

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 17, 2025

**CASE:** 2024-00067R

**Citation:** Raffa v. Metropolitan Toronto Condominium Corporation No. 1245, 2025 ONCAT 57

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

**Member:** Michael Clifton, Vice-Chair

**The Applicant,**

Cora Carino Raffa

Self-Represented

**The Respondent,**

Metropolitan Toronto Condominium Corporation No. 1245

Represented by Jessica Hoffman, Counsel

**Hearing:** Written Online Hearing – April 15, 2024 to March 22, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant is a unit owner in the Respondent condominium corporation, who rents her unit to tenants. This case concerns the Applicant's December 14, 2023, request for copies of board meeting minutes from the prior 12-month period and copies of "All photos, videos & invoices related to chargeback" in relation to a leak that occurred in the Applicant's unit in August 2023, affecting the unit below hers (the "Request for Records").
- [2] Although the Respondent's handling of the Request for Records was imperfect and exhibited flaws in the Respondent's record keeping and related processes, I find that the Respondent did not refuse to provide records to the Applicant. As explained in the reasons below, to the extent that a record – namely a video purportedly taken in the Applicant's unit – was not provided to the Applicant, this was due to the Respondent's lack of knowledge that it exists. In fact, its existence at this time remains only a matter of conjecture. With respect to another video, that the Respondent was unable, but not unwilling, to provide, I order the Respondent to deliver it, as well as to correct some redactions in other records that were given

to the Applicant. I find no basis for any order for a penalty or an award of costs in this case.

**B. BACKGROUND**

- [3] On August 26, 2023, water damage occurred in the unit below the Applicant's unit. The Respondent had the damage to the unit below immediately repaired and commenced an investigation into its cause. The investigation appears to have taken place between August 26, 2023, and August 30, 2023.
- [4] The investigation involved attendance at the Applicant's unit by the Respondent's superintendent, during the course of which one or more videos and photographs were taken. This was followed, within days, by the use of thermal imaging and water sensors by Response Restorations Inc., which provided the service of drying the units. They identified locations of moisture behind the drywall in each of the units, notably near the base of the toilet in the Applicant's unit.
- [5] Following this, the Respondent's plumbing contractor (Heat-Air Mechanical Ltd.) attended the Applicant's unit and identified the likely cause of the leak as a faulty bidet line. The line was visible in a video taken by the superintendent days earlier but was not present on the date that Heat-Air Mechanical Ltd. attended the unit. Heat-Air Mechanical Ltd. also identified that it appeared the water supply line to the toilet had been replaced during the same period.
- [6] The Applicant was aware of the investigations in her unit and that one or more videos and photographs were taken. In fact, during the superintendent's investigation, the Applicant and her tenant used the FaceTime video chat application to allow the Applicant to observe what was taking place.
- [7] On December 8, 2023, the Respondent's manager delivered a notice to the Applicant demanding reimbursement of \$3,998.08 in relation to their investigation and repair of the leak (the "chargeback notice").
- [8] The foregoing information is relevant as the context relating to the subject matter of this case, which is the Request for Records, including that the chargeback appears to be the principal underlying issue that motivated the Applicant to make that request. However, the Tribunal does not have jurisdiction over a dispute about the investigation of water damage, and I make no findings about that matter. In addition, the Tribunal does not have authority to assess whether the Respondent's chargeback is justified.
- [9] The Applicant advised the Tribunal that she had previously filed a claim in court,

which was served on the Respondent on July 19, 2023, relating to an earlier leak occurring in her unit in July 2020. That claim and earlier leak are also not the subjects of this case.

[10] Lastly, the Tribunal was informed that the Applicant submitted a request for records to the Respondent in September 2023. That request is also not part of this case.

[11] After receiving the chargeback notice, the Applicant sought information and documentation from the Respondent, including copies of the photos and videos of her unit that were taken during the investigation. The Respondent asserts that it provided all available records to the Applicant at that time, but the Applicant believes this is not correct.

[12] As a result, the Applicant submitted the Request for Records.

[13] The Applicant states that she received the following before submitting the Request for Records:

1. Two photographs of a technician holding a thermal gun in her unit;
2. A photograph of the bathtub and shower in her unit;
3. A photograph of a wet bathroom tile in the unit below her unit;
4. A photograph of the wet ceiling in the unit below her unit;
5. A video of the drainpipe taken in the unit below her unit by the Respondent's superintendent;
6. Copies of invoices from Response Restorations Inc. and Heat-Air Mechanical Ltd.;
7. Copies of a service report by Heat-Air Mechanical Ltd.;
8. Copies of two "backup reports" from Response Restorations Inc.; and
9. Copies of board meeting minutes from April, May, June, and August 2023.

[14] Not all of these records were received at the same time. Some were given only after multiple inquiries by the Applicant, and some of the records had to be provided a second time since the first copies that were delivered were illegible.

[15] After receiving the Request for Records, the Respondent did not reply using the

correct statutory form. However, the Respondent provided the Applicant with redacted copies of additional board meeting minutes for meetings occurring from January through November 2023. No minutes were provided for a meeting in July 2023.

- [16] The Applicant asserts that not all records requested in the Request for Records have been provided and further submits that the board meeting minutes provided by the Respondent were improperly redacted.

### **C. ISSUES & ANALYSIS**

[17] The issues in this case are:

1. Has the Respondent provided the Applicant with all records requested in the Request for Records?
2. Were the board meeting minutes provided by the Respondent improperly redacted?
3. Have any records requested in the Request for Records been refused without reasonable excuse?
4. Based on the findings in relation to the foregoing issues, should there be any order(s) made with respect to costs or a penalty?

#### **ISSUE 1 – Has the Respondent provided the Applicant with all records requested in the Request for Records?**

[18] The Applicant alleges that the following additional records exist that were not provided in response to her Request for Records:

1. Board meeting minutes from July 2023;
2. A video taken in the unit below the Applicant's unit, believed by the Applicant to be the video represented by certain "videocapture" photographs included in emailed materials that were provided by the Respondent to the Applicant;
3. An additional video taken by the Respondent's superintendent in her unit on August 28, 2023; and
4. Additional photographs of the leak, damage, and repair in the unit below her unit.

#### **Minutes of July 2023**

[19] The Respondent asserts there was no board meeting held in July 2023. The Applicant does not believe this, noting that the meeting was scheduled to occur “the day after the Board was served with a lawsuit,” meaning her lawsuit relating to an earlier leak occurring in her unit in July 2020.

[20] The Applicant’s evidence included copies of the board meeting minutes from June and August 2023. The June 2023 minutes indicate that the next meeting of the board was scheduled to be held virtually on July 20, 2023. However, in the August 2023 minutes, under the heading “Approval of Previous Minutes,” it reads,

The Chair asked for any errors or omissions in the minutes of the Board meeting of June 22, 2023 that were circulated previously for review.

It also indicates that the minutes from the June 22, 2023, meeting were accepted as presented. It makes no mention of a July meeting having taken place in the meantime.

[21] None of the other minutes for September, October, or November 2023 refer to a meeting occurring in July 2023. I also note that the regular format for the board’s meetings includes the business of reviewing what is typically the prior month’s unaudited financial statements. The August minutes indicate that the financial statements for both June and July were reviewed at that meeting.

[22] Based on the evidence provided by the Applicant and the clear assertion of the Respondent, I find on the balance of probabilities that the Respondent’s board held no meeting in July 2023 and therefore there are no minutes of that meeting that can be produced by the Respondent.

#### Video Taken in the Unit Below the Applicant’s

[23] The Respondent readily admits that it does have a second video taken by its superintendent of the unit below the Applicant’s unit. It did not have this video prior to the commencement of this case. This was a second video taken in the unit below by the Respondent’s superintendent, which – when it was discovered – he said was not delivered to the Respondent since it was virtually identical to, but of lesser quality than, the video that was already delivered to the Applicant. For this reason, the Respondent was previously unaware of its existence.

[24] The Respondent said it attempted to provide that video to the Applicant in the course of these proceedings – delivering it by email and using a ShareFile link – but the Applicant stated that these attempts were unsuccessful. No further methods of delivery appear to have been suggested or tried.

- [25] The Respondent further advises that this video is not, however, the video represented by the “videocapture” images contained in the earlier emailed materials. The Respondent advises that those images were provided by the owner of the unit below the Applicant’s, and that the video from which they are taken was made by and belongs to that unit owner and is neither a record nor in the possession of the corporation.
- [26] Having reviewed the evidence and submissions of the parties, I find it probable that the two videos taken by the superintendent described here are the only videos that the Respondent possesses regarding inspection of the leak in the unit below the Applicant’s. I am satisfied with the Respondent’s explanation that the “videocapture” images belong to a video made and possessed by the owner of that unit and that it is therefore not a record of the Respondent.
- [27] The Respondent is ordered to take steps to effect delivery to the Applicant of the superintendent’s second video taken in the unit below the Applicant’s, within 30 days of the date of this decision. The Respondent and Applicant should work together to resolve the technical difficulties that have prevented delivery so far.

#### Video Taken in the Applicant’s Unit

- [28] Throughout the proceedings, the Respondent asserted that it did not have any video that was taken in the Applicant’s unit on August 28, 2023, or believe that any such video existed. It stated that, other than the videos described above, “the Condominium is not in possession of any other videos.”
- [29] The Applicant set out the following reasons for believing that the Respondent is either not truthful or is mistaken about this:
1. The Applicant told the condominium manager that she required photographic or video evidence to be made during access to her unit on August 28, 2023, and therefore anticipated that such a video would be made.
  2. The Applicant was “present by FaceTime and personally witnessed [the Respondent’s superintendent] holding his camera taking video in my unit’s bathroom.” She “snapped a picture” during this FaceTime session, which she alleges shows the superintendent with his camera in his hand and “in camera/video mode”. The Applicant uploaded this photograph into evidence in this case.
  3. The Applicant’s tenant also observed the superintendent making a video recording while attending her unit on that date.

4. A report from Heat-Air Mechanical Ltd., made on August 30, 2023, makes reference to the video.
5. The chargeback notice refers to the video.

[30] The chargeback notice states,

On August 30, 2023, Heat-Air Mechanical Ltd., the corporation's plumber, inspected your unit to determine the cause of the leak. As part of its investigation, Heat-Air reviewed the video of the leak taken by the superintendent and noticed that the bidet apparatus/hose that was connected to the toilet, as shown in the video, had been removed.

Although the date of the video is not referenced, this does confirm there was a video taken by the superintendent in the Applicant's unit prior to August 30, 2023.

[31] The report from Heat-Air Mechanical Ltd. is a little more specific. It states,

Super showed video of [the Applicant's unit] when flood occurred. Noticed that the bidet attached to the toilet in the video was not present in the unit at the time of visit.

Here, the video is said to have been taken "when the flood occurred," which was August 26, 2023. The chargeback notice also states that the superintendent attended the Applicant's unit on August 26, 2023, but notes that Response Restorations Inc. was in that unit on August 28.

[32] As noted, the Applicant's testimony is that she allowed entry to the unit by the superintendent on August 28, not August 26, and that she both required a video be made and that she and her tenant both witnessed the superintendent being in the unit with his phone in hand making such a video during his inspection.

[33] The Applicant also uploaded the video provided to her by the Respondent of the superintendent's inspection in the unit below hers. The video title is "VIDEO-2023-08-28-14-03-10-1" suggesting it was made on August 28, 2023. While not determinative of the question of whether or when a video was taken by the superintendent in the Applicant's unit, it does suggest that the superintendent was conducting his inspections, including making video recordings, on August 28, rather than (or in addition to) on August 26, the date the leak occurred.

[34] The superintendent provided testimony by videoconference on January 23, 2025. He stated that he did take, or likely would have taken, a video when inspecting the Applicant's unit. Unfortunately, his memory of events was vague, and in his testimony, he stated what he believes he would have done at the time, rather than

providing certainty about what he did do. Therefore, I cannot give his evidence much weight.

[35] The Applicant suggests that the superintendent's entry to the unit was – for reasons the Applicant explains in her submissions but are not set out here – a non-permitted entry constituting trespass. I have not considered or made any determination about this allegation as it is outside the range of the Tribunal's jurisdiction. The Applicant suggests, however, that this is “a possible motive” for the Respondent to have denied the existence of the video in question. This position is speculative and unsupported by other or reliable evidence. It does not factor into my conclusions.

[36] It seems reasonable to conclude that the superintendent might have taken a video when inspecting the Applicant's unit. However, the evidence is not sufficiently certain for me to conclude that such a video was actually taken or, if taken, still exists.

#### Additional Photographs, etc.

[37] Other than the one video that the Respondent has so far been unable to deliver due to technical issues, I am satisfied on a balance of probabilities that the Respondent has provided the Applicant with all of its records that constitute, “photos, videos & invoices related to chargeback against [the Applicant's unit]” dating from August 26, 2023, to December 14, 2023, and that there are no other such records in its possession or control.

#### **ISSUE 2 – Were the board meeting minutes provided by the Respondent improperly redacted?**

[38] The Applicant believes there are redactions or omissions in the board meeting minutes that she was given. She notes in particular that references to a “water leak update” and the presence of legal counsel representing the Respondent in respect of the Applicant's lawsuit (pertaining to the 2020 leak) suggest there was discussion of her case, her unit, or the August 2023 leak, that are missing from the minutes.

[39] The Respondent advises that there were some excess redactions erroneously made by the condominium manager as they believed they were to redact all references to individual units or owners, including references to the Applicant and the Applicant's unit. The Respondent is aware that these were not all necessary redactions; however, some of those redactions were appropriate since they were made in contemplation of litigation and/or are otherwise privileged.



- [40] Although the Respondent failed to provide a reply to the Request for Records in the proper form, and therefore also failed to provide any statements explaining the redactions, as required by the regulations under the *Condominium Act, 1998* (the “Act”), such statements were provided during these proceedings.
- [41] I accept the Respondent’s admission that they made some minor errors in redacting the minutes that were provided to the Applicant. I will order that the Respondent provide corrected minutes to the Applicant, if they have not already done so. I find that the balance of redactions was appropriate and in accordance with the Act.
- [42] There is no specific penalty for the failure to have provided the proper form of response and statements as required by the regulations under the Act, and I do not find the Respondent’s breaches in this case to be a refusal to provide records. However, the Respondent is advised to correct its practices in this regard to ensure more careful compliance with the Act in the future, as in some cases there may be consequences that attach to such failures.

**ISSUE 3 – Have any records requested in the Request for Records been refused without reasonable excuse?**

- [43] Based on the facts and analysis set out above, I find that the Respondent has not, at all times, been aware of the records that could be available to it to satisfy the Request for Records, or other requests made by the Applicant, but has sought to deliver such records as it became aware of them. Therefore, I find that the Respondent has not refused to provide any of the requested records to the Applicant without reasonable excuse.

**ISSUE 4 – Based on the findings in relation to the foregoing issues, should there be any order(s) made with respect to costs or a penalty?**

- [44] Based on the foregoing conclusion, there is no basis for awarding a penalty under s. 1.44 (1) 6 of the Act. I also find that there is no basis on which a costs award should be issued against either party.
- [45] The Applicant has not succeeded in the majority of her claims. Despite the minimal success she has obtained, I find that she is not entitled to reimbursement of her Tribunal filing fees and exercise my discretion under Rule 48.1 of the Tribunal’s Rules of Practice not to award those costs.
- [46] I do not agree with the Applicant that she is entitled to such fees on the basis that recourse to the Tribunal was necessary to resolve her concerns. I am compelled to

reflect on the fact that the underlying issue – the chargeback of just under \$4,000 (as noted above) – is relatively minor in comparison to the costs to the parties, in terms of their time, energy, and money spent pursuing this case. I note that the Respondent asserts its legal costs of these proceedings alone exceeded \$7,000. Even though that expense is likely not disproportionate with the requirements of this case, given the scope of the Applicant's unsuccessful claims in this case it is possible that costs in favour of the Respondent, rather than the Applicant, might have been justified. However, I do not hold the Respondent faultless for the fact that this case was not resolved sooner.

[47] I do not support the Respondent's submission that, if the Applicant had been "respectful" and not made any accusations, the matter could have been resolved. This statement is tantamount to telling the unit owner to "behave" in order for her concerns to be treated with the care, diligence, and skill all owners are entitled to expect. That is entirely inappropriate.

[48] I observed no disrespectful language or attitude in the Applicant's communications in these proceedings, nor was any evidence of the same ever offered. Under the Act, the condominium corporation exists solely to be a representative of the owners, serving their interests. When an owner believes they are aggrieved by the actions or conduct of the condominium, its management, or board, they are entitled to complain and to seek a resolution of their concerns.

[49] Each party shall bear its own costs of these proceedings.

#### **D. ORDER**

[50] The Tribunal Orders that:

1. The Respondent is to deliver to the Applicant the second video taken by the superintendent in the unit below the Applicant's unit, within 30 days of the date of this decision;
2. If not already provided, the Respondent is to deliver to the Applicant, within 30 days of the date of this decision, copies of the minutes of board meetings in respect of which it acknowledges excessive or incorrect redactions were formerly made, with such redactions corrected; and
3. Each party shall bear its own costs of these proceedings.

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Michael Clifton  
Vice-Chair, Condominium Authority Tribunal

Released on: April 17, 2025