

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: September 15, 2023

CASE: 2023-00297R

Citation: Richards v. Peel Condominium Corporation No. 27, 2023 ONCAT 132

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Dawn Wickett, Member

The Applicant,
Anne Richards
Self-Represented

The Respondent,
Peel Condominium Corporation No. 27
Represented by Patrick Nelson, Counsel

Submission Dates: September 5, 2023 to September 8, 2023

MOTION ORDER

- [1] The Applicant filed this application with the Tribunal on May 27, 2023. The issues in dispute stem from the Applicant's request for records dated April 18, 2023. The Applicant alleges she did not receive all the records (November 22, 2017 meeting minutes) she requested to examine. Further, the Applicant alleges the Respondent did not respond to her request by using the mandatory board response form, and its records are inadequate. The Applicant seeks an appropriate remedy for the records being inadequate, a penalty against the Respondent and an order for costs.
- [2] The Respondent, Peel Condominium Corporation No. 27 ("PCC 27") brings this motion to have the Tribunal dismiss the application pursuant to Rule 19.1 of the Tribunal's Rules of Practice.
- [3] The Respondent's Counsel submits that the Tribunal has no jurisdiction to hear this application because it is out of time. Counsel cited the statutory limitation period set out at section 1.36 (6) of *the Condominium Act, 1998* (the "Act") which states:

Subject to any other provision of this Act, an application must be made within two years after the dispute to which the application relates arose.

- [4] It is the Respondent's position that the issues in dispute arose in May 2018, and

because the Applicant did not file an application within two years of that date, the Tribunal is precluded from hearing it. The Respondent's Counsel further submitted that the Tribunal's discretion to extend time for a period of one year, pursuant to section 1.36 (7) of the Act is also out of time.

- [5] Additionally, the Respondent's Counsel submitted that the remedy the Applicant is seeking, being a penalty, is not within the Tribunal's jurisdiction in this matter because the issues in dispute are not about the Respondent refusing to provide records without a reasonable excuse. Rather, it is the Respondent's position that this application is about the Applicant's contention with the fact that the November 22, 2017, owner's meeting minutes have not yet been approved.
- [6] Based on the foregoing, the Respondent's Counsel submitted that the Tribunal should dismiss this application.
- [7] The Applicant submitted that her application is not out of time, and that the remedies sought are within the jurisdiction of the Tribunal. The Applicant submitted that her application is based on her request for records dated April 18, 2023, for which the Respondent did not provide a response on the mandatory form. She further submitted that because she did not receive the documents she requested to examine without being provided a reasonable excuse, the Tribunal can consider the remedy of a penalty pursuant to section 1.44(1)6 of the Act.
- [8] Having considered the submissions of both parties, I find that this application is not out of time as submitted by the Respondent. The statutory limitation period cited by the Respondent is not applicable to this matter. The dispute is not about what occurred between the parties in May 2018. The application is based on the Applicant's April 18, 2023, request for records, and her contention that the Respondent has not complied with the Act and the Ontario Regulation 48/01 in terms of its response, and adequacy of records. Applications based on requests for records are subject to the provisions set out in section 13.10 of the Ontario Regulation 48/01 which states that a request for records application must be filed with the Tribunal within sixty days of receiving the board response or within six months of no board response. Given the Applicant filed her application just over 30 days from the date of her request for records, there can be no other determination that it was filed within time and can be heard by the Tribunal.
- [9] Regarding the Tribunal's authority to order penalty against the Respondent, I find it is premature decide this issue given the hearing is not yet concluded. A decision on the issue of a penalty will form part of the final order upon the conclusion of the hearing.

ORDER

[10] The motion is dismissed.

Dawn Wickett
Member, Condominium Authority Tribunal

Released on: September 15, 2023