

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 10, 2020

CASE: 2020-00342R

Citation: Rice v. Peel Condominium Corporation No. 9, 2020 ONCAT 43

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

Member: Jennifer Webster, Member

The Applicant,

Bernice Rice

Represented by Paul Wilk, Agent

The Respondent,

Peel Condominium Corporation No. 9

No one appearing

Hearing: Written Online Hearing – November 24, 2020 to December 4, 2020

REASONS FOR DECISION

A. INTRODUCTION

- [1] Ms. Bernice Rice (the “Applicant”) is the owner of a unit of Peel Condominium Corporation No. 9 (the “Respondent” or “PCC No. 9”). On September 8, 2020, she sent a Request for Records (the “Request”) in the prescribed form to the Respondent’s condominium manager by email and by mail to the address for service provided to the Condominium Authority Ontario public registry. In the Request, she was seeking an electronic copy of the record of owners and mortgagees that the condominium corporation is required to maintain under s.46.1 of the *Condominium Act, 1998* (the “Act”).
- [2] The Respondent did not respond to the Request as required by s.13.3(6) of Ontario Regulation 48/01 made under the Act, and the Applicant filed a case with the Tribunal.
- [3] The Applicant provided notice of the Tribunal proceeding by sending the letter generated by the Tribunal to the Respondent’s address for service on October 20, 2020. She sent the Tribunal’s second notice letter to the Respondent on November 2, 2020 and, through the tracking number for this letter, she was able to

confirm that a person named Kevin signed for the letter on behalf of the Respondent on November 3, 2020. The Applicant also sent a third Tribunal-generated letter about these proceedings to the Respondent on November 18, 2020.

- [4] The Respondent did not respond to these notices nor did it join the case before the Tribunal. It did not participate in Stage 1 - Negotiation, the prior stage of the Tribunal's process. Because the Respondent did not join the case, there was no Stage 2 – Mediation in relation to this matter. I requested that the Tribunal clerk contact the Respondent when the case was referred to Stage 3 – Tribunal Decision. The Tribunal clerk left a voice mail for Mr. Michael Holmes, the principal of the condominium management services provider, on November 20, 2020. Additionally, the Tribunal clerk spoke to Mr. Holmes and Mr. Mike Aceto by telephone on November 23, 2020. In this phone call, the Tribunal advised the Respondent of this case, the steps needed to join the case and that the hearing would proceed if it did not participate. Nonetheless, the Respondent did not join and the hearing proceeded.
- [5] The Applicant requested an Order from the Tribunal directing the Respondent to provide the record of owners and mortgagees. Additionally, the Applicant asked for costs in the amount of \$750 and that a penalty be assessed against the Respondent in the amount of \$5000 pursuant to s. 1.44(1)6 of the Act for its failure to respond to her records request.
- [6] The online hearing concluded on December 4, 2020. The Respondent brought a motion to reopen the case on December 4, 2020 after the hearing had closed. In its motion, the Respondent argued that the board of PCC No. 9 had not received either notice of the Applicant's Request or of the case at the Tribunal.

B. RESULT

- [7] For the reasons that follow, I deny the Respondent's motion to reopen the case. On the merits of the Applicant's Request, I find that she is entitled to the record requested, being the record of owners and mortgagees. Further, I order the Respondent to pay a penalty in the amount of \$500 for its refusal to provide the records without reasonable excuse. I also award costs of \$150 to the Applicant which represents the filing fees she had paid to the Tribunal.

C. ISSUES & ANALYSIS

Issue 1 - Should the hearing be reopened pursuant to the Respondent's motion?

- [8] The Tribunal did not request submissions from the Applicant in relation to the Respondent's motion to reopen the hearing.
- [9] As noted above, the Respondent did not respond to the Applicant's Request nor did it participate in any stage of the Tribunal's proceedings.
- [10] PCC No. 9 submitted that it did not participate because it had not been notified of either the Request or the case before the Tribunal. On this basis, it asserts that the hearing should be reopened.
- [11] The first factor to be considered by me is why PCC No. 9 failed to appear or participate or failed to respond. While the Respondent asserts that the board did not know of the proceeding and therefore, did not participate, the evidence established that the Respondent's condominium manager was made aware of the proceeding by the Applicant and by the Tribunal.
- [12] The Applicant's Request was sent to Mr. Aceto, the Respondent's condominium manager, by email on September 8, 2020 and by mail to the Respondent's address for service. The Applicant provided a Canada Post tracking number for the delivery of the Request which confirmed that the Request was delivered on September 9, 2020. For each of the letters generated by the Tribunal, the Applicant provided Canada Post tracking numbers in relation to her efforts to deliver them to the Respondent. The first letter was sent by Canada Post on October 20, 2020, but, for unknown circumstances, it was never delivered. The second letter was sent by Canada Post on November 2, 2020, and its delivery was confirmed by signature on November 3, 2020. The third of the Tribunal letters was sent by the Applicant on November 18, 2020, and although the tracking number shows that this letter is available for pick up by the addressee, it has not yet been picked up.
- [13] Additionally, the Tribunal staff notified the Respondent's condominium manager by telephone of the case, how to join the case, and that the hearing would proceed in its absence. The Respondent acknowledged in its motion that Mr. Aceto had a conversation with the Tribunal in November about joining the case in the portal. The Respondent asserted, however, that Mr. Aceto was not able to join the case because his registration in the Tribunal's system required action from his supervisor, Mr. Michael Holmes. Nonetheless, I find that Mr. Aceto, as the Respondent's representative, knew of the case and knew how to join the case. Although the PCC No. 9 board may not have known of the Applicant's Request and her case before the Tribunal, the Respondent's condominium manager was aware and failed to take the necessary steps to participate and / or to respond to the Tribunal.

[14] The second factor to consider is whether it would be unfair to the Respondent if the case were not reopened. The Respondent did not provide any specific submissions on the issue of unfairness beyond its submission about the board's lack of knowledge about the case. I do not find that there is any basis to conclude that it would be unfair if the case were not reopened, particularly given that the only record in issue is the record of owners and mortgagees and the Respondent has acknowledged that it has an obligation to provide this record to the Applicant.

[15] Given that the Respondent has not provided reasonable grounds for its failure to participate or evidence of unfairness, I deny the motion to reopen the hearing.

Issue 2 - Is the Applicant entitled to examine or obtain a copy of the Respondent's record of owners and mortgagees?

[16] The Applicant requested the record of owners and mortgagees in electronic form and, if it were not available in electronic form, she requested that a paper copy be delivered to her.

[17] The record of owners and mortgagees is a core record as defined in section 1 of Ontario Regulation 48/01. The Applicant is clearly entitled to examine or obtain a copy of this record pursuant to section 55(3) of the Act.

Issue 3 - Does the Respondent's failure to respond to the Request amount to a failure to provide the Record without reasonable excuse such that a penalty should be assessed under s.1.44(1)6 of the Act?

[18] The Applicant seeks the maximum penalty of \$5000 under the Act on the basis that the Respondent did not respond to her Request and did not participate in the Tribunal proceedings.

[19] The Applicant sent her Request to Mr. Aceto by email and by regular mail to the Respondent's address for service. The Respondent's failure to respond to and acknowledge the Request equates to a refusal to provide the requested record. The Applicant and the Tribunal staff provided notice to the Respondent of the case before the Tribunal. The Respondent's lack of participation in the Tribunal's proceedings exacerbated the refusal to provide the record.

[20] As part of the Respondent's submissions on the motion to reopen the hearing, it argued that the Applicant's Request had not been acknowledged because the condominium manager was busy with multiple demands. In addition, the Respondent argued that the Applicant should have engaged in direct follow-up

with the board about her Request prior to advancing the case to the Tribunal. Neither of these submissions provide a reasonable excuse for the failure to acknowledge and respond to her request, which is a refusal to provide a record to which the Applicant was clearly entitled.

- [21] The purpose of a penalty, as noted in previous Tribunal decisions, is to ensure that condominium corporations understand their legal responsibilities and diligently fulfill them. One of those responsibilities is the obligation to respond to a request for records, which did not happen in this case. After having failed to respond to the Applicant's Request, the Respondent then did not participate in the Tribunal's hearing process despite being notified by the Applicant and by the Tribunal.
- [22] I find that the Respondent has not provided a reasonable excuse for its failure to provide the record of owners and mortgagees. The Respondent did, however, advise in its motion to reopen that it was "committed to providing all permissible records to the owner without further delay" and I conclude that this statement of commitment does demonstrate that the Respondent understands its obligation to provide records under the Act. In these circumstances, I assess a penalty of \$500 in relation to the Respondent's refusal to provide the requested record.
- [23] Not every case where a condominium fails to respond to a request for records will amount to a refusal, but where there is evident disregard for a request despite knowledge of it, and then ongoing disregard of the request by a further failure to participate in the Tribunal case despite clear knowledge of it, such conduct can amount to a refusal, which I think it does in this case.

Issue 4 - Is the Applicant entitled to costs?

- [24] The Applicant requests her costs in the amount of \$750 for her filing fees, postage charges, and time expended on the case.
- [25] The time spent by an applicant to participate in and advance this case before the Tribunal is not, as a general rule, compensable through a costs award. I see no reason to depart this general rule in this case. I do, however, award her costs for the fees required to bring the application before the Tribunal which includes the fee of \$25 to file at Stage 1 and the fee of \$125 to move the case to Stage 3, for a total of \$150.

D. CONCLUSION

- [26] I find that the Applicant is entitled to examine or receive a copy of the record of owners and mortgagees that the condominium is required to maintain under s.46.1

of the Act. I also order that the Respondent shall pay a penalty of \$500 to the Applicant because it refused to provide the record without reasonable excuse by failing to respond to the Applicant's Request. The Respondent shall also pay the Applicant \$150 in costs.

E. ORDER

[27] The Tribunal orders that:

1. Within 30 days of the date of this decision, the Respondent, PCC No. 9, shall provide the Applicant, Ms. Bernice Rice, with an electronic copy of the record of owners and mortgagees. If an electronic copy is unavailable, the Respondent shall provide a paper copy. There shall be no fee charged to the Applicant for this record.
2. Within 30 days of the date of this decision, the Respondent shall pay a penalty of \$500 to the Applicant.
3. Within 30 days of the date of this decision, the Respondent shall pay costs of \$150 to the Applicant.
4. 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 towards the common expenses attributable to her unit in the amount equivalent to the Applicant's proportionate share of the penalty and costs awarded.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: December 10, 2020