

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 20, 2021

CASE: 2021-00206R

Citation: Ji v. Toronto Standard Condominium Corporation No. 1611, 2021 ONCAT 122

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

Member: Monica Goyal, Member

The Applicant,

Yuantao Ji

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1611

Represented by Arun Kuganesan, Agent

Hearing: Written Online Hearing – October 20, 2021 to November 26, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Yuantao Ji (the “Applicant”) is a unit owner of Toronto Standard Condominium Corporation No. 1611 (the “Respondent”).
- [2] The Applicant submitted a request for records to the Respondent on August 23, 2021 to obtain noise complaint incident reports of August 12, 16, 19 and 23 of 2021 composed by building security staff in response to noise complaints (the “Records”).
- [3] The Respondent did not respond to the Request for Records, nor did the Respondent join the Case at the Stage 1 negotiation phase; therefore, the Case moved directly to Stage 3 Hearing. The Respondent did participate in the Hearing, at which point the Respondent provided all of the Records requested by the Applicant.
- [4] For the reasons set out below, I find that the Applicant’s Request for Records has been fulfilled. However, I also find that the Respondent’s failure to respond to the Request for Records and the delay in joining the Case is a refusal to provide records without reasonable excuse and I order a penalty of \$500. At the hearing,

the Respondent agreed to pay to the Applicant the costs of filing the case with the Tribunal and I will so order the Respondent to pay the Tribunal fees of \$150 to the Applicant.

B. BACKGROUND

- [5] This is the second Tribunal case between the parties. The first was resolved by a Consent Order issued on May 12, 2021, in which the Respondent agreed to provide certain records to the Applicant by May 26, 2021. Although this Case is not about that Consent Order, I note that, as of the date of the Hearing of this Case, the Respondent had still not fulfilled its promise under the Consent Order.
- [6] On or around August 23, 2021, the Applicant submitted a second Request for Records, which is the request that is the subject of this Case. As noted above, although the Application commenced this case in October 2021, the Respondent did not initially participate, and only began to participate on commencement of this Stage 3 Hearing, at which time the Respondent provided the records requested in the Applicant's second Request for Records.

C. ISSUES & ANALYSIS

- [7] Given that the Respondent has provided at this Hearing the records requested by the Applicant and also agreed to pay the Applicant their costs of \$150 paid to file the case with the Tribunal, the only issue to be determined by me is whether a penalty should be awarded to the Applicant pursuant to s. 1.44(1)6 of the *Condominium Act, 1988* (the "Act").
- [8] Section 1.44(1)6 of the Act provides that the Tribunal may order a penalty if it finds that the condominium corporation has, without reasonable excuse, refused to provide the requested records.
- [9] The Applicant is entitled to the records. The Respondent provided the records during the hearing, many months after the request had been made.
- [10] The Applicant had no reasonable excuse for refusing to respond to the request for records. The Respondent said that there was a change of management and that was why he did not respond to the request for records.
- [11] A change in management company is not a sufficient reason for not providing the records. Further, it provides no excuse for ignoring the request for records and the invitation to the Stage 1 part of the Tribunal process. This is a case in which the apparent failure to provide records in fact constitutes an effective refusal without reasonable excuse to provide them, since there were clearly both opportunities

and ability for the Respondent to have properly addressed the Request for Records sooner, and, based on the evidence before me, it simply did not do so. Therefore, I find a penalty is appropriate in this Case.

[12] The next question to be determined is the amount of the penalty. Under subsection 1.44(3) of the Act the quantum of the penalty shall not exceed \$5,000. The specific amount of the penalty is also in the discretion of the Tribunal.

[13] One of the purposes of the penalty is to deter future similar action. A requester should not have to apply to the Tribunal in order to receive the requested records for which there is clear entitlement.

[14] In these circumstances of this Case, I find that a penalty of \$500 is appropriate. In determining this amount, I have taken into consideration that the Respondent did provide the outstanding records as well as additional records, which were not included in the Applicant's Request for Records form.

D. ORDER

[15] The Tribunal Orders that:

1. Within 15 days of this order, the Respondent must pay the Applicant a penalty of \$500.
2. Within 15 days of this order, the Respondent is to pay the Applicant's Tribunal fees of \$150.
3. In order to ensure that the Applicant does not have to pay any portion of this cost award, 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 such costs.

Monica Goyal
Member, Condominium Authority Tribunal

Released on: December 20, 2021