

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 13, 2023

CASE: 2023-00215N

Citation: Beierl v. Peel Standard Condominium Corporation No. 661, 2023 ONCAT 78

Order under section 1.41 of the *Condominium Act, 1998*.

Member: Dawn Wickett, Member

The Applicant,
Walter Beierl
Self-Represented

The Respondents,
Peel Standard Condominium Corporation No. 661
Represented Francesco Deo, Counsel

Unidentified Unit Owner

The Intervenor,
Unidentified Unit Occupant

Submission Dates: June 1, 2023, to June 8, 2023

DISMISSAL ORDER

- [1] The Applicant filed an application with the Condominium Authority Tribunal (CAT). The case proceeded to Stage 3 - Tribunal Decision ("Stage 3") on May 30, 2023, as a default proceeding because not all the parties joined the case.
- [2] The Applicant brought this application to the Tribunal because of alleged nuisances created by the occupants of unit #3310. Unit #3310 is alleged to be used as a short term rental. The Applicant alleges that the guests create unreasonable noise, odour (cannabis) and vibration. The Applicant believes the Respondent has been negligent in their duties by not enforcing the corporation's by-laws and rules with respect to these issues. The Applicant is seeking compensation for his legal fees and for the disruption to his "peaceful lifestyle".
- [3] The Intervenor is identified as the occupant of unit #3310 and they did not join the case. While the Applicant named the unit owner as a Respondent, he did not provide any identifying information such as their name or address.
- [4] The Respondent is Peel Standard Condominium Corporation No. 661 ("PSCC

661”) and joined the case in Stage 3.

- [5] At the onset of the hearing, I noticed that there were inconsistencies in the information provided by the Applicant with respect to information about the Intervenor. Namely the unit number identified in the party’s information and in the application description.
- [6] I asked the Applicant to clarify the inconsistency about the unit number, and asked who he served notice of this case to, and how.
- [7] The Applicant explained that he put his own unit number in the Intervenor’s information and indicated that he was “not familiar with some of the technologies.” The Applicant then advised that he served both the Intervenor and the Respondent the Notice of Case (“notice”) by placing it on the door of their respective units (office door for the Respondent). To confirm the method of service, the Applicant provided pictures of the notices placed on each unit door. The pictures revealed that the incorrect notices were served to each party.
- [8] The Applicant’s account of how he served the notices was inconsistent with his previous information provided to the Tribunal. At the time of filing his application, the Applicant confirmed he served the parties by regular mail.
- [9] The Tribunal’s Rules of Practice (“Tribunal’s Rule”), Rule 20.1 states that a notice must be served by handing it to the person, or by sending it by regular mail. Posting it on the door is not an acceptable method of service.
- [10] Based on the above information, on June 1, 2023, I brought forward a motion to dismiss this application given the notices were not properly served to the parties and may account for their lack of participation in the proceeding. All parties were afforded the opportunity to provide submissions.
- [11] The Applicant did not provide any submissions. Rather, he sent inappropriate messages in the ODR system that did not address the concerns raised in the motion.
- [12] The Respondent submits that the application should be dismissed because the Applicant failed to serve the notice in accordance with the Tribunal’s Rule 20.1, and further he served the incorrect notice to the parties. The incorrect notice being served prevented the Respondent from being privy to the Applicant’s confirmation of mailed delivery in the ODR system, contributing to the technical difficulties joining the case in Stage 1 and Stage 2. The Respondent had to seek assistance from a Tribunal staff member, and once they successfully joined, the matter was already in Stage 3 as a default proceeding.
- [13] The Respondent submits that the improper service of the notice deprived PSCC 661 of its “procedural right to a negotiation and/or mediation.”

Analysis and Finding

[14] Having considered the submissions before me, I find the Applicant did not serve the notices to the Intervenor and Respondent in accordance with the Tribunal's Rule 20.1. In making my finding, I considered the Applicant's evidence that he served the notices by placing them on the door of the units. I also consider the uncontested submissions of the Respondent that they received the incorrect notice which contributed to PSCC 661's difficulty joining the case prior to Stage 3, depriving it of their procedural right to a negotiation and/or mediation. Further, given the Applicant's error in serving the notice, I find it unfair to the Intervenor and the Respondent because they were not given proper notice of the case against them which contradicts the rules of natural justice. In any legal proceeding, for it to be fair, each party has the right to know the case against them, as well as being afforded an opportunity to respond. If after receiving proper notice, a party chose not to participate in the proceeding, only then would it be appropriate for a matter to proceed as a default proceeding.

[15] Under the Tribunal's Rule 20.4, the Tribunal can dismiss a case if a party fails to deliver a document as required by its Rule 20.1. The Tribunal's Rule 20.4 (c) reads as follows:

If a Party fails to deliver a paper document as required, the CAT may:

(c) dismiss the Case or Request.

[16] As I have found that the Applicant did not serve the notices to the Respondent and the Intervenor in accordance with the Tribunal's Rule 20.1, pursuant to the Tribunal's Rule 20.4 the application is dismissed. As I have not heard any evidence regarding the substantive issues of this application, I find it appropriate that this application is dismissed without prejudice. Accordingly, the Applicant, if he so chooses, may file a new application with the Tribunal. Should he require assistance with properly filing an application, the Applicant can seek assistance from the Tribunal's staff.

ORDER

[17] The Tribunal orders that:

1. This case is dismissed without prejudice.

Dawn Wickett
Member, Condominium Authority Tribunal