

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 29, 2022

CASE: 2022-00051R

Citation: Ji v. Toronto Standard Condominium Corporation No. 1611, 2022 ONCAT 42

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

Member: Marc Bhalla, Member

The Applicant,

Yuantao Ji

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1611

Represented by Annette Quitevis, Agent

Hearing: Written Online Hearing – February 17 to April 13, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] This is the third records case that has come before this Tribunal involving the parties – an Applicant unit owner and Respondent condominium corporation. The cases all relate to the documentation of noise complaints made by the Applicant. The Applicant wants incident reports of their noise complaints.

[2] The Applicant requested incident reports for noise complaints of September 13, October 19, October 24, October 30 and November 7, 2021. Soon after the Applicant filed this case, the Respondent provided the Applicant with incident reports of September 14, October 19, October 24 and November 7, 2021. The Applicant still wants incident reports of September 13 and October 30, 2021. The Respondent claims those reports do not exist.

[3] The Respondent refused to provide records to the Applicant without a reasonable excuse. It then corrected the refusal. I am not convinced further records exist or should exist. A small penalty is in order.

[4] While this case is a records case, not as a noise case, there is no question that the Applicant has noise concerns. The Respondent has acknowledged receiving 26

noise complaints from the Applicant. It may well be time for the Applicant and the Respondent to address the underlying issue.

B. ISSUES & ANALYSIS

Did the Respondent refuse to provide the Applicant with records?

- [5] The Applicant requested records on December 21, 2021. Without a reply, the Applicant filed this case on January 24, 2022. On January 28, 2022, the Applicant moved the case to Stage 2 – Mediation and the Respondent provided the Applicant with four incident reports.
- [6] The Respondent failed to respond to the Applicant’s Request for Records within the 30 days required by Section 13.3(6) of Ontario Regulation 48/01. As in *Ji v. Toronto Standard Condominium Corporation No. 1611, 2021 ONCAT 122* (“2021 ONCAT 122”), I find this lack of reply to be a refusal to provide records.
- [7] On the two requested reports the Respondent has not provided, the Applicant offered screen shots of calls and recordings of conversations as evidence that they made noise complaints on September 13 and October 30, 2021. This does not prove that incident reports exist. This case is not about whether the Applicant made allegations of nuisance on the dates in question. This case is about records. The Applicant has not established that the Respondent had to create incident reports based on their interactions of September 13 and October 30, 2021.
- [8] The Respondent did not refuse to provide the Applicant with records that do not exist. It refused to provide the Applicant with the incident reports that it has since given to the Applicant.

Should a penalty be awarded?

- [9] Section 1.44(1)6 of the *Condominium Act, 1998* (the “Act”) allows this Tribunal to order a penalty if a condominium corporation refuses to offer a record without reasonable excuse. The Respondent explains the delay in addressing the Applicant was due to a staffing change. I accept this as an explanation, not as a reasonable excuse. I find that the Respondent refused to offer a record without reasonable excuse.
- [10] This is not the first request made by the Applicant to the Respondent. This is not the first time the Respondent failed to reply to the Applicant within the prescribed timeline. Yet, the Respondent mitigated the refusal by providing the Applicant with records four days after this case was filed. This distinguishes this case from 2021 ONCAT 122. Here, the Respondent provided records before the case moved to

Stage 3 for a hearing and 38 days after they were requested. In 2021 ONCAT 122, records were provided during the Stage 3 hearing, many months later.

- [11] I question the merit of bringing this case to a Stage 3 hearing. A \$150 penalty is appropriate. I caution the Respondent not to make a habit of failing to reply to requests for records within the prescribed timeline. Larger penalties may be appropriate if that continues.
- [12] Rule 48.1 of this Tribunal's Rules of Practice establish that filing fees are generally recoverable by a successful party. I find it appropriate for the Applicant to recover only the filing fees they paid before they received records, \$75.

C. ORDER

- [13] The Tribunal Orders that the Respondent is to pay the Applicant a penalty of \$150 and filing fees of \$75. If the full amount of \$225 is not provided to the Applicant within 30 days of this Order, the Applicant can set-off the amount against the common expenses attributable to their unit(s) as set out in Section 1.45(3) of the Act. Each party shall otherwise bear their own costs for this proceeding.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: April 29, 2022