

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 12, 2023

CASE: 2022-00750R

Citation: Stancu v. York Region Standard Condominium Corporation No.1055, 2023 ONCAT 130

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

Member: Dawn Wickett, Member

The Applicant,

Mihai Stancu

Self-Represented

The Respondent,

York Region Standard Condominium Corporation No.1055

Represented by Antoni Casalnuovo, Counsel

Hearing: Written Online Hearing – July 25, 2023 to August 25, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner in York Region Standard Condominium Corporation No.1055 (“YRSCC 1055”).

[2] The Applicant brings this case to the Tribunal because he believes the Respondent has failed to provide him records in response to his request for records of February 16, 2023. The request sought to examine the following records:

1. invoice for fence replacement
2. the construction shop drawings as per tender document for the retaining wall: Part 1 General - scope of work summary of work 01010 item j.
3. the consulting reports.

[3] YRSCC 1055 responded to the Applicant’s request for records by email on March

24, 2023, indicating that they would be providing him with a copy of the requested records. The Applicant takes issue with the fact that the Respondent did not respond to his request for records using the mandatory board response form.

- [4] The Respondent provided the Applicant with the above noted records on March 28, 2023, after the case was filed with the Tribunal.
- [5] The matter proceeded to a hearing because the Applicant believes the details of the October 1, 2016, fence repair invoice are inadequate, and because the Respondent did not provide the mandatory board response form. The Applicant also believes a penalty should be imposed against the Respondent for failing to provide the records within the prescribed thirty-day period. It is the Applicant's position that a penalty ordered against the Respondent could act as a reminder that it "be more mindful of its legal obligations" when responding to requests for records. The Applicant also seeks an order requiring that each current acting director of YRSCC 1055 take or retake the mandatory director training. The Applicant seeks to be reimbursed the cost (\$200) for filing this application.
- [6] The Respondent's Counsel submitted that YRSCC 1055 has been responsive to the Applicant's requests for records, and in fact provided multiple copies of records in response to various requests made by the Applicant since 2019. The Respondent concedes it did not use the mandatory board response form, so one was never provided to the Applicant. Counsel submitted that this application is "meritless litigation" and an abuse of the CAT process. It is the Respondent's position that the Applicant's intention is to undermine the governance of its board.
- [7] The Respondent's Counsel submitted that the details contained in the fence repair invoice are adequate. The Respondent cannot be held to the standard of perfection as previously confirmed in prior decision of this Tribunal. Further, Counsel submitted that "there are no grounds for the CAT to penalize or sanction YRSCC 1055, especially when the Applicant acknowledges receipt of the very documents under contention". Rather, the Applicant is on a fishing expedition and his behaviour is an abuse of the CAT process. Counsel submitted that the Applicant's behaviour warrants intervention from the Tribunal by way of an order restricting his ability to file future applications without the Tribunal's permission. Because of the Respondent's position about the Applicant's behaviour, it seeks an order requiring the Applicant to reimburse it \$6,620.67 for partial indemnity of its legal costs. This amount is inclusive of Stage 1, 2 and 3 of the Tribunal proceedings.
- [8] For the reasons that follow, I find the Respondent did not respond to the Applicant's February 16, 2023, request for records within the prescribed thirty-day

period as set out in section 13.3 (6) of Ontario Regulation 48/01 (O. Reg 48/01). I am further satisfied that the Respondent has not complied with the requirement of section 13.3 (7) of O. Reg 48/01 as it did not provide its response to the Applicant's request for records on the mandatory board response form. I will not order the Respondent to reimburse the Applicant his cost for filing this application. I decline to make an order requiring the Respondent's current directors to take or retake the mandatory directors training. There is no basis for me to make an order for costs in favor of the Respondent, or an order requiring the Applicant to seek the Tribunal's permission before filing a new application.

[9] Both parties provided a significant amount of evidence, most of which was not relevant to the issues in dispute. In making my determinations, I rely on and refer to only the relevant evidence.

[10] Before turning to the issues in dispute in this case, I will address a preliminary issue which arose at the onset of the hearing.

B. PRLIMINARY ISSUES

[11] Counsel for the Respondent submitted that the Applicant's requests for records dated June 21, 2019, January 23, 2020, and March 15, 2021 "are beyond the time frame for which the CAT can make any orders" and can only be considered for factual background. Counsel further submitted that the Tribunal is statute barred from granting an extension of time for the Applicant's January 23, 2020, request for records.

[12] The Applicant agreed that the June 21, 2019, request for records is out of time and cannot form part of this hearing.

[13] The Applicant submitted he filed his application on December 26, 2022, which means requests for records dating back to December 26, 2020, can form part of his application. As such, the Applicant submitted that his March 15, 2021, request for records is within the two-year statutory limitation period and can form part of this hearing. The Applicant relied on section 1.36 (6) of the *Condominium Act, 1998* (the "Act") which states an application must be made within two years after the dispute to which the application relates arose.

[14] With respect to his January 23, 2020, request for records, the Applicant requested an extension of time as in his view, is permissible under section 1.36 (7) of the Act which reads as follows:

(7) If a person does not make an application within the deadline mentioned in subsection (6), the Tribunal may extend the deadline for a time of no more

than one additional year if the Tribunal is satisfied that the delay in not applying was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

- [15] In support of his request, the Applicant submitted that his request to extend time is made in good faith and that there is minimal prejudice to the Respondent as the content of the January 23, 2020, request for records, is replicated in the subsequent requests which are subject to this hearing. The Applicant further submitted that the delay in filing is because he did not think he needed to file an application with the Tribunal as the Respondent led him to believe that the records would be provided.
- [16] During the hearing, I ruled that the Applicant was entitled to bring this application in regards to the request for records of March 15, 2021, because it was within the two-year limitation period as set out in section 1.36 (6) of the Act. I also granted the Applicant's request to extend time to allow him to include the January 23, 2020, request for records. In making my decision, I not only considered the limitation period, but also the Stage 2 Summary and Order which ordered both requests be subject to the Stage 3 hearing. However, in review of the evidence and the governing legislation, I find I made an error by allowing the March 15, 2021, request be part of this proceeding, as well as I erred in granting an extension of time to include the January 23, 2020, request.
- [17] While section 1.36 (6) of the Act states that an application must be made within two years after the dispute to which the application relates arose, this does not apply to requests for records. Section 13.10 of O. Reg 48/01 explicitly states that a request for records shall be deemed abandoned and have no force and effect, if within 60 days of receiving the board response, the requester does not apply to the Tribunal for resolution of the requests as a matter in dispute. Section 13.10 (2) of O. Reg 48/01 states that where there is no board response, the request shall be deemed abandoned if, within six months of delivery of the request, the requester does not file a dispute with the Tribunal. The word "shall" in these sections of O. Reg 48/01 indicates that I have no discretion on this issue. As such, I find the Applicant's January 23, 2020, and March 15, 2021, records requests cannot form part of the issues in dispute. The requests are deemed abandoned as the Applicant did not file an application within the Tribunal within the prescribed period of 60 days, or six months as set out in O. Reg 48/01.
- [18] While the Applicant is likely disappointed with my finding, it should not come as a surprise. In review of the Tribunal's records, I note the Applicant was advised at the time he filed his application on December 26, 2022, that these requests for records were deemed abandoned under the governing legislation. The Tribunal

staff gave the Applicant the opportunity to correct his application by providing a request for records that was not abandoned and within in time. On March 22, 2023, the Applicant rectified the issues identified in his application by providing the February 16, 2023, request for records.

[19] I note that my finding does not impact the outcome of this order. Essentially, the records for which the Applicant sought to examine in his requests of January 23, 2020, and March 15, 2021, are duplicated in the February 16, 2023, request.

C. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent provided the requested records and the board response forms?

[20] As previously stated above, the records the Applicant seeks to examine were provided to him on March 28, 2023, during the Tribunal proceedings. This is beyond the prescribed thirty- day period in which the Respondent ought to have provided the records and the board response form. The records were provided to the Applicant 10 days late.

[21] The Respondent's condominium manager, Linda Gabriele testified that it is her position that the Respondent provided the Applicant with the requested records within the prescribed thirty-day period. Ms. Gabriele acknowledges that the Respondent did not respond to the Applicant's request for records using the mandatory board response form. Going forward, Ms. Gabriel advised that the Respondent will use the mandatory board response form when responding to all request for records. Ms. Gabriele testified that it was not until she spoke with Counsel that she understood the "basis for the use of the form".

[22] With her testimony, Ms. Gabriele submitted copies of emails and documents she provided to the Applicant which she stated support her position that the Respondent responded to the Applicant by email and provided the requested documents. The email response is dated March 24, 2023, and indicates that the Respondent would be providing the Applicant the records he requested. This is inconsistent with Ms. Gabriele's assertion that the Respondent provided the records to the Applicant within the prescribed thirty-day period, given her email response to the request is dated one week after the prescribed deadline.

[23] Based on this evidence, I find the Respondent failed to respond to the Applicant's request for records within thirty days and failed to provide its response on the mandatory board response form.

[24] Since the records have been provided to the Applicant during of the Tribunal proceeding, the issue is moot. There is no need for me to make an order requiring the Respondent to provide the records to the Applicant.

[25] Given the Applicant has received the requested records in March 2023, I find there is no benefit to ordering the Respondent to now provide the Applicant with a completed board response form. However, I am concerned about Ms. Gabriele's statement that it was not until speaking with Counsel that the Respondent understood the need to use this form, despite it being a requirement under the governing legislation. I encourage the Respondent to be more diligent going forward by using the mandatory board response form in reply to all request for records it receives.

Issue No. 2: Are the details of the fence repair invoice adequate?

[26] The Applicant submitted that details in the fence repair invoice dated October 1, 2016, are inadequate as it does not contain the following:

- a) GST/HST number
- b) Business trade registration number
- c) Customer purchase order number and its corresponding date

[27] The Applicant submitted that in the absence of this information being included on the invoice, it makes tracing this information difficult.

[28] Ms. Gabriele testified that the Respondent "has minimal control over how third parties prepare invoices". She further advised that she will obtain the GST/HST number and provide it to the Applicant if need be.

[29] In making my determination as to the adequacy of the details in the invoice, I note that the Tribunal has previously determined that accuracy is contextual and there can be tolerance for imperfections. What is most important is that there is enough information contained in the record to allow owners to understand.

[30] I have reviewed the invoice in question, I find it is adequate in its details as it provides sufficient information within the document for a full understanding of the invoice. The invoice sets out that the work is for repair to the fence, who requested the work, the amount it will cost (subtotal, HST and total), the date and the invoice number. It also includes name of the company who prepared the invoice, their contact numbers and address.

Issue No. 3: Should a penalty be imposed?

[31] The Applicant submitted that a penalty should be imposed on the Respondent for failing to provide him with records within thirty days of his request for records. The Applicant's position is that a penalty could promote the Respondent's compliance with its obligations under the governing legislation.

[32] The Respondent submits that it should not be penalized because it took all reasonable steps to comply with its obligations by providing the Applicant with the requested records within the prescribed thirty-day period. The Respondent submitted that it went above and beyond to satisfy the Applicant's requests for records.

[33] Having reviewed the evidence before me, I find a penalty against the Respondent is not warranted. Penalties are only imposed, pursuant to section 1.44(1)6 of the Act when a corporation refuses without reasonable excuse to provide records to a unit owner. I do not find that is the situation in this matter. The evidence demonstrates that while the records were provided beyond the prescribed thirty-day period, the delay was minimal being less than two weeks. Further, the Respondent's evidence suggests that they want to cooperate with its owners and be responsive to their requests for records. While a delay in providing records has been found in certain situation to be a refusal without a reasonable excuse, on the evidence before me the intention was to provide the records.

D. Should costs be awarded?

[34] The Applicant has requested that the Respondent reimburse him the cost of filing this application.

[35] The Respondent's Counsel has requested that the Applicant reimburse YRSCC 1055's legal fees for responding to this application. Counsel submitted that the Applicant having filed this application amounts to an abuse of the Tribunal's process, and as such he should be ordered to pay costs. In support of his position, Counsel relied on various Tribunal cases where costs were ordered because of an applicant's behaviour and application having been filed for an improper purpose.

[36] The Applicant success in this matter was limited. I say this because the result of this hearing is a decision with no order. The Applicant successfully obtained copies of the records he sought to examine during the Tribunal proceeding and successfully identified the Respondent's need to use the mandatory board response form. However, the Applicant did not get any of the remedies he sought which were largely the substance of this application. For these reasons, I find the

Applicant is not entitled to an order requiring the Respondent reimburse him the cost of filing this application.

[37] Regarding the Respondent's claim for the cost of legal fees it incurred to respond to this application, I decline to make such an order. While the Respondent's Counsel submitted that the application was an abuse of the Tribunal's process and that the Applicant's behaviour warrants a cost order, I disagree. This is the first application the Applicant has brought to this Tribunal. The evidence is indicative of an acrimonious relationship between the parties that ultimately lead to a breakdown in communication, and the Applicant not receiving the records he requested to examine within the prescribed time. As such, although the Applicant could not obtain his sought-after remedies, he was entitled to file this application to seek resolution to the issue. The Applicant's conduct during the hearing was respectful and did not cause any unnecessary delays which would be a consideration should an award for cost have been ordered. For these same reasons, I find there are no grounds to make an order requiring the Applicant be required to first obtain the Tribunal's permission to file future applications.

[38] Regarding the relationship between the two parties, I feel compelled to provide comments. This matter was relatively straightforward, and likely could have been resolved without a hearing had the parties put their differences aside and worked collaboratively to resolve the issue. I can say by reviewing the evidence, it was clear to me that both the Applicant and the Respondent must shoulder accountability for the breakdown in the relationship. Going forward, I encourage the parties to find a way to resolve their differences. Co-existing in a condominium setting requires collaboration, patience, respect and flexibility to help foster a positive community.

E. ORDER

[39] The Tribunal makes no order.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: September 12, 2023