursuant to the authority set out in section 1.44(1) of the Act, the Tribunal orders that:
 1. The Respondent shall provide an up-to-date version of the Record of Owners and Mortgagees to the Applicant, as required to be maintained under section 46.1 of the Act within 30 days of this Order.
 2. The Respondent shall provide an up-to-date version of the Record of Notices relating to leases of units, required to be maintained under section 83 of the Act within 30 days of this Order.

3. Pursuant to s. 1.44(1) of the Act, the Respondent is to pay the Applicant \$450 being a penalty in the amount of \$250 and costs in the amount of \$200. In the event that the full amount is not provided to the Applicant within 30 days of this Order, the Applicant is entitled to set-off all remaining amounts due against the common expenses attributable to the Applicant's unit(s) in accordance with s. 1.45 (3) of the Act.
4. In order to ensure that the Applicant does not have to pay any portion of this cost award, the Applicant shall also be given a credit toward the common expenses attributable to the Applicant's unit(s) in the amount equivalent to the Applicant's proportionate share of such costs.

Deborah Anschell
Member, Condominium Authority Tribunal

Released On: February 11, 2020