

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 18, 2024

CASE: 2024-00002SA

Citation: Callaghan v. Toronto Standard Condominium Corporation No. 1465, 2024 ONCAT 42

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Marc Bhalla, Member

The Applicant,

Patrick Callaghan
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1465
Represented by Jessica Hoffman, Counsel

Hearing: Written Online Hearing – January 18, 2024 to March 15, 2024

Videoconference Hearing – January 26, 2024, February 23, 2024 & March 15, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner of the Respondent condominium corporation. On July 12, 2023, the parties entered into a Settlement Agreement resolving a records dispute, CAT case 2023-00158R. The Applicant alleges that the Respondent is in breach of the Settlement Agreement.
- [2] In the hearing, I cautioned the Applicant that their submissions seemed to extend beyond the consideration of a settlement agreement breach. I allowed the Applicant to provide their full submissions. This decision focuses only on the issues to be decided in this settlement agreement compliance case.
- [3] In addition to the claim of a settlement agreement breach, I was asked to decide if a cost award is appropriate. As I will explain, compliance with the Settlement Agreement is ordered and each party is to bear their own costs.

B. ISSUES & ANALYSIS

Is the Respondent in breach of the Settlement Agreement?

[4] Each of the four paragraphs of settlement terms are addressed individually to determine this issue.

Settlement Term #1: The Parties have resolved the case in Mediation by the Respondent providing the periodic information certificate ("PIC") dated February 25, 2022, the PIC dated August 30, 2022, and the Rules of the Toronto Standard Condominium Corporation No. 1465 ("Corporation")

[5] This settlement term captures a past action. The Respondent cannot be found in breach of this settlement term.

Settlement Term #2: The Respondent will also revise the PICs of February 25, 2022, and August 30, 2022 by July 31, 2023, to include appropriate attachments, and revising sections 2(i), section 4, and section 5 per discussions in Mediation, in compliance with the Condominium Act, 1998, and subject to the advice of the Respondent's professional advisors.

[6] This settlement term has two components:

1. Timing of Revisions - the Respondent was to make the revisions by July 31, 2023. It revised the PICs and provided them to the Applicant around August 10, 2023. This is a breach, as the responses were due by July 31, 2023. The Respondent addressed the breach before this case was filed and the breach is inconsequential.
2. Nature of Revisions – this pertains to the listed sections of the PICs. As the settlement term does not clearly set out what the parties agreed to in mediation discussions or what they agreed would constitute compliance with the *Condominium Act, 1998* (the "Act"), I cannot find a breach on either basis. As the Respondent confirmed it relied on professional advice for the revisions, the Respondent is not in breach of this component of the settlement term.

Settlement Term #3: The Respondent by July 31, 2023 will provide written answers to the following questions:

1. *What was the deficit for the financial year ending on September 2021, and the deficit for the financial year ending on September 2022?*
2. *What was the plan to clear the deficit for financial years ending on September 2021, and September 2022?*

3. *What is the timeline to clear the deficit for the financial years ending on September 2021, and September 2022.*

[7] The Respondent answered the questions by email on August 10, 2023. This is a breach of the settlement term, as the responses were due July 31, 2023. The Respondent addressed the breach before this case was filed and the breach is inconsequential.

Settlement Term #4: The Respondent to pay \$200 to the Applicant to reimburse for CAT fees.

[8] The Respondent admits it did not pay the Applicant and states this was inadvertent. The Respondent is prepared to pay the Applicant. While this settlement term lacks a deadline, I find the Respondent is in breach of the Settlement Agreement by not paying the Applicant \$200. I order the Respondent's compliance.

Is an award of costs appropriate?

[9] The Applicant seeks recovery of their filing fees and time spent at CAT. They contacted the Respondent's Board of Directors prior to filing this case to try to address their concerns. The Applicant invested much time over the past two years on the records matter.

[10] The Respondent seeks recovery of its legal costs on a full indemnity basis. It references the extensive submissions of the Applicant and submits that it acted in good faith at all times.

[11] There is little doubt the parties spent considerable time on a case that amounts to simply the breach of a settlement term calling for the payment of \$200. This is because most of their issues extend beyond the Settlement Agreement and compliance therewith. The lack of detail in the settlement terms has resulted in varying understanding between the parties about what they agreed to. With respect to the revision of the PICs, I wonder if the parties actually reached agreement. This falls beyond the issues of this case, as the dispute between the parties is about the content of the records more so than compliance with the Settlement Agreement.

[12] Cost awards are discretionary. In this case, the Applicant's submissions were excessive and the Respondent is in breach of the Settlement Agreement. I find no cost awards to be appropriate.

C. ORDER

[13] The Tribunal orders the Respondent to pay \$200 to the Applicant, as called for in the Settlement Agreement. Should the Respondent not pay the Applicant within 15 days, the Applicant may set-off the amount against the common expenses attributable to their unit(s) as in section 1.45(3) of the Act.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: March 18, 2024