

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 30, 2022

**CASE:** 2022-00492R

**CITATION:** Bukuroshi v. Toronto Standard Condominium Corporation No. 1749, 2022 ONCAT 134

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

**Member:** Anne Gottlieb, Member

**The Applicant,**  
Paola Bukuroshi  
Self-Represented

**The Respondent,**  
Toronto Standard Condominium Corporation No. 1749  
Represented by Zelko Prodanovic, Agent

**Hearing:** Written Online Hearing – September 23, 2022 to November 18, 2022

### REASONS FOR DECISION

#### **A. INTRODUCTION**

- [1] The Applicant, Paola Bukuroshi, submitted a Request for Records (the “Request”) on June 15, 2022, as a unit owner of the Respondent condominium corporation (“TSCC No.1749”). TSCC No.1749 did not provide a Board Response to the Request for Records on the prescribed form as required by the Condominium Act, 1998 (the “Act”). The Respondent did not provide the records requested and gave no explanation for its failure to provide the records. TSCC No.1749 did not participate at all during this hearing, despite requests in the Tribunal online system to do so and calls and emails sent from Tribunal staff to the Respondent’s agent.
- [2] The Applicant requests records that establish a connection between an alleged plumbing leak and renovations to the unit below hers and invoices she was made to pay a year later. The Applicant expresses concern over four invoices that were sent to her, which amount to a substantial sum. They were sent to her approximately a year after the alleged plumbing incident, without any prior notice. She states that she was told by management that there would be a lien on her property if the invoices were not paid. She made the payment and requested records in connection with these invoices.

- [3] TSCC No. 1749 did not participate in this hearing. It gave no explanation for not providing the requested records to the Applicant. This is a refusal to provide records. I find that the Applicant is entitled to the records she requested and order TSCC No.1749 to produce the records within 30 days from the date of this decision. If any of these records do not exist, TSCC No.1749 is to provide a written confirmation itemizing the record and explaining that it does not exist.
- [4] I award a penalty of \$3000 to be paid to the Applicant by TSCC No. 1749 for the refusal to provide the records without a reasonable excuse. The Applicant requests her costs to bring this matter before the Tribunal. I find that the Applicant is entitled to the Tribunal filing fees which she paid, in the amount of \$200. The Applicant also requests reimbursement for expenses associated with the payment of the invoices rendered to her. These are not costs associated with this records case. I therefore decline to make such an order

## **B. BACKGROUND**

- [5] At the beginning of the hearing and throughout the hearing, I posted messages in the Tribunal's online system inviting and allowing TSCC No.1749 to participate. I asked Tribunal staff to contact the Respondent. They sent an email and left voice messages for Zelko Prodanovic, the condominium manager and agent for the Respondent. I am advised by Tribunal staff that they spoke with Mr. Prodanovic and informed him of the hearing and instructed him to gain access to the Tribunal ODR platform. There was no participation from Mr. Prodanovic or TSCC No.1749 despite being given ample opportunity and time to join and engage in the hearing. I am satisfied that the Respondent was aware of this case and knew that the hearing would proceed.
- [6] The Applicant provided evidence, made submissions and provided answers to questions put to her by me to clarify her evidence. I find the Applicant to be credible, and I accept her version of the facts leading up to the filing of this application.
- [7] The Applicant states that on April 26, 2022, she received two invoices from the condominium's management for work done in the unit located below her unit. She made several attempts to get an explanation from management about the bills. She states that instead of an explanation, she received two additional bills relating to plumbing leaks and renovations that had occurred a year earlier in the unit below. In all, there were four invoices totaling \$6,918.39.

[8] On June 15, 2022 the Applicant sent an email to Zelko Prodanovic, the condominium manager from Percel Inc., the condominium management provider, with a Request for Records. I am paraphrasing the Request, which asked for the following records in electronic form:

- April 18 2021 - Report of active leak {in unit below}
- April 18 2021 - Record of plumber entering our unit and any communication {email, notice} advising us about the source of leak
- April 2021 - Record {notice or email} informing us about the leak {in unit below} and plumber's finding
- April 2021- Record {allowing us to affect repairs} within a reasonable amount of time before the corporation carries out repairs
- April 2021 - Record or work order for work done {in unit below} from Omega Painting and Renovation
- April to June 2021 – Record of notifications {email or notice} to our unit about the leaks {in the unit below} and identifying our responsibility for the repairs

[9] On June 17, 2022, the Applicant received an email from Zelco Prodanovic. The email stated that “The Board is not obligated to provide reasons. Requested documents will be forwarded some time next week”. The Applicant did not receive any of the requested records and brought this case to the Tribunal.

### **C. ISSUES & ANALYSIS**

[10] The issues that relate to the Applicant's Request in this case are as follows:

1. Is the Applicant entitled to the records that she requested?
2. Did TSCC No.1749 reply to the Request within 30 days and use the mandatory form required by the Act?
3. Did TSCC No.1749 refuse to provide requested records without a reasonable excuse?
4. Should TSCC No.1749 be required to pay a penalty under s. 1.44 (1) 6 of the Act?
5. Should any costs or fees be awarded to the Applicant?

#### **Issue No. 1: Is the Applicant entitled to the records that she requested?**

[11] The Applicant seeks records relating to her unit, to explain the invoices she received from management for repairs to a unit located below hers, done a year earlier, that management billed to her. She maintains that she was not advised of any issue within her unit or caused by her unit and was not afforded an opportunity

to remedy any alleged plumbing issue or alleged damage caused by a plumbing leak. She is seeking records from the condominium corporation in order to understand and substantiate four invoices that she was made to pay, under threat of a lien to her unit.

[12] There is nothing before me to demonstrate that the Applicant is not entitled to the records she seeks pursuant to s. 55 of the Act. There is no evidence to suggest that these records would fall under an exempted category pursuant to s. 55(4) of the Act, (which might exempt the Respondent from the need to provide the records). In fact, s. 55(5) of the Act states that a unit owner should not be prevented from examining or obtaining copies of records that relate to that owner's own unit. As the invoices were attributed to her unit, the Applicant is entitled to receive records relating to those invoices.

**Issue No. 2: Did TSCC No. 1749 reply to the Request within 30 days and use the mandatory form required by the Act?**

[13] TSCC No.1749 did not satisfy the statutory requirements of the Act when responding to the Request and, specifically, sections 13.3 to 13.8 of O. Reg. 48/01. The evidence submitted by the Applicant shows an email from management dated June 17, 2022, which is two days after the Request was made. It is not on the proper Board Response to Request for Records form and does not contain the information the form would have contained. According to the Applicant, nothing was provided by the Respondent regarding her Request, other than the email of June 17, 2022, from management. This email states that the documents would be provided, the following week, but none were ever provided to her.

**Issue No. 3: Did TSCC No. 1749 refuse to provide requested records without a reasonable excuse?**

[14] There are two noteworthy aspects to the email from management. One is that it states "the Board is not obligated to provide reasons". The second is that TSCC No. 1749 failed to follow through and provide the records, the following week. If an invoice or a chargeback is made to a unit, the unit owner is entitled to know the reason for it. In this case, the Applicant requested records to show a connection between her unit and the alleged plumbing and damage to the unit below, which occurred a year before. The condominium corporation did not provide the records, as they stated they would. The refusal is effected by the lack of delivery of the requested records. I find that TSCC No. 1749 has refused to provide the records requested by the Applicant without reasonable excuse.

**Issue No. 4: Should TSCC No. 1749 be required to pay a penalty under s. 1.44 (1) 6 of the Act?**

[15] Under 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.” I have so found.

[16] Where a penalty is awarded, it is meant to warn the corporation not to repeat these actions. A condominium corporation has an obligation to provide records to owners, and if they refuse to do so, the Act provides for a remedy, by way of a penalty, up to a maximum of \$5,000.

[17] The Applicant initially requested a penalty from the management provider. The Applicant asked me to award a penalty commensurate with the amount it would cost her to make the repairs, had she been advised about the problem at the time, and the amount invoiced by the condominium corporation, a year later. That is not the case before me. I explained the jurisdiction of the Tribunal and that awards were made between one party and another, and the scope of this case. The Applicant addressed the refusal of the condominium corporation “to provide the requested documents, whether upon my initial request directly to them for records when I received the bills or during any of the stages of this case with CAO.” I find, based on the evidence before me, that a penalty in the amount of \$3,000 is an appropriate penalty to serve as caution for TSCC No. 1749 not to disregard any future requests made by owners for records.

**Issue No. 5: Should any costs or fees be awarded to the Applicant?**

[18] The Tribunal may 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 Applicant has been successful in this proceeding and asked for her expenses incurred throughout the hearing. I find that the Applicant is entitled to the Tribunal filing fees which she paid, in the amount of \$200.

[19] The Applicant also requested \$12.23 to deliver a cheque to the TSCC No. 1749 and \$2.19 for postage. These expenses were associated with the payment of the invoices rendered to her and are not part of the records case. I therefore decline to make such an order.

**D. CONCLUSION**

[20] The Applicant was successful in her application before the Tribunal. I find that she is entitled to a copy of the records that she requested. TSCC No. 1749 will have 30 days from the date of this decision to provide the Applicant with a copy of the requested records. The email from management indicated such records did exist and I order them to be produced to the Applicant. If any of these records do not exist, TSCC No. 1749 is to provide a written confirmation to the Applicant, itemizing the record and explaining that it does not exist. TSCC No. 1749 is to pay the Applicant the penalty and costs in accordance with the Order set out below.

## **ORDER**

[21] The Tribunal orders that:

1. Within 30 days of the date of this decision, TSCC No. 1749 shall, at no cost to the Applicant, either provide copies of the records listed below or provide a written confirmation indicating which of these records do not exist:
  - a) April 18 2021 - Report of active leak in unit below the Applicant's and any related work order to a plumber to effect repairs
  - b) April 18 2021 - Record of plumber or management or board communicating with the Applicant about the source of a leak in the unit below hers
  - c) April 2021 - Record or email or notification from management or board to the Applicant advising that she would be responsible for the repairs to the unit below
  - d) April 2021 – Copy of work orders and authorization from management to Omega Painting and Renovation for work to the unit below that of the Applicant
  - e) April to June 2021 – Record of any discussion or emails from management to the Applicant about repairs and cost of repairs to the unit below hers, arising from plumbing leaks and detailing the Applicant's responsibility for the repairs
2. Within 30 days of the date of this decision, TSCC No. 1749 shall pay a penalty of \$3,000 to the Applicant.
3. Within 30 days of the date of this decision, TSCC No. 1749 shall pay \$200 to the Applicant in respect of the fees paid to bring this case before the Tribunal.

4. If the full amount of \$3,200 is not provided to the Applicant within 30 days of this Order, the Applicant can set-off remaining amounts due against the common expenses attributable to the Applicant's unit under section 1.45(3) of the Act.
5. To ensure that the Applicant does not pay any portion of the penalty or costs awarded, the Applicant shall be given a credit towards the common expenses attributable to her unit, equivalent to the unit's proportionate share of the above penalty and costs.

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Anne Gottlieb  
Member, Condominium Authority Tribunal

Released on: November 30, 2022