

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 19, 2022

CASE: 2021-00405R

CITATION: Grant v. York Condominium Corporation No. 17, 2022 ONCAT 88

Order under section 1.44 of the Condominium Act, 1998

Member: Victoria Romero, Member

The Applicant

Enid Grant

Represented by Dianne Grant, Agent

The Respondent

York Condominium Corporation No. 17

Represented by Steve Savage, Agent

Hearing: Written Online Hearing - June 24 to August 04, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Enid Grant (the “Applicant”) is a unit owner in York Condominium Corporation No.17 (YCC 17 or the “Respondent”). The Applicant requested the following core records from the Respondent:
1. Condominium Corporation Declaration;
 2. Condominium Corporation Bylaws;
 3. Condominium Corporation Rules;
 4. Record of owners and mortgagees;
 5. Periodic information certificates from the past 12 months;
 6. Budget for Corporation’s current fiscal year, including any amendments;
 7. Most recent approved financial statements;
 8. Most recent auditor’s report;
 9. Current plan for future funding of reserve fund; and
 10. Minutes of Board meetings held in past 12 months, from November 30, 2020 to November 30, 2021.
- [2] The Applicant, hand delivered a request for these records, on the prescribed form, to the Respondent on October 1, 2021 by delivering it to the home of Ms. A. Palombo, president of the board of directors of YCC 17.
- [3] The Respondent did not provide the records. The Applicant requests an order from the Tribunal directing that the Respondent provide the requested records. She asks the Tribunal to award a \$5000 penalty against the Respondent for refusing to

provide the records and asks for her costs of \$200 to bring this matter to the Tribunal and other costs of \$300 representing Ms. Grant's agent's three missed days of work.

- [4] At the time of the completion of this hearing, the Respondent had not provided any of the requested core records. Despite joining the case, the Respondent did not participate in this online written hearing except to post one message on July 28 2022. This message showed the Respondent had received the Applicant's Request for Records, they were aware of the hearing and advised that they will not be providing any records.
- [5] For the reasons set out below, I find that the Applicant is entitled to the records requested, and the Respondent must pay the penalty of \$4000 for its failure to provide the requested records without reasonable excuse and \$200 in costs.
- [6] Regarding representation, Ms. Dianne Grant produced a letter from Enid Grant. This letter, dated August 22, 2021, confirmed that Ms. Enid Grant authorizes her daughter, Ms. Dianne Grant, to make any decisions regarding her unit at YCC 17 and therefore represent her as an Agent at this Hearing.

B. ISSUES AND ANALYSIS

Issue 1 – Is the Applicant entitled to receive the requested records?

- [7] The requested records are all 'core records' as defined by s.1 (1) of Ontario Regulation 48/01 (O.Reg.48/01). Section 55 (3) of *the Condominium Act, 1998* (the "Act") and its regulations set out a clear entitlement to these records and I will order that these be provided to the Applicant.

Issue 2 – Is there a reasonable excuse for not providing these records?

- [8] There is no evidence before me indicating that the Respondent has a reasonable excuse for not providing the core records requested. Indeed, as noted in paragraph 4 above, the Respondent's single message during this hearing, posted on July 28, 2022 by Steve Savage, the Respondent's property manager, showed the Respondent received the Applicant's Request for Records, they were aware of the hearing and confirmed that they will not be providing any records.
- [9] In addition, Mr. Savage stated in the message that the Applicant had not answered YCC 17's demands regarding a fire incident replacing a new flat roof at the Applicant's unit. Entitlement to the requested records is not contingent upon an owner responding to a condominium corporations' inquiries on an unrelated matter. The applicant's lack of response to the Respondent's questions and/or requests are not a relevant to the issue of entitlement and does not give the Respondent a reasonable excuse for not providing the records.
- [10] No other evidence or submissions were submitted by the Respondent. This is despite the fact that the Respondent was, at all times, afforded the opportunity to

participate in this hearing. No response was received from the Respondent to address the Tribunal's Request to explain their non-participation.

- [11] Accordingly, I find that the Respondent has, without reasonable excuse, refused to permit the Applicant to examine or obtain copies of records they are entitled to under s.55 (3) of the Act.

Issue 3 – Is a penalty under section 1.44 (6) warranted? And if so, in what amount?

- [12] The Applicant has asked that the Respondent pay a penalty under section 1.44 (6) of the Act, which gives the Tribunal the jurisdiction to order a penalty to be paid to the Applicant if the Tribunal finds that the Respondent refused to provide the Applicant with the requested records without a reasonable excuse.

- [13] The Tribunal has already found, as above, that the Respondent has not had a reasonable excuse to not provide the records and that the Applicant has a clear entitlement to the core records being requested.

- [14] The Applicant also asked the Tribunal to consider the decision of *Brown v. Peel Condominium Corporation No. 21*, 2020 ONCAT 26. Paragraph 26 of that decision reads:

“I will refer to the Terence Arrowsmith case first. At paragraph 16, that decision reads:

I note that generally penalties operate to do two things. First, they operate to sanction conduct that is considered undesirable. Second, they communicate to the class of interested people and organizations that some conduct is unacceptable. The Tribunal is committed to providing dispute resolution that is fair, convenient and timely. These are some of the values that the Tribunal should consider in establishing the appropriate amount of the penalty.

I find that in the case before me the penalty should be substantial to indicate that the conduct of the Respondent is not acceptable and is deserving of sanction. There was no Response provided. There were no governing documents provided. There was no explanation provided, prior to the involvement of this Tribunal. There was no reasonable excuse for not providing the records.”

I find that the circumstances of this case are similar to the case before me. In this case, the Respondent did not provide a Response to the Request for Records either, the records being requested were core records, there was no explanation prior to the involvement of this Tribunal.

- [15] In exercising my discretion regarding the amount of the penalty, I have also considered the nature of the records requested and the fact the Respondent did not participate in this hearing process despite being aware of same. The failure of the Respondent to participate in these proceedings by choice, and its failure, before that, to provide any records including providing the Response to the Request of Records amplify the Respondent's refusal to provide the records and

underline the lack of any reasonable excuse for so doing. The fact that, in their attempt to make provision of the records conditional on the Applicant's responding to their inquiries, they have shown that, at best, they do not understand, or, at worst, they reject their clear obligations under the Act. Such conduct leads me to conclude that the Respondent disregarded its legal requirements relating to the Applicant's request for records. Weighing these factors, I have determined that a penalty of \$4000 is appropriate.

Issue 4 – Should the Applicant be awarded costs and fees? If so, in what amount?

- [16] Subparagraph 1.44 (1) 4 of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding. Under section 1.44 (2) of the Act, an order for costs shall be made "in accordance with the rules of the Tribunal." As set out in rule 48.1 of the Tribunal's Rules of Practice, if a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise. The Applicant was successful in her Application before this Tribunal here and is therefore entitled to be reimbursed for the cost of the filing fees to obtain this decision from the Tribunal. She paid \$200 to participate in all three of the Tribunal stages and shall be reimbursed this amount by the Respondent.
- [17] In her submission, the Applicant also asked for \$300 representing her agent's three missed days of work. No evidence was produced regarding this. Furthermore, this was a written hearing. Time extensions were granted to the Applicant when requested. All deadlines allowed for participation both during and beyond business hours. Indeed, the CAT-ODR system is available 24 hours a day, 7 days a week. The Applicant had the opportunity to respond at their convenience. As set out in Rule 49.1 of the Tribunal's Rules of Practice, the CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding. Therefore, this amount will not be granted.

C. ORDER

[18] The Tribunal orders that:

1. The Respondent is to provide the Applicant with the following records within 30 days of this decision:
 - a. Condominium Corporation Declaration;
 - b. Condominium Corporation Bylaws;
 - c. Condominium Corporation Rules;
 - d. Record of owners and mortgagees;
 - e. Periodic information certificates from October 1, 2020 to October 1, 2021;
 - f. Budget for Corporation's current fiscal year, including any amendments;
 - g. Most recent approved financial statements;
 - h. Most recent auditor's report;

- i. Current plan for future funding of reserve fund; and
- j. Minutes of Board meetings held in past 12 months, from November 30, 2020 to November 30, 2021.

These records will be provided in electronic format where available. Where electronic records are not available the records will be provided in paper copy.

These records will be provided without cost to the Applicant.

- 2. The Respondent shall pay a penalty in the amount of \$4000 pursuant to s. 1.44 (1) (6) of the Act within 30 days of the date of this decision.
- 3. Pursuant to s.1.44 (1) 4 of the Act, Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.
- 4. In order to ensure that the Applicant does not have to pay any portion of this penalty or costs, the Applicant will be given a credit toward its common expenses in the amount equivalent to each of its units' proportionate shares of the penalty and costs.
- 5. If the penalty is not paid within 30 days of this decision, the Applicant will be entitled to set-off those amounts against the common expenses attributable to the Applicant's unit(s) in accordance with section 1.45 (3) of the Act.

Victoria Romero
Member, Condominium Authority Tribunal

Released on: August 19, 2022