

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 27, 2019

CASE: 2019-00080R

Citation: Sunil Kainth v York Condominium Corporation No.506, 2019 ONCAT 31

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

Member: Patricia McQuaid, Member

The Applicant

Sunil Kainth

Self-Represented

The Respondent

York Condominium Corporation No. 506

Hearing: June 29 – August 6, 2019, Written online hearing

REASONS FOR DECISION

A. OVERVIEW

- [1] Sunil Kainth (the “Applicant”) is a unit owner of York Condominium Corporation No. 506 (“YCC 506” or the “Respondent”). He has lived there for over 18 years. On April 8, 2019 he submitted a Request for Records (the “Request”) to YCC 506, under s. 55 of the *Condominium Act, 1998* (the “Act”). He requested the following records, in electronic format: the condominium corporation declaration, the condominium corporation by-laws and the condominium corporation rules.
- [2] The Applicant sent the Request by email to YCC 506 on April 8th and personally delivered the Request to the management office for YCC 506 on April 9, 2019.
- [3] YCC 506 did not respond to the Request as required by s. 13.3(6) of Regulation 48/01 made under the Act (the “Regulation”). As a result, Mr. Kainth made an application to this Tribunal. YCC 506 did not respond to the notice of case before the Tribunal and did not join the case. YCC 506 has not participated at any of the prior stages of the Tribunal proceeding (Stage 1- Negotiation or Stage 2 - Mediation), nor in this hearing, despite being given an opportunity to do so.
- [4] In addition to seeking the requested records, the Applicant has, in this hearing, asked that a penalty be awarded to him; specifically, that YCC 506 be ordered to pay a penalty in the amount of \$5000 pursuant to s. 1.44(1)(6) of the Act.\
- [5] For the reasons set out below, I find that the Applicant is entitled to the records requested. Further, the Respondent is ordered to pay a penalty in the amount of \$2500 for its refusal to provide the records without reasonable excuse.

- [6] Further, pursuant to s.1.44(1)4 of the Act, I award costs of \$150 to the Applicant representing the filing fees paid to the Tribunal by the Applicant.

B. ISSUES AND ANALYSIS

Is the Applicant entitled to receive copies of the requested records?

- [7] The first issue is whether the Applicant is entitled to the requested records: the condominium corporation declaration, the condominium corporation by-laws and the condominium corporation rules. These are all core records as defined in s. 1 of the Regulation. Indeed, these are the originating and governing documents for any condominium corporation and are the first of the listed core records in s.1 of the Regulation. There is a clear entitlement to these records under s.55(3) of the Act.

Should the Respondent be required to pay a penalty under s. 1.44(6) of the Act for failure to provide the Applicant with the records requested without reasonable excuse, and if so, in what amount?

- [8] As noted above, the Respondent did not participate at any stage of the Tribunal processes. As a result, no excuse, reasonable or not, was ever proffered for its failure to provide these core records. There is no evidence before me, for example, that the Request was not delivered in the proper format or that YCC 506 had no notice of the Request. I note too that these are not records which might give rise to ambiguity for a condominium corporation. The declaration is the originating document for the condominium corporation. The by-laws and rules are essential documents that provide for the governance of the condominium corporation and the guide for the conduct of condominium owners. I find that a penalty is warranted in this case.
- [9] In assessing what the amount of the penalty should be, I find the type of document requested to be relevant. As stated above, the Applicant's entitlement to these records clear and unambiguous. Also relevant is the context for the Request. In his written testimony, the Applicant stated that in February 2018 his unit had flood damage from a neighbouring unit. He reported it to his property insurer which then asked him to provide the condominium Standard Unit By-law in order for it to process the claim. The Applicant requested the document from the Respondent in February 2018, though not by way of a formal Request for Records. In his testimony, the Applicant stated that he sent emails requesting the records and attended the property management office on numerous occasions. His property insurer also contacted YCC 506 regarding the Standard Unit By-law. The Applicant was told by the property manager that the records would be emailed to him, but they were never provided. So, while this was not a request for records as prescribed by the Regulation, it appears, based on the evidence, that YCC 506 did, at a minimum, have informal notice of the request and the reason for it.

- [10] Unfortunately, the Applicant experienced flood damage again, also from a neighbouring unit, on March 30, 2019. It was only following this second flood that the Applicant became aware of the Tribunal processes and filed his Request.
- [11] Though the Respondent's failure to provide the by-law after the first requests were made in February 2018 is perplexing, the failure to provide the records after the April 2019 request, which is the relevant date for this matter, is inexplicable. Its failure has, based on the evidence from the Applicant, negatively impacted the processing of his insurance claim. A penalty under the Act, is not designed to compensate for potential property damage, nor for the time spent by the Applicant in pursuing the records prior to the formal request made in April 2019. However, a penalty can be responsive to a condominium's apparently steadfast ignoring of a Request, as the evidence suggests occurred here. I can appreciate the Applicant's frustration with the Respondent and why he believes that its unresponsiveness since February 2018 calls for the maximum allowable penalty of \$5000. I must emphasize, however, that I can only consider the failure to respond since the formal request for records was given to the Respondent in April 2019. Whether or not the Applicant could have obtained any of the requested documents through another means; for example, through a title search, does not negate the obligation of YCC 506 to provide the records as required under the Act.
- [12] Previous Tribunal decisions have noted that a penalty may be awarded to encourage condominium corporations to fulfill their legal responsibilities under the Act diligently. Here, not only did YCC 506 fail to respond to the Request for Records as it is required to do under the Act (when it appears to have known of the importance of the records to the Applicant given the incidents of flood damage), it then failed to participate in this hearing process despite being notified that it was taking place. Its lack of response throughout is noteworthy. The failure of YCC 506 to participate in these proceedings and its failure before that to respond to the Request for Records amplify its refusal to provide the records and underline the lack of any reasonable excuse for so doing.
- [13] This conduct leads me to conclude that YCC 506 wilfully disregarded its legal obligations under the Act relating to the Applicant's request. This is unacceptable conduct that requires sanction. Providing core records to an owner, such as those requested in this case, cannot be considered an onerous task. If there was any impediment to providing them, YCC 506 had an opportunity at various stages of this proceeding to offer an explanation, but it failed to avail itself of that opportunity. In these circumstances, I find that a substantial penalty is warranted to reflect the severity and nature of the refusal and award a penalty of \$2500.

Is the Applicant entitled to costs?

- [14] Section 1.44(1)4 of the Act gives the Tribunal discretion to order costs. The Applicant did not request his costs of participating in the Tribunal process; however, the Tribunal does have jurisdiction to award costs even when not

specifically requested. I note that to bring this matter forward to Stage 3, the Applicant has paid \$150 in filing fees. These are costs that would not have been incurred had YCC 506 been responsive to the Applicant's Request for Records. I therefore award the Applicant costs in the amount of \$150.

ORDER

[15] Therefore, for the reasons set out above, the Tribunal orders as follows.

1. YCC 506 shall provide the applicant with the following records within 15 days of this decision:
 - a. the condominium corporation declaration,
 - b. the condominium corporation by-laws; and
 - c. the condominium corporation rules.
2. These records shall be provided in electronic format where available. If not available electronically, the records will be provided in paper copy and there will be no cost to the applicant for the records.
3. YCC 506 shall pay a penalty in the amount of \$2500 to the Applicant within 30 days of this decision.
4. YCC 506 shall pay costs in the amount of \$150 to the Applicant within 30 days of this decision.
5. In the event that the penalty or costs are not provided to the Applicant within 30 days of this Order, the Applicant will be entitled to set-off this amount against the common expenses attributable to the Applicant's unit(s) in accordance with Section 1.45(3) of the Act.
6. In order to ensure that the Applicant does not have to pay any portion of the penalty and cost awards, the Applicant shall also be given a credit toward the common expenses attributable to the Applicant's unit in the amount equivalent to the Applicant's proportionate share of the penalty and costs awarded.

Patricia McQuaid
Member, Condominium Authority Tribunal

Released on: August 27, 2019