CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 5, 2025
CASE: 2024-00693R
Citation: Danielson v. Ottawa-Carleton Standard Condominium Corporation No. 909, 2025 ONCAT 72

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

Member: Keegan Ferreira, Vice-Chair

The Applicant,
David Danielson
Self-Represented

The Respondent,
Ottawa-Carleton Standard Condominium Corporation No. 909
Represented Sean Cornish, Agent

Hearing: Written Online Hearing – December 9, 2024 to March 23, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] David Danielson (the "Applicant") is an owner of a unit in Ottawa-Carleton Standard Condominium Corporation No. 909 (the "Respondent"). The Applicant submitted a Request for Records to the Respondent on July 30, 2024, and filed this case after the Respondent failed to respond to the request and to several follow-up emails.

[2] The Respondent provided some of the requested records during the hearing. The Applicant raised an issue about the redactions to those records, and that issue was added to the scope of issues in dispute so all issues related to that request could be dealt with in this case.

[3] For the reasons set out below, I find that the Respondent refused to provide the requested records without a reasonable excuse, and I order it to pay a penalty of $500 pursuant to s. 1.44 (1) 6 of the *Condominium Act, 1998* (the "Act"). I also order that the Respondent provide the balance of the records the Applicant

requested, and order that the Respondent is entitled to redact information contained in those records in accordance with the Act. Finally, I order that the Respondent reimburse the Applicant $150 for his CAT fees.

B. ISSUES & ANALYSIS

[4] The issues to be decided in this case are:

1. Has the Respondent refused to provide the Applicant with records without a reasonable excuse? If so, what order is appropriate in the circumstances?

2. Is the Applicant entitled to the minutes without redactions for information related to actual or contemplated litigation?

Issue 1: Has the Respondent refused to provide the Applicant with records without a reasonable excuse? If so, what order is appropriate in the circumstances?

[5] The Applicant submitted a Request for Records on July 30, 2024, by email. Nicole Edwards, condominium manager, responded on behalf of the condominium corporation on August 12, 2024, and advised that the request had been forwarded to the board of directors for their consideration.

[6] The Applicant advised, and the Respondent acknowledged, that he sent follow up emails on August 9, August 12, August 27, September 7, and October 10, 2024, inquiring about the status of the Response. Notably, in his September 7 email, the Applicant specifically referred to the Respondent's obligation to respond to a Request for Records within 30 days, as set out under s. 13.3 (6) of Ontario Regulation 48/01. Nevertheless, the Respondent did not respond to the Applicant's Request for Records until this hearing was already underway.

[7] The Applicant filed this case on November 13, 2024 and it proceeded directly to Stage 3 – Tribunal Decision because the Respondent did not join despite receiving three paper notices provided by the Applicant. I am satisfied that the Respondent was properly notified of this case as the Applicant provided documents that had been signed and stamped by the corporation's agents confirming receipt.

[8] At the outset of the hearing, I asked Tribunal staff to reach out to the Respondent to warn them of the consequences of failing to participate. After staff reached out, Sean Cornish, condominium manager with Apollo CI Condominium Management Limited (Apollo), joined the case on behalf of the Respondent and apologized for the Respondent's failure to participate to that point.

[9] The Respondent offered to provide the minutes at no cost by uploading them to the CAT-ODR system. I allowed them to do so, and they did. The Respondent also uploaded a completed Board's Response to Request for Records, which identified each set of minutes provided and included explanations for the redactions they had made to each. In total, Mr. Cornish uploaded redacted minutes from 13 separate board meetings ranging from September 27, 2022, to July 8, 2024.

[10] Once those records had been uploaded to the system, the Applicant raised two new issues: the first relating to the breadth of the records provided, and the second relating to the redactions the Respondent made (this issue is dealt with separately below).

[11] On the issue of the breadth of the records provided, the Applicant noted that he had not only requested board meeting minutes where the flood to his unit was discussed. He had also requested board meeting minutes for any meeting at which floods that had occurred to five other units had been discussed. He advised that there were at least two previous floods involving the other units he identified which occurred as far back as 2019, and as such, the responsive records would go back at least that far.

[12] The Respondent replied that they had not appreciated the full scope of the request. The Respondent submitted that it had mistakenly understood that he had only requested records of minutes where the flood to his unit had been discussed, acknowledged that there were additional minutes responsive to the Applicant's request that the Applicant was entitled to, and offered to provide them at no cost – though I directed them not to do so until I released this decision. As there is no dispute that the Applicant is entitled to these records, I will order the Respondent to provide them.

[13] While I appreciate the Respondent's acknowledgement of the Applicant's entitlement to the records and its willingness to provide the records during the hearing, its failure to respond to the Applicant's Request for Records, particularly after receiving five subsequent follow-up emails, is noteworthy. The Respondent also failed to join or participate in this case until Tribunal staff reached out to them directly, despite having received the three paper notices the Applicant delivered. While they ultimately provided the records during this hearing, they did so only after receiving no fewer than 10 separate notifications regarding this issue and case over a span of five months.

[14] The Applicant requested the following orders:

1. An order that the Respondent provide him with the minutes of board

meetings at which floods to units other than his were discussed, which is dealt with below in Issue 2.

2. An order that the Respondent pay him a penalty under s. 1.44 (1) 6 of the Act for refusing to provide the requested records without a reasonable excuse.

3. An order requiring that the members of the Respondent's board retake the CAO's mandatory director training.

4. An order for $650 in costs.

[15] In reply, the Respondent submitted that the board members are fully aware of the corporation's obligations with respect to records. The Respondent also noted that the board was always willing to provide the requested records, as demonstrated by the fact that they provided the records during the hearing at no cost to the Applicant, and that the Respondent's failure to respond to the Request and to join this case was the result of internal issues at Apollo resulting from a departure of key personnel, multiple staff illnesses, and errors in tracking, which they advised they had already taken steps to address.

[16] It is well established that a condominium corporation that chooses to delegate responsibility for responding to requests for records to a condominium manager is still ultimately responsible for the performance of its obligations under the Act. I find that the Respondent's failure to respond to the Applicant's request constitutes a refusal. I also find that the Respondent's failure to respond even after the Applicant followed up with them numerous times and specifically pointed out their obligation to do so constitutes a refusal without a reasonable excuse and order the Respondent to pay a penalty of $500 under s. 1.44 (1) 6 of the Act.

[17] With respect to the issue of costs, the Applicant sought a total of $650 in costs, $150 of which was for his CAT filing fees and $500 of which was for compensation for the time he spent on the case. The total amount of Tribunal fees in this case was $150 (i.e., $25 filing fee + $125 Stage 3 fee) as this case proceeded directly to Stage 3 – Tribunal Decision.

[18] As the Applicant has been at least partially successful in this case, I will order the Respondent to pay the Applicant $150 to reimburse him for his CAT fees in accordance with Rule 48.1.

[19] Rule 49.1 states that the CAT generally will not order one party to pay another for time spent related to a CAT proceeding. I see no reason to vary from this Rule and decline to make an order for costs related to the time the Applicant spent on the

case.

Issue 2: Is the Applicant entitled to receive the minutes without redactions for information related to actual or contemplated litigation?

[20] The Applicant challenged the appropriateness of the redactions the corporation made to the minutes provided during the hearing. The accompanying statements indicate that most of the redacted information was redacted because it relates to individual units / unit owners, citing s. 55 (4) (c) of the Act. In some instances, information was redacted citing s. 55 (4) (b), being information relating to actual or contemplated litigation or insurance investigations involving the corporation. In deciding this issue, I have considered the timeline of events and evidence set out below.

[21] The leak to the Applicant's unit occurred on or about September 16, 2022. Shortly thereafter, Sandra Filetti, the mother of the Applicant's partner, began to correspond with the corporation on the Applicant's behalf. Both parties acknowledged that Ms. Filetti acted as the main liaison between the parties and that she communicated on behalf of the Applicant, both with Mr. Cornish and directly with members of the Respondent's board of directors about the leak and the pending repairs.

[22] On March 22, 2023, Ms. Filetti called and had a phone conversation with Marie Pierre Peland, a member of the Respondent's board of directors. Both Ms. Filetti and Ms. Peland were called as witnesses and provided testimony about that call. Ms. Peland testified that during the call, Ms. Filetti threatened the corporation with legal action. Ms. Filetti testified that she did not, either directly or indirectly. Both parties also provided contemporaneously prepared written materials in support of their testimony – the Applicant provided a set of handwritten notes Ms. Filetti had made during the call, and the Respondent provided a copy of an email that Ms. Peland sent immediately after the call to Mr. Cornish and to the other director in which she wrote, among other things, that "she is threatening legal actions against the board saying we are delaying the approval of the repairs."

[23] I found both witnesses to be candid and credible. Ms. Filetti's notes included several quotes of specific statements that she testified Ms. Peland had made during the call. During cross-examination, the Applicant asked Ms. Peland several times whether she remembered making them. While Ms. Peland admitted that she did not remember making those specific statements, she asserted that her recollection of the call was generally reliable and accurate. I find that it is reasonable for Ms. Peland not to be able to recall, verbatim, statements that she was alleged to have made in a call that occurred two years prior, and do not find

Ms. Peland testimony to be any less credible on account of her inability to do so.

[24] In April 2024, there were some communications between the owner and board about a request for compensation related to the water damage. When I inquired about the nature of those communications, the Applicant advised me those communications were covered by settlement privilege and that he did not consent to waiving that privilege. This is an important point which I will revisit below.

[25] On July 30, 2024, the Applicant submitted his Request for Records.

[26] On September 13, 2024, the Applicant notified the Respondent that he had commenced an action against it in Small Claims Court. Finally, on November 13, 2024, the Applicant filed this case.

[27] While the Applicant does not dispute the appropriateness of the redactions made to protect information relating to individual units / owners, he argues that the corporation is not permitted to redact information related to actual or contemplated litigation because "it is simply too late" for the board to do so. Essentially, the Applicant's argument is that if the corporation had responded to him within 30 days of his request, as required, then they would not have been able to claim the exemption because there would have been no basis, at that time, to conclude that there was contemplated litigation as the SCC case had not yet been commenced. The Applicant argued that the Respondent should not be permitted to claim that exemption belatedly after the Small Claims Court action was filed, when they had failed to respond to him within the mandatory timeline.

[28] The Applicant cited *Landau v Metropolitan Condominium Corporation No. 757*[1] in support of his argument. In that case, an owner had requested a copy of a legal opinion the corporation had obtained. The corporation refused to provide it, citing solicitor-client privilege as the sole reason for the refusal, without making any reference to s. 55 (4) of the Act. After the Applicant in that case received the board's response to her request, she advised the corporation that she would consider filing an application with this Tribunal. The corporation subsequently argued that it was exempt from providing the legal opinion citing s. 55 (4) (b). Ultimately, the Tribunal found that the corporation was not entitled to cite the exemption under s. 55 (4) (b) as the basis for refusal because the corporation had "claimed it retroactively rather than at the appropriate time."

[29] While I agree with the findings in Landau and with this line of reasoning, this case

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[1] *Landau v Metropolitan Condominium Corporation No. 757,* 2020 ONCAT 19

is distinguishable from Landau because in this case, I find that the corporation did have reasonable basis for the belief that there was contemplated litigation prior to the Applicant's request for records on July 30, 2024.

[30] While I found Ms. Filetti to be a credible witness, and while she denied having threatened or intimated any potential litigation during her call with Ms. Peland on March 22, 2023, it is clear both from Ms. Peland's testimony and from the email that she sent to Mr. Cornish and the other board members immediately after that call that Ms. Peland certainly understood that Ms. Filetti had, in fact, threatened litigation. The Applicant's argument is that there was no basis for Ms. Peland to have formed that understanding, and that the first time the Respondent would have been aware of any actual or contemplated litigation was when the Applicant notified them of the Small Claims Court action in September 2024. Having heard Ms. Peland's testimony and the email she sent, I find it highly unlikely that Ms. Peland would have concluded that Ms. Filetti had threatened litigation without any basis, as the Applicant contends.

[31] Furthermore, the Applicant appears to have acknowledged during this hearing that a litigious dispute existed as early as April 2024. As noted above, when I inquired about the communications between the owner and board at that time, the Applicant claimed settlement privilege with respect to those communications and did not disclose their substance.

[32] The Applicant is a practicing lawyer and is familiar with the law, and I conclude that his claim of settlement privilege with respect to the communications was neither inadvertent nor accidental. It is incompatible for the Applicant to argue that there was no contemplated litigation with respect to the leak issue and to also claim settlement privilege with respect to communications with the Respondent about that issue. For settlement privilege to apply, there must have been a litigious dispute at the time of the communications in April 2024. Accordingly, I find that the Applicant's own statements made during the hearing establish that there was a litigious dispute at least by April 2024, if not earlier, and that he and the Respondent were engaged in settlement discussions with respect to that issue.

[33] In light of the above, I find that the Applicant is not entitled to receive the minutes without redactions for information related to actual or contemplated litigation.

C. ORDER

[34] The Tribunal Orders that:

1. The Respondent provide the Applicant with minutes of all meetings responsive to the Applicant's request for records, including minutes where the flood to his unit and/or to five other units he identified in his Request for Records were discussed, within 30 days of this decision.

2. The Respondent shall redact those records to prevent the release of information covered by s. 55 (4) (c) of the Act and is entitled to redact them in accordance with the Act, including information related to actual or contemplated litigation covered by s. 55 (4) (b) of the Act.

3. The Respondent shall pay a penalty in the amount of $500 to the Applicant within 30 days of this decision.

4. The Respondent shall reimburse the Applicant $150 for his CAT fees within 30 days of this decision.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: May 5, 2025