

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 20, 2024

CASE: 2023-00723R

Citation: Smith v. Peterborough Condominium Corporation No. 38, 2024 ONCAT 45

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

Member: Michael Clifton, Vice-Chair

The Applicant,

Robert Smith

Self-Represented

The Respondent,

Peterborough Condominium Corporation No. 38

Represented by Margaret Rea, Agent

Hearing: Written Online Hearing – March 4, 2024 to March 13, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] This is not the parties' first case before this Tribunal. In fact, according to the Applicant, this is the ninth time he has brought a case against this Respondent in relation to a Request for Records. Though most cases resolved before reaching Stage 3 of the Tribunal process, two cases have resulted in orders issued by the Tribunal.
- [2] On December 21, 2023, the Applicant delivered his latest Request for Records to the Respondent, seeking copies of minutes of the Respondent's board meetings held between October 1, 2023, and the date of the request. The Respondent replied more or less immediately on the prescribed form that there were no such records since the relevant minutes had not yet been approved. The Applicant was dissatisfied with this response and commenced these proceedings.
- [3] The application to the Tribunal was filed by the Applicant on December 22, 2023, one day after the Request for Records was delivered and responded to. The file was moved to Stage 2 – Mediation less than two weeks later on January 3, 2024. While the parties were still engaged in Stage 2 – Mediation, the Respondent was

able to approve the minutes in question and delivered them to the Applicant. They were uploaded to the CAT-ODR system on January 17, 2024, which was within 30 days of the Applicant's request being made, consistent with legislative requirements.

- [4] Having received the requested records, the Applicant then demanded that he also be reimbursed his \$75 Tribunal filing fees. Because the Respondent did not agree to do so, he applied to move this case to Stage 3 – Tribunal Decision, at an additional cost to himself of \$125.
- [5] The Applicant acknowledges he has received the records he requested. His position in this hearing is solely that he is entitled to reimbursement of his "\$75.00 and now \$200.00 in costs."
- [6] On review of the Stage 2 Summary and Order setting out the background and sole issue of the case, I invited both parties to provide submissions regarding the apparent grounds for its dismissal. After reading the parties' submissions and obtaining answers to some further clarifying questions, I concluded that this case should be dismissed. The subject matter of the case is a minor issue and I find that it has no reasonable grounds or prospect of success.
- [7] I order that the case is dismissed without costs to either party.

B. REASONS

- [8] The minor nature of the Applicant's claim is evident on its face. The irony of spending \$125 in pursuit of \$75 serves to make the issue stark.
- [9] To justify his claim, the Applicant cited various past faults of the Respondent, including allegations about the Respondent's degree of compliance with prior orders of this Tribunal. None of those issues, however, are relevant to this case. This case cannot be used to re-litigate prior cases or to seek enforcement of prior Tribunal orders.
- [10] The Respondent had stated in its Board's Response to Request for Records form delivered to the Applicant, that it was unable to provide the minutes when they were requested since they either did not exist or had not been approved at that time. As they explained in that form:
 - 1. The board had held only one special meeting in November 2023 to review its budget, and approval of prior meetings' minutes was not on its agenda for that meeting; and

2. subsequently several board members fell ill, as a result of which no further meetings were held prior to the date of the Applicant's request.

- [11] In its submissions in this case, the Respondent noted that the intervening holiday period also impacted the scheduling of board meetings.
- [12] The Applicant suggests that the Respondent's reasons set out in its Board's Response to Request for Records form are "illogical". I disagree. The Respondent's reasons are not only logical in form and substance, but they also appear on a balance of probabilities to be true.
- [13] As it turned out, the Respondent's next board meeting took place on January 5, 2024, just 15 days after the Applicant's Request for Records was submitted. The Respondent was able to approve the requested minutes at that meeting. However, by that time the Applicant had already commenced this case (on December 22, 2023) and moved it from Stage 1 – Negotiation to Stage 2 – Mediation (on January 3, 2024). The Respondent provided the requested minutes during Stage 2 (on January 17, 2024).
- [14] The Applicant submitted that the quick filing and progress of the case were necessary since his need for the minutes was "time-sensitive" on account of a pending owners' meeting. However, he provided no evidence of that meeting or that his actions caused the minutes to be delivered any sooner than they otherwise might have been. I noted that, under the legislation, the Respondent had up to 30 days from the date of the request to deliver the records anyway. It also does not appear from either party's submissions that any attempts were made to obtain the records sooner without recourse to the Tribunal.
- [15] While the Respondent's reasons for refusing to provide the requested records in this case appear reasonable, the Applicant's reasons for commencing Tribunal proceedings when he did are not. On the facts of this case, it is clear that the Applicant had a longer window of time than just one day in which to communicate directly with the Respondent and attempt to resolve this dispute without immediately commencing Tribunal proceedings.
- [16] While I cannot know what transpired during the early stages of these proceedings, given the apparent inability of the Respondent's board to formally meet on account of illness and other reasons during Stage 1 - Negotiation, it is unlikely that there was a reasonable chance for a resolution to be reached before the case was moved to Stage 2 – Mediation. I also find that the Applicant had no reasonable basis for moving this case to Stage 3 once the records were received or for expecting the Tribunal to order the reimbursement of his Tribunal filing fees.

[17] Given those facts and the minor nature of the issue in this case, the Applicant's case must be dismissed.

[18] As the Applicant has been unsuccessful, neither party was represented by counsel, and submissions were minimal, there is no basis for any award of costs in this case.

C. ORDER

[19] The Tribunal orders this case dismissed without costs.

Michael H. Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: March 20, 2024