

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 6, 2025

CASE: 2024-00597R

Citation: Nguyen v. Peel Condominium Corporation No. 96, 2025 ONCAT 21

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

Member: Nicole Aylwin

The Applicant,

Bich Nguyen

Represented by Nathan Den Ouden, Agent

The Respondent,

Peel Condominium Corporation No. 96

Represented by Anthony Spadafora, Counsel

Hearing: Written Online Hearing – November 26, 2024 to January 27, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Bich Nguyen (the “Applicant”) is an owner of the Respondent Peel Condominium Corporation No. 96 (the “Respondent”). On August 21, 2024, the Applicant submitted a Request for Records to the Respondent requesting board meeting minutes for April 2024.
- [2] The Applicant claims that to date she has not received these minutes, and that the Respondent has no reasonable excuse for refusing to provide them. She also asserts that the Respondent was late in replying to her request. The Applicant has asked the Tribunal to order that the record be produced and a penalty be imposed on the Respondent for refusing to provide the record without a reasonable excuse. She has also requested costs in this matter.
- [3] The Respondent denies that it refused to provide the Applicant with the requested record without reasonable excuse and submits that no penalty should be assessed.

- [4] For the reasons set out below, I find that Respondent has provided a reasonable excuse – the record does not exist. I further find, that although the Respondent was late in replying to the Applicant's request, the delay was minor. I make no award of a penalty or costs.
- [5] Finally, I note that while I have reviewed all the evidence and submissions provided to me, I refer only to those necessary to make my decision.

B. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse?

- [6] On August 21, 2024, the Applicant made a request for records in which she requested board meeting minutes for the April 2024 board meeting. On September 25, 2025, the Respondent replied to the request indicating to the Applicant that the board did not hold a meeting in April 2024 and thus there were no meeting minutes to provide.
- [7] The Applicant disputes the fact that no meeting was held. She alleges that given the number of decisions that were required to be made by the board prior to the Annual General Meeting ("AGM") scheduled for May 2024, the board must have held a meeting and there should be minutes from that meeting. The Applicant for instance, argues that the board should have had discussions about which platform to use to host the virtual AGM, tendered bids and voted on which bid to accept. She further submits decisions such as who should be the chairperson of the meeting should have been made and documented.
- [8] She further takes the position that if the board did not hold a meeting, they ought to have, and thus the excuse that the record does not exist, is not reasonable and indicates the Respondent is not keeping adequate records as per s. 55 (1) of the *Condominium Act, 1998* ("the Act").
- [9] The Respondent maintains that no board meeting was held in April 2024. They submit that the board made the decision not to meet that month as the board and the management team were busy preparing for the AGM. They maintain that the board holds regular meetings and the decision not to hold one in April was reasonable and is not evidence of a failure to keep adequate records.
- [10] The Respondent's condominium manager, Jeronim Dyrnishi, testified that no meeting was held in April 2024. I find his testimony credible. The board minutes of May 2024 also substantiates his testimony. The May 2024 minutes show that the

board approved the minutes of the previous meeting, which is listed as being held on March 20, 2024, not in April 2024.

- [11] The Applicant's belief that the board must have made decisions about the AGM in April is not sufficient evidence that a meeting took place and/or that minutes exist. Based on the evidence before me, I accept that the board did not hold a meeting in April 2024, and thus no meeting minutes exist.
- [12] Whether a board *ought* to have held a meeting, is a matter of governance which is beyond the scope of the Tribunal's jurisdiction. However, I will address the Applicant's arguments that non-existence of the minutes is evidence that the board is not keeping adequate records under s. 55 (1) of the Act and not a reasonable excuse for failing to provide the record.
- [13] Section 55 (1) of the Act requires that a corporation keep adequate records, including a minute book containing the minutes of owners' meetings and the minutes of board meetings.
- [14] The Applicant is correct that Tribunal has rendered decisions in which it determined that a corporation was not keeping adequate records in circumstances where the board had failed to hold meetings in accordance with the Act.¹ However, I am not bound by these decisions and in any event, the facts of this case are different than those that led to such decisions. In this case, there is only one set of minutes at issue (as opposed to several months' worth of missing minutes), and I cannot conclude that a discussion of the issues and/or decisions related to the AGM as identified by the Applicant took place in April (or at all) and thus should have been documented in a set of April minutes specifically. I accept that the Applicant has concerns about how and if decisions regarding the AGM were made; however, these are governance issues, not issues of adequacy or entitlement.
- [15] Based on the above, I cannot conclude that because there are no meeting minutes for April that the Respondent has failed to keep adequate records as per s. 55 (1) of the Act. Nor has it refused to provide such records without a reasonable excuse. I accept that in this case the non-existence of the minutes is a reasonable excuse for not providing them.

¹ See *Surinder Mehta v. Peel Condominium Corporation* 389, 2020 ONCAT 9; *McLaughlin v. Brant Standard Condominium Corporation No. 75*, 2022 ONCAT 16

Issue No. 2: Should the Respondent be required to pay a penalty under s. 1.44 (6) of the Act?

- [16] The Applicant has requested that I order the Respondent to pay a penalty for refusing to provide records without a reasonable excuse and because the Respondent did not respond to the Applicant's request within the timeline as set out in Ontario Regulation 48/01 ("O. Reg 48/01") s. 13.3 (6).
- [17] O. Reg 48/01 s. 13.3 (6) provides that when a corporation receives a request for records in accordance with the Act, it shall respond to the requester within 30 days.
- [18] The Applicant submitted her request on August 21, 2024, making the Respondent's reply due on September 21, 2024. The Respondent replied on September 25, 2024. I accept that the Respondent was four days late in replying to the Applicant's request. However, the Act does not permit me to impose a penalty for a late response and in any event the response was late only by four days, which I find to be a minor infraction that has no negative consequences at all.
- [19] Section 1.44 (6) of the Act allows the Tribunal to award a penalty only if the Tribunal finds that a corporation has refused to permit a person to examine or obtain copies of records to which they are entitled without a reasonable excuse. In this case, I have determined that the Respondent's excuse is reasonable, i.e. they do not exist. Thus, there is no basis on which to award a penalty.

Issue No. 3: Should costs be awarded to the Applicant?

- [20] The Applicant has requested her costs in the amount of \$200 for Tribunal fees. The Respondent has not requested costs in this matter.
- [21] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing another party to the proceeding to pay the costs of another party to the proceeding."
- [22] Section 1.44 (2) of the Act states that an order for costs "shall be determined ...in accordance with the rules of the Tribunal".
- [23] The cost-related rule of the Tribunal's Rules of Practice relevant to this case is:
- 48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

[24] The Applicant was not successful and therefore is not entitled to costs.

C. ORDER

[25] The Tribunal Orders this application dismissed without costs to any party.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 6, 2025