

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 10, 2018

**CASE:** 2018-00306SA

**Citation:** Clyde Rogers v. Niagara North Condominium Corporation No. 131 2018 ONCAT 13

Order under section 1.44 of the Condominium Act, 1998.

**Adjudicator:** Deborah Anschell, Member

### **The Applicant**

Clyde Rogers

Self Represented

### **The Respondent**

Niagara North Condominium Corporation No. 131

Jim Brindle

Agent

Written Hearing: October 15, 2018 through October 19, 2018

## **REASONS FOR DECISION**

### **A. OVERVIEW**

[1] This hearing concerned a records request under section 55 of The Act.

Clyde Rogers ("Mr. Rogers") is a unit owner of Niagara North Condominium Corporation No.131 ("NNCC 131" or the "Respondent"). He requested documents from NNCC 131, namely supporting documentation in relation to an amount of \$11,479.00 reported in the most recent auditor's report for building maintenance.

[2] A settlement agreement was entered into on July 28, 2018 (the "Settlement Agreement") following a negotiation using the CAT-ODR system.

[3] The Settlement Agreement stated that NNCC 131 would provide Mr. Rogers copies of these records by August 15, 2018. Mr. Rogers would pay \$6.40 for 32 pages of records.

[4] Mr. Rogers now asserts that NNCC 131 has not complied with the Settlement Agreement. So a hearing, by way of written submissions from the parties, was held from October 15, 2018 until October 19, 2018.

[5] For the reasons set out below, I find that Mr. Rogers has now received the records stipulated in the Settlement Agreement. All efforts were made by NNCC 131 to

comply with the Settlement Agreement. Based on the evidence before me, I make no order as to costs.

## **B. THE SUBMISSIONS**

[6] Mr. Rogers submits that NNCC 131 has not complied with the Settlement Agreement. According to Mr. Rogers, the records to be produced included 24 invoices and disbursements. Four of the twenty-four invoices remained outstanding. These remaining invoices represented expenses in the amount of \$4144.00, or 36 per cent of the total expenditures.

[7] Mr. Rogers submits that the following invoices remained outstanding:

- 1) \$1108 – this is a payment to Wayne Bamber (the president of NNCC 131) indicating costs of repairs to the garden shed; there was a notation that receipts were to be provided later
- 2) \$2686 – this represents two payments to Solo Construction that Mr. Rogers submits lacks supporting details to determine what was provided or performed
- 3) \$226 – payment to Bayshore Masonry Ltd. that lacks invoice details to reflect what the payment was for.

[8] Mr. Rogers states that he requested these missing records on August 17, 2018. On August 20, 2018 he received a response that Wayne Bamber would provide an invoice upon his return from vacation on September 6, 2018. Further, the Respondent's lawyer would provide a response relating to the other two items.

[9] On September 13, 2018, the Respondent forwarded to Mr. Rogers documents relating to the payment to Wayne Bamber. These documents were allegedly blurred, altered and illegible.

[10] Mr. Rogers submits that the Respondent engaged in a number of stalling tactics and excuses for the remaining records. He notes that the outstanding records are material since they represent a significant amount of the expenditures. Further, he submits that the Respondent has willfully disregarded the request for records. He seeks a penalty to serve as a reminder to NNCC 131 to apply more care and diligence and be more mindful of its legal obligations when responding to an owner's request for records.

[11] NNCC 131 submits that all requested records were emailed to Mr. Rogers on August 15, 2018, with the exception of one invoice that was emailed the following morning. Details relating to the garden shed invoice were provided on September 13, 2018 once Mr. Bamber returned from vacation. Mr. Bamber was away for a three week vacation at the time that the Settlement Agreement was entered into.

[12] With respect to the invoices from Solo Construction, these invoices related to clearing gutters from all 32 condominium units, not specific units. This information was not apparent on the invoice, but was explained subsequently. The invoice stated as follows: "Clear-out gutters, flush downpipes and picke-up leafs" (sic).

[13] With respect to the payment made to Bayshore, the invoice stated "remove and dispose excess rock at swale". "Remove and dispose excess rock" is a description of the work done, and "swale" refers to removing rock from the condominium's drainage basin.

### **C. ISSUES AND ANALYSIS**

#### **Issue 1: Did NNCC 131 comply with the Settlement Agreement?**

[14] I find that NNCC 131 complied with the Settlement Agreement. Mr. Rogers noted that 19 out of 24 records were provided by the date stipulated in the Settlement Agreement ie. August 15, 2018, with the exception of one record that was sent the next day.

[15] I have examined each invoice provided to Mr. Rogers. By August 15, 2018 a total of 23 invoices were provided by NNCC 131 to Mr. Rogers. Eight additional invoices were provided as soon as they were available on September 13, 2018. These eight invoices provided on September 13, 2018 all relate to the garden shed.

[16] The reason for the delay with respect to the garden shed invoices was that the Respondent's president, Mr. Bamber, was away on vacation for several weeks, and he provided details as soon as he returned. While the invoices are somewhat difficult to read, they support expenditures in excess of the \$1108 payment amount made to Mr. Bamber.

[17] Mr. Rogers has raised some issues relating to the sufficiency of the invoices that were provided in compliance with the Settlement Agreement. In particular, he expressed concerns about the invoices from Solo Construction that lacked supporting details.

[18] With respect to the invoices provided by Solo Construction, no particular units were involved. This appears to be maintenance work that applied to the exterior of the building as a whole. The charges were for cleaning of gutters, flushing downpipes and leaf collection. Because no specific units were involved, I find that the records that were provided from Solo Construction complied with the Settlement Agreement.

- [19] Mr. Rogers also raised an issue with respect to the invoice from Bayshore Masonry Ltd. in the amount of \$226.00. He submitted that this invoice lacked sufficient information to determine what was provided and the location.
- [20] I have reviewed this invoice, and find that it adequately describes the work done, and where the work was performed.
- [21] The Settlement Agreement provided that NNCC 131 would provide supporting information relating to an amount of \$11,479 spent for building maintenance, including by vendor and supported by invoices that contain the breakdown of the materials/service provided as well as the common area or unit that it is applicable to.
- [22] The Settlement Agreement did not particularize or itemize the invoices that were to be provided. Rather, invoices were to be produced in a list that totalled \$11,479.00.
- [23] Because the President was on an extended vacation at the time of the deadline, ie. August 15, 2018, the invoices with respect to the purchase that he made of a garden shed were unavailable until September 13, 2018. These invoices were produced as soon as they were available. The other relevant invoices were produced by the deadline in the Settlement Agreement.
- [24] It is significant that the Settlement Agreement did not include an inventory of invoices that would be provided, but rather related to a category of expenses, ie. those expenses that related to actual expenditures for building maintenance in 2017.
- [25] I find that NNCC 131 made best efforts to comply with the Settlement Agreement. The only invoices that were not provided by the deadline of August 15, 2018 were the invoices relating to the garden shed, in the possession of Mr. Bamber, who was on vacation at that time.
- [26] I find that all of the records referenced in the Settlement Agreement were provided by the Respondent by the time that the hearing commenced on October 15, 2018. Therefore, I conclude that Mr. Rogers received all the records that the Respondent was obliged to provide to him. The Respondent has not contravened the Settlement Agreement.

#### **D. COSTS**

- [27] The award of costs is in the Tribunal's discretion. Mr. Rogers requests costs in the amount of \$1000.00, representing reimbursement for his out of pocket expenses, and to reinforce to the Respondent the importance of operating within the legislation.

[28] During these proceedings, I found both parties to be completely responsive. All of the materials were provided on a timely basis, and in compliance with the CAT-ODR system requirements.

[29] In these circumstances, I award no costs in this matter.

## **CONCLUSION**

[30] It is the finding of this Tribunal that the terms of the Settlement Agreement have been complied with. Accordingly, no order will issue. This concludes the matter.

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Deborah Anshell  
Member, Condominium Authority Tribunal

RELEASED ON: December 10, 2018