

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 13, 2022

CASE: 2021-00414R

Citation: Kerswill v. Toronto Standard Condominium Corporation No. 2595, 2022 ONCAT 34

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

Member: Anne Gottlieb, Member

The Applicant,

Cathy Kerswill
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2595
Represented by Shirishkumar Patel, Agent

Hearing: Written Online Hearing - February 8, 2022 to April 1, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ms. Kerswill, submitted a Request for Records (“Request”) on September 9, 2021, as a unit owner of the Respondent (“TSCC 2595”). TSCC 2595 did not provide a Board Response to the Request for Records (“Board Response”) as required by the *Condominium Act, 1998* (“Act”). Some records were delivered to the Applicant prior to the filing of this Application. The Applicant requests that she be provided with all outstanding requested records and that the Tribunal order a penalty and the costs of her filing fees.

[2] I find that TSCC 2595 refused to provide certain records to the Applicant, to which she was entitled. TSCC 2595 also did not provide a reasonable excuse for failing to provide other records, which in effect, is a refusal to provide the records. I award the Applicant the amount of \$3,000.00, as a penalty. I further find that the Applicant is entitled to Tribunal filing fees in the amount of \$200.

B. BACKGROUND

[3] The Applicant provided testimony and evidence and made submissions. TSCC 2595 was sent multiple messages and provided with extended timelines to

participate in the hearing. I asked Tribunal staff to contact Shirishkumar Patel, agent for the Respondent, to encourage his participation in the hearing. He participated in a limited capacity in the hearing on 2 occasions. TSCC 2595 was given time to cross examine the Applicant and provide testimony. It did not do so. I find the Applicant to be credible, and I accept her testimony regarding the facts leading up to the filing of this Application.

[4] On September 9, 2021, a Request was emailed to Mr. Patel, the condominium manager for TSCC 2595, using the Request for Records form provided on the Condominium Authority of Ontario website. The Request asked for the following records:

1. Record of owners and mortgagees
2. Record of notices relating to leases of units under s. 83 of the Condominium Act, 1998
3. Budget for the corporation's current fiscal year, including any amendments
4. Most recent approved financial statements
5. Most recent auditor's report
6. The current plan for future funding of the reserve fund
7. Minutes of meetings (board meetings and owners meetings) held within the last 12 months – from 04 Sept 2020 to date of Request
8. Additional Records specified in a by-law of the corporation
9. Actual Expenses for the fiscal year May 2021

C. ISSUES AND ANALYSIS

[5] The issues to be addressed relate to the entitlement of the Applicant to the records in the Request. The issues to be determined are as follows:

1. Did TSCC 2595 reply to the Request within 30 days and use the mandatory form required by the Act?
2. Is the Applicant entitled to the records which she requested?
3. Is the Applicant entitled to receive additional records?
4. Did TSCC 2595 refuse to provide requested records without a reasonable excuse?
5. Should TSCC 2595 be required to pay a penalty under s. 1.44 (1) 6 of the Act?
6. Should any costs or fees be awarded to the Applicant?

Issue No. 1: Did TSCC 2595 reply to the Request within 30 days and use the mandatory form required by the Act?

- [6] Section 13.3 (6) of Ontario Regulation 48/01 (“O. Reg 48/01”) states that when the corporation receives a request, it shall respond within 30 days on the prescribed Board Response form. The Applicant did not receive any response or acknowledgement to her Request and on October 6, 2021 she sent the Request by registered mail, to the office of Proactive Management and Consultants. Proactive Management and Consultants is the management corporation hired by TSCC 2595.
- [7] On November 4, 2021, the Applicant forwarded a copy of the Request to the Board of Directors (“board”). On November 8, 2021, Mr. Patel sent an email to the Applicant and advised that due to privacy issues the owners’ information could not be provided. He forwarded the following documents to the Applicant:
- Budget for TSCC 2595’s fiscal year June 1 2021 to May 31 2022
 - AGM minutes
 - Periodic Information Certificate dated May 11, 2021
- [8] The Applicant responded to Mr. Patel by email and identified the records from her Request which were not addressed or provided. She provided excerpts from the Act to substantiate her right to the list of owners and mortgagees and the list of notices relating to leased units and other records. Based on the facts outlined above, I find that the provisions of the Act were not followed by TSCC 2595. The Board Response was not issued on the mandatory government form and was not provided within the 30 days outlined in the Act.

Issue No. 2: Is the Applicant entitled to the records which she requested?

- [9] During the hearing Mr. Patel sought clarification on the obligation of a condominium corporation to provide the record of owners and mortgagees and notices relating to leases of units. Section 46.1 (3) of the Act requires a corporation to keep a record of owners and mortgagees which includes the unit number, the name of the owner or mortgagee, and their address for service in Ontario. An owner is not entitled to the e-mail addresses of owners or mortgagees; however, the record of owners and mortgagees is a record to which an owner is entitled.
- [10] According to Section 83 (1) (a) of the Act, a unit owner is required to notify the condominium corporation within ten days of leasing their unit. Section 83 (3) of the Act requires a condominium corporation to keep a record of the notices that it

receives. The Applicant is entitled to copy of the record of notices relating to leased units.

- [11] The approved financial statements, the auditors report, the current plan for future funding of the reserve fund and the most recent auditors report are all records listed in section 55 (1) of the Act as records that a condominium corporation is required to keep. These are core records as per O. Reg 48/01 and the Applicant is entitled to all these records. Per section 67 (1) of the Act, audited statements are to be prepared every year.
- [12] Section 32 (1) of the Act deals with meetings of the board of directors. Minutes of these meetings are required. There is no evidence before me to suggest that board of director's meetings were not held for this condominium corporation. The Applicant is entitled to receive a copy of these board minutes. She was only provided with minutes from the AGM and not with board minutes from September 2020 to September 2021, as she requested.
- [13] No submission was made by TSCC 2595 with respect to the Applicant's request for actual expenses for the fiscal year ending May 2021. These would be considered non-core records. TSCC 2595 did not ask for any fee to produce these records. The Applicant has concerns regarding the expenditures over the last 2 fiscal years when no financial records were provided to unit owners. I will order those records showing the actual expenditures for TSCC 2595 for the year ending May 2021 be provided to the Applicant without any cost for labour or photocopying.
- [14] During the hearing the Applicant stated that she is no longer seeking what was described in the Request as "additional records specified in a by-law of the corporation". She states that she was referring to Mutual Agreements under s. 113 or 154 (5) of the Act and that she is no longer seeking these records.
- [15] Towards the end of the hearing Mr. Patel joined the hearing for a second time and indicated that an audit for the previous two years was complete and that financial records would be provided in the forthcoming AGM package. Since Mr. Patel indicated that the financial records are available, I will order that the records be produced and I will shorten the timeline to produce these records, to within 15 days from the date of this order.

Issue No. 3: Is the Applicant entitled to receive additional records?

- [16] The Applicant raised additional requests for the following records:

- Actual expenses 2020
- Bank statements for 2020 and 2021
- Audited financial statements for 2021

[17] Issues pertaining to these records are not properly before me. Despite the challenges faced by the Applicant to obtain records from TSCC 2595, I decline to expand the scope of the Request to order that these records be produced. Hopefully some of these records will form part of the next AGM package, as Mr. Patel indicated. If the Applicant does make a request for these records, perhaps this decision will inform how TSCC 2595 should respond to that request.

Issue No. 4: Did TSCC 2595 refuse to provide requested records without a reasonable excuse?

[18] By email dated November 8, 2021. Mr. Patel stated that he would not provide the list of mortgagees and owners, and the list of leased units. I have already outlined; these are records to which the Applicant is entitled. There was no communication regarding many of the other records that formed part of the Request. This amounts to a refusal.

[19] Mr. Patel explained that the financial records were not available because of the pandemic. While I recognize that the unprecedented times of the Covid-19 pandemic may be a reason for some delay, a condominium corporation exists for the sole purpose of managing the property on behalf of the owners and must conduct its activities in accordance with the requirements of the Act. This certainly includes fiscal responsibility and the keeping of financial records. The Applicant testified that the most recent auditors' report for the year ending May 2020 (due December 2020) was still outstanding at the time the hearing began. That is some 21 months after the year end. No evidence was put forth by the Respondent to explain the reasons for the delay. I find that the Respondent did not have a reasonable excuse, which is in effect a refusal to provide the records.

Issue No. 5: Should TSCC 2595 be required to pay a penalty under s. 1.44 (1) 6 of the Act?

[20] Pursuant to section 1.44 (1) 6 of the Act, the Tribunal may order a corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under subsection 55 (3) of the Act if the Tribunal considers that the corporation has, without reasonable excuse, refused to permit the person to examine or obtain copies under that section."

[21] The Applicant asked the Tribunal to award a penalty of \$3,000.00. She indicated that she was aware that the maximum penalty was \$5,000.00. TSCC 2595 was given an opportunity to make a submission on the issue of a penalty but did not do so.

[22] A penalty is imposed to signal that the actions of a party are not acceptable and that there is a reason to impose a sanction. The Applicant made multiple attempts to obtain core financial records and get the attention and cooperation of TSCC 2595 to comply with provisions of the Act. TSCC 2595 did not provide those records. I have found that there was a refusal to provide records, without a reasonable excuse. I award the Applicant the amount of \$3,000.00.

Issue No. 7: Should costs or fees be awarded to the Applicant?

[23] The Applicant paid \$200 to bring this case before the Tribunal. She asked that her Tribunal fees be paid by TSCC 2595. The Applicant was successful before the Tribunal and should have these fees reimbursed. I therefore order that TSCC 2595 pay the Tribunal fees of \$200 to the Applicant.

C. ORDER

[24] The Tribunal Orders that:

1. TSCC 2595 shall provide to the Applicant the following records, in paper form, within 15 days of this Order:
 - a. Record of owners and mortgagees
 - b. Record of notices relating to leases of units under s. 83 of the Condominium Act, 1998
 - c. Most recent approved financial statements 2020 to 2021
 - d. Most recent auditor's report 2020 to 2021
 - e. The current plan for future funding of the reserve fund
 - f. Minutes of board meetings from September 2020 to September 2021
 - g. Actual expenses for the fiscal year ending May 2021
2. TSCC 2595 shall pay a penalty of \$3,000.00 to the Applicant within 30 days of this decision.
3. TSCC 2595 shall pay \$200.00 in costs to the Applicant within 30 days of this decision.
4. To ensure that the Applicant does not have to pay any portion of the penalty and costs awarded in this Order, TSCC 2595 is directed to give the Applicant a

credit toward the common expenses payable for her unit in an amount equal to the unit's proportionate share of the penalty and costs awards.

5. 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 the common expenses of her unit.

Anne Gottlieb
Member, Condominium Authority Tribunal

Released on: April 13, 2022