

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 27, 2020

CASE: 2020-00006R

Citation: Shayan Zahedi v. Toronto Standard Condominium Corporation No. 2503, 2020 ONCAT 5

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

Member: Ian Darling, Chair

The Applicant

Shayan Zahedi

Self-represented

The Respondent

Toronto Standard Condominium Corporation No. 2503

Tony Okorn, Agent

Hearing: January 29, to February 27, 2020, written on-line hearing

REASONS FOR DECISION

A. INTRODUCTION

[1] Shayan Zahedi (the “Applicant”) owns a condominium in Toronto Standard Condominium Corporation No. 2503 (the “Respondent”). The Applicant experienced a flood in their unit and wanted records related to the repair and air quality testing following the flood. The Applicant submitted a Request for Records on October 23, 2019, seeking an Air Quality Report (the “Report”), and quotations from three contractors for work to repair the damages. The Respondent responded on November 14, 2019 indicating that they would not provide the records, so the Applicant submitted a case to the Tribunal. In this case, I decide that the Applicant has received the requested records, and that the Respondent shall pay a \$500 penalty and \$150 costs to the Applicant.

[2] The Respondent did not join the case until it was in Stage 3 - Tribunal Decision. As a result, the case did not progress through the Negotiation or Mediation stages. When the hearing started, I provided the parties with a chance to resolve the issue without a hearing. The Respondent indicated that they would provide the records but did not upload the documents when given the opportunity. As a result, we started the hearing.

- [3] The issues to be decided in this hearing were:
- a. Is the Applicant entitled to receive copies of the requested records?
 - b. Should the Respondent be required to pay a penalty under s. 1.44 (1) 6 of the *Condominium Act, 1998* (the “Act”) for refusing to provide the Applicant with the records requested without reasonable excuse, and if so, in what amount?
 - c. Should costs be awarded to either party?
- [4] The Respondent participated intermittently during the hearing. The hearing was structured with a series of opportunities for the parties to submit written arguments. During the time to upload written submissions, the Respondent uploaded the requested records. The Respondent did not provide any written submissions. The Respondent answered direct questions from me during the hearing though their responses were largely irrelevant to the issues to be determined.
- [5] Both parties wanted to use the Tribunal as a forum to deal with the damage arising from the flood, and the process to ensure repairs, rather than addressing the question of entitlement to the records. I understand their frustration with the process; however, these issues are beyond the jurisdiction of the Tribunal.

B. ISSUES & ANALYSIS

Issue 1: Is the Applicant entitled to receive copies of the requested records?

- [6] The Applicant’s submissions were received first. They cited *Browne v Peel Condominium Corporation No. 94, 2019 ONCAT 1* as the basis for establishing the entitlement to the air quality report. In *Browne*, the Tribunal found that the Applicant was entitled to an air quality report.
- [7] During the Respondent’s turn to make submissions, they did not respond to any of the issues to be decided in the hearing. The Respondent instead uploaded the requested records. This entitlement issue does not need to be decided since the records were provided to the Applicant.
- [8] After reviewing the records that were uploaded, the Applicant indicated that they expected to have received an additional quotation from a fourth contractor. In response to questioning, the Respondent indicated that the fourth contractor visited the unit, but did not provide a written quote, so there were no further

records to provide. While both parties confirmed the visit, there is no evidence before me that establishes that the Respondent received a fourth written quotation.

Issue 2: Should the Respondent be required to pay a penalty under s. 1.44 (1) 6 of the Act for refusing to provide the Applicant with the records requested without reasonable excuse, and if so, in what amount?

- [9] The Applicant's submissions on whether the Respondent should be required to pay a penalty for refusing to provide the records without reasonable excuse cited two cases: Browne and *Sunil Kainth v York Condominium Corporation No. 506, 2019 ONCAT 31*. These cases were similar in that the applicants requested records related to mold and repairs following a flood. In their submissions, the Applicant focussed on their dissatisfaction with how the Respondent dealt with the damage caused by the flood.
- [10] The Applicant requested a \$5000 penalty due to the severity of the potential health issues caused by the delay in completing repairs to the flood. The question of any delays in completing repairs is irrelevant to the question of whether the Respondent refused to provide a record without reasonable excuse. The Applicant did not address the issue of whether the Respondent refused to provide the record without reasonable excuse.
- [11] The Respondent did not make a submission on this issue; however, in response to my questions, the Respondent's Agent stated that the corporation should not be assessed a penalty because the quotes were provided to the Applicant in September 2019. This statement is inconsistent both with the evidence before me that contractors did not attend the unit or produce the quotes until October 2019 and the evidence that the Respondent refused to provide the records in their November 2019 Response to Records form.
- [12] The Respondent did not provide a reasonable excuse for failing to provide the records before the hearing started. Browne established an entitlement to air quality testing reports. The report is prescribed to be maintained under section 55 (1) 11 of the Act and s. 13.1 (1) 9 of *Ontario Regulation 48/01*, which require the corporation to maintain:

"All reports and opinions of an architect, engineer, or other person whose profession lends credibility to the report or opinion, that the corporation receives and that relate to physical features of the property or of any real or personal property that the corporation owns..."

Furthermore, since the report relates to the applicant's unit, it can also be considered a record consistent with s. 13.1 (1) 7, which includes "Records that relate to specific units or owners and that the corporation creates or receives". It is appropriate to award a penalty in this case because the Respondent was required to keep a copy of the record and failed to provide it without reasonable excuse.

[13] In *Kainth*, the Tribunal ordered a \$2500 penalty because the Corporation failed to provide basic core documents, including the condominium declaration, bylaws and rules. Further, they failed to acknowledge the request and did not participate in any stage of the tribunal proceedings. This is not an appropriate comparison to this case because of the difference between the number and nature of the records, and because the records were ultimately provided during this case.

[14] In *Terence Arrowsmith v Peel Condominium Corporation No. 94, 2018 ONCAT 10*, the Tribunal ordered a \$500 penalty. In *Browne*, the Tribunal ordered a \$500 penalty to be paid by the Corporation. I accept that these are appropriate comparisons to this case because the records are similar, and the tribunal also found that the corporations did not provide a reasonable excuse for not providing a record.

[15] I find that \$500 is also an appropriate penalty in this case due to the ongoing failure of the corporation to provide a reasonable excuse for not providing the record, to which there is a clear entitlement.

Issue 3: Should any other costs be awarded to either party?

[16] The Applicant requested that their Tribunal fees be paid by the Respondent. The Applicant paid \$150 to bring this case before the Tribunal: \$25 to file the case, and \$125 to move the case to Stage 3 -Tribunal Decision. The Applicant requested the Tribunal order these fees reimbursed. The Respondent did not make any submissions on the question of costs.

[17] The parties should have resolved the issues on their own and could easily have resolved the case earlier if the Respondent had participated in the Tribunal's negotiation stage. The Respondent shall pay to the Applicant their costs to file the case with the Tribunal, and the costs to bring the case to stage 3.

ORDER

[18] The Tribunal Orders that:

1. The Respondent pay a penalty of \$500 to the Applicant within 30 days of this decision.
2. The Respondent pay \$150 in costs to the Applicant within 30 days of this decision.
3. In order to ensure that the Applicant does not have to pay any portion of this penalty, the Respondent will give the Applicant a credit toward its common expenses in the amount equivalent to each of its proportionate share of the penalty.
4. If the penalty or costs are not paid within 30 days of this decision, the Applicant may deduct the outstanding amount from any contributions owing for its common expenses.

Ian Darling,
Chair, Condominium Authority Tribunal

Released On: February 27, 2020