

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 12, 2021

CASE: 2020-00431R

Citation: Schaefer v. Metropolitan Toronto Condominium Corporation No. 1024, 2021 ONCAT 62

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

Member: Sancia Pinto, Member

The Applicant,

Stephen Schaefer

Self-Represented

The Respondent,

Metropolitan Toronto Condominium Corporation No. 1024

Represented by Robert Weinberg, Agent

Hearing: Written Online Hearing – February 10, 2021 to June 15, 2021

REASONS FOR DECISION

A. OVERVIEW

- [1] Stephen Schaefer (the “Applicant”) is an owner of a unit of Metropolitan Toronto Condominium Corporation No. 1024 (the “Respondent”). In October 2020, using the mandatory Request for Records form, the Applicant made a records request under s. 55 of the *Condominium Act, 1998* (the “Act”) to the Respondent.
- [2] The Respondent did not respond to the Request for Records as required by s. 13.3 (6) of Ontario Regulation 48/01 made under the Act, and the Applicant filed a case with the Condominium Authority Tribunal (“Tribunal”). The Applicant submits that the Respondent did not respond to the Request for Records in the prescribed manner and refused to provide the records in a timely manner.
- [3] The Respondent joined the case on December 23, 2020, but did not participate in the Tribunal’s prior stages and so the matter proceeded to a Stage 3 hearing on February 10, 2021. Given the lack of response from the Respondent, at my request and to prevent any possible prejudice to the Respondent, on February 12, 2021, the CAT clerk reached out to the Respondent to remind them of their

obligation to participate in the online hearing. The hearing was adjourned until February 17, 2021, to allow for the participation of the Respondent who did not join the hearing until April 22, 2021 despite being notified by the Tribunal.

- [4] The Respondent submitted that their lack of response was due to the fact that they did not receive any notice of this hearing and that the Request for Records from the Applicant was sent directly to the Condominium Board of Directors (the "Board") with nothing being forwarded by the Board to management. While this may be the case, it still does not explain the lack of participation once the Respondent joined the case in December 2020 using the invitation code created by the CAT-ODR system.
- [5] All notifications for every procedural step in the hearing and documents for the hearing were visible and available to both parties throughout the hearing. I am satisfied that the Respondent had proper notice of this proceeding and had access to the case. Nonetheless, I allowed the Respondent the opportunity to make submissions on the issues for the hearing.

B. RESULT

- [6] For the reasons set out below, I find that the Respondent is not disputing the Applicant's entitlement to the record, penalty, and costs in this case. For the reasons that follow, I order the Respondent to pay to the Applicant a penalty in the amount of \$300 and costs in the amount of \$205.

C. ISSUES

- [7] The issues for the hearing are as follows:
1. Is the Applicant entitled to receive a copy of the current fire safety plan, and if so, what is the fee, if any, that may be charged for the record?
 2. 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 a reasonable excuse, and if so, in what amount?
 3. Should the Applicant be awarded any costs?

D. ANALYSIS

Issue No. 1: Is the Applicant entitled to receive a copy of the current fire safety plan, and if so, what is the fee, if any, that may be charged for the record?

[8] The Applicant filed a case with the Tribunal as he had not received the fire safety plan from the Respondent. The Applicant submitted that he received no response from the Respondent to the October 2020 Request for Records. During the hearing, the Respondent provided a complete copy of the current fire safety plan to the Applicant at no charge. I further find that the Applicant is entitled to the fire safety plan as it is a record that the corporation must keep under s. 55 (1) (11) of the Act and s. 13.1 (1) (10) of the Regulation.

Issue No. 2: 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 a reasonable excuse, and if so, in what amount?

[9] The Tribunal, pursuant to s. 1.44 (1) 6 of the Act, may make an order directing a condominium corporation “to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.”

[10] Under s. 1.44 (3) of the Act, the Tribunal has authority to award a penalty of up to \$5000. What penalty is appropriate depends on the specific facts in each case. It is important to outline the basis for a penalty under the Act. As noted in previous Tribunal decisions submitted by the Applicant, the purpose of a penalty is to impress upon condominium corporations the seriousness of their legal responsibilities to comply with the provisions of the Act and to provide unit owners with a remedy when there has been non-compliance. A penalty may also serve as a tool to communicate to the interested public what conduct is considered unacceptable.

[11] During the hearing, the Respondent conceded that the Applicant is entitled to a penalty in the circumstances and that an appropriate penalty amount would be in the amount of \$200 as the record was not intentionally withheld. The Respondent further submitted that this amount is appropriate given that it is one document at issue and not a substantial records request to warrant a higher penalty.

[12] The Applicant has requested a penalty from this Tribunal and has not specified the amount he is seeking. The Applicant submitted that the quantum of the penalty has been intentionally left unspecified to be determined by the Tribunal with consideration of his submissions and case law on penalties.

[13] The Applicant cited several Tribunal decisions in which penalties were awarded including *Maxime Pedneault v Carleton Condominium Corporation No. 227* (“Pedneault”), 2020 ONCAT 8, *Shaheed Mohamed v. York Condominium*

Corporation No. 414, 2018 ONCAT and Tharani Holdings Inc. v. Metropolitan Toronto Condominium Corporation No. 812 2019 ONCAT 3. In Pedneault, the Tribunal, stated:

The purpose of the penalty is to impress upon condominium corporations the seriousness of their obligations to comply with the provisions of the Act and to provide unit owners with a remedy when those obligations are not met. The maximum penalty is reserved for wilful misconduct or behaviour that is highhanded, intransigent or egregious. In this case, I find there are mitigating factors and the maximum penalty is not justified.

- [14] The Applicant submits that the Respondent's lack of response to the Record Request and lack of participation in the various stages at the Tribunal without a reasonable excuse, warrants a penalty. The Applicant further submits that the Respondent's behaviour demonstrates a clear disregard of its legal obligations with respect to Requests for Records.
- [15] The Respondent does not dispute the Applicant's entitlement to a penalty for not providing the record under the Act and has submitted that the appropriate amount for the penalty should be in the amount of \$200.
- [16] Given the submission of the parties, there is no dispute that the Board did not respond to the Request for Records submitted by the Applicant. As for the late delivery of the record due to miscommunication between the Board and the property manager, I find that this does not constitute a reasonable excuse, nor does it excuse the responsibility that the Board has under the Act.
- [17] The Board is responsible for overseeing their property managers and ought to have know their obligations to respond to the Applicants Request for Records in compliance with the procedural timelines set out in the Act. In addition, despite joining the case in December of 2020, the Respondent first participated in the case during the middle of the hearing around April 2021. For the above noted reasons, I find that a penalty is appropriate and warranted. With that said, I do note that once the Respondent did participate in the hearing, the Respondent was cooperative, responsive, and promptly provided the record to the Applicant. Nonetheless, I find that the delay in providing the fire safety plan without a reasonable excuse is an effective refusal, albeit a temporary one, as the record was provided to the Applicant during the hearing.
- [18] In determining the appropriate quantum of the penalty, I have considered the Respondent's lapse in fulfilling their responsibilities under the Act including the number and type of record that was not delivered to the Applicant within the

prescribed timelines. Considering the above factors including the case law submitted, I find that a penalty in the amount of \$300 is appropriate, reasonable and in line with the principle of ensuring that penalties are proportional, taking into consideration the nature of the records requested, and conduct of the Respondent relating to the record request, which led to a penalty.

Issue No. 3: Should the Applicant be awarded any costs?

[19] Section 1.44 (1) 4 of the Act and Rules 45.1 and 45.2 of the Tribunal's Rules of Practice, gives the Tribunal discretion to order a party to pay another party any reasonable expenses related to the use of the Tribunal including any fees paid to the Tribunal. The parties both made submissions on costs. The Applicant requested costs in the amount of \$205. The Respondent submitted that the Applicant should be entitled to their costs, but that amount should be limited to their filing fees paid through the Tribunal's various stages in the amount of \$200.

[20] The Applicant has been successful in this proceeding. The Applicant has asked for the costs incurred for filing fees at all three stages at the Tribunal. In addition, the Applicant has requested his costs incurred with the City of Toronto for filing a freedom of information request for the fire safety plan in the amount of \$5.00. I find the Applicant's request in the amount of \$205 to be reasonable. Furthermore, these are costs that would not have been incurred had the Respondent been responsive to the Applicant's Request for Records. I therefore award the Applicant costs in the amount of \$205.

E. ORDER

[21] The Tribunal Orders that:

1. Within 30 days of the date of this decision, the Respondent, shall pay to the Applicant a penalty in the amount of \$300.
2. Within 30 days of the date of this decision, the Respondent shall pay costs of \$205 to the Applicant.
3. In the event that the full amount is not provided to the Applicant within 30 days of this Order, pursuant to s. 1.45 (3) of the Act, the Applicant is entitled to set-off all remaining amounts due against the common expenses attributable to the Applicant's unit(s).
4. In order to ensure that the Applicant does not have to pay any portion of the penalty and cost award, the Applicant shall also be given a credit towards the common expenses attributable to the applicant's unit(s) in the amount

equivalent to the Applicant's proportionate share of the penalty and costs awarded.

Sancia Pinto
Member, Condominium Authority Tribunal

Released on: July 12, 2021