

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 12, 2021

CASE: 2020-00389R

Citation: Hawryliw v. Toronto Standard Condominium Corporation No. 2309, 2021 ONCAT 12

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

Member: Nicole Aylwin, Member

The Applicant,

Fred Hawryliw
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2309
No one appearing

Hearing: Written Online Hearing – January 12, 2021 to February 1, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Mr. Fred Hawryliw, is a unit owner in Toronto Standard Condominium Corporation No. 2309 (“TSCC 2309”). Mr. Hawryliw has asked the Condominium Authority Tribunal (the “CAT” or “Tribunal”) to address two separate requests for records.
- [2] The first request, made on September 24, 2020, is for the most recent Periodic Information Certificate (“PIC”). The second request, made on September 30, 2020, is for a copy of security footage stills of himself on a ladder in the hallway outside of his unit. Both requests were made on the prescribed form as per the *Condominium Act, 1998* (the “Act”).
- [3] Mr. Hawryliw has asked the Tribunal to deal with both of these requests in this proceeding. Given that these requests were made within seven days of each other and that TSCC 2309 has had the 30 days required by the Act to respond to each request, I have agreed that both requests may be addressed in this hearing.

- [4] In addition to his request for records, Mr. Hawryliw has asked that TSCC 2309 pay a penalty for refusing to provide the records.
- [5] TSCC 2309 did not participate in this hearing and has provided no evidence or submissions on the issues. Nonetheless, I am satisfied that TSCC 2309 had proper notice of this case and therefore have proceeded in their absence.
- [6] For the reasons set out below, I find that, in this case, Mr. Hawryliw is entitled to the records he requested and a penalty of \$500 is warranted.

B. ISSUES & ANALYSIS

Issue 1: Is Mr. Hawryliw entitled to the requested records as per s. 55 of the Act?

- [7] The first request made by Mr. Hawryliw is for TSCC 2309's most recent Periodic Information Certificate ("PIC"), which would be the PIC issued most recently prior to September 2020. Mr. Hawryliw's entitlement to the PIC is clear. It should be provided and at no cost since it is a core record.
- [8] I wish to add an additional note regarding this record. Although Mr. Hawryliw is not required to disclose his reasons for requesting records beyond the fact that they are related to his interest as a unit owner, he has expressed that he seeks this record in order to ascertain information about any legal actions to which the corporation is a party. Thus, I wish to make clear that the PIC is required to contain this information so questions of adequacy of the record do not arise at a later date.
- [9] The second record requested by Mr. Hawryliw is a copy of security footage stills of himself on a ladder with a breathing device in the hallway outside of his unit on September 30, 2020 at 9:05 am.
- [10] In his testimony and submissions, Mr. Hawryliw explained that on September 30, 2020 he climbed a ladder outside of his unit in order to take readings on a medical device. He states that he took these readings due to health issues he has been having which he believes are tied to the migration of marijuana smoke, smoke and diesel fumes from another unit. Thus, he asserts the requested security footage stills are related to his interest as a unit owner.
- [11] Additionally, Mr. Hawryliw argues that there should be no issue with providing him with the requested security stills as he has requested security footage from TSCC 2309 previously and received it. Moreover, he states that TSCC 2309 informed owners that they would be provided with any requested security footage so long as a Request for Records form was completed. Mr. Hawryliw states owners were also told that TSCC 2309 "would not erase any footage requested as long as the time

frames were reasonable to the actual incidents.”

- [12] I will first address whether the fact that TSCC 2309 has supplied this record in the past means that they are required to do so. Entitlement to a record is determined by the Act, not a past practice. Having supplied this type of record in the past does not necessarily mean TSCC 2309 is required to do so again. I must decide whether the Act entitles Mr. Hawryliw to the requested security footage and whether there are any exceptions that may limit his entitlement.
- [13] There are no statutory prohibitions that expressly restrict access to this particular type of record. There is also no evidence before me to suggest that security footage does not constitute a record that the corporation is required to keep, or a unit owner entitled to obtain or examine.
- [14] While it may be the case that security footage (stills and/or moving footage) is not expressly listed in the Act as a record the corporation is required to keep, that does not immediately disqualify it as a record to which an owner is entitled. As the Tribunal noted in *Sinclair v. Peel Condominium Corporation No. 3*¹, “an owner's entitlement to records is not restricted by whether or not the record is specifically identified in those sections.² All records of the corporation may be subject to a request for disclosure under section 55(3) of the Act.” The list of records contained in s. 55(1) are those that the corporation is required to keep in order to meet a *minimum* standard of adequate record keeping and to which an owner is entitled.
- [15] That said, the Act, does not provide unlimited rights to examine and obtain records. Section 55(4) of the Act states that the right to examine or obtain copies of the records does not apply to “subject to subsection (5), records relating to specific units or owners”. Thus, I have also had to consider if s. 55(4) applies in this case. Mr. Hawryliw has testified that he is the only person in the requested footage and that he is not requesting footage of any other unit or unit owner. Given this, I find that s. 55(4) does not apply in this case and would not restrict Mr. Hawryliw's entitlement.
- [16] Thus, while it may not be the case that in every instance an owner is entitled to security footage taken by the corporation, in the absence of any particular statutory prohibition, any evidence that would indicate that Mr. Hawryliw is not entitled to the record, and the fact that in this instance, s. 55(4) does not apply, I find in, this case, he is entitled to receive a copy of the security footage stills as requested.

¹ 2020 ONCAT 25 (CanLII)

² Specifically, the tribunal was referencing s. 55(1) of the Act and s. 13.1(1) of the Regulation 48/01

[17] Finally, regarding this particular record, I note that, at this time, I could be ordering access to a record that may not exist. In some cases, a condominium may only keep security footage for a limited amount of time. However, based on Mr. Hawryliw's evidence, the truth of which I have no reason to question, TSCC 2309 indicated to owners that if a request for security footage was made in a timely manner the footage would be kept and provided. Mr. Hawryliw made the request for these particular security footage stills on the same day that the security footage would have been taken (September 30, 2020). This constitutes a timely request and would suggest that this footage should have been available for examination shortly after the request was made. However, given that the records request was made in September 2020 and it is now February 2021, there is a possibility that the footage is no longer available. Therefore, I will be ordering TSCC 2309 to provide the security footage as requested to Mr. Hawryliw but in the event that the footage no longer exists, TSCC 2309 must provide Mr. Hawryliw confirmation of this fact in writing and explain why it cannot be provided. No fee will be charged by TSCC 2309 for providing this record.

Issue 2: Is TSCC 2309 required to pay a penalty under s. 144(1)6 of the Act?

[18] Under s. 144(1)6, the Tribunal may order a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55(3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection

[19] As TSCC 2309 did not participate in this hearing, no excuses, reasonable or not, have been provided for refusing Mr. Hawryliw's requests. As I have determined that Mr. Hawryliw is entitled to the records, and no excuse has been provided for the refusal, I find he is entitled to a penalty under the Act.

[20] The question before me then becomes what is the appropriate amount for the penalty?

[21] Mr. Hawryliw argues that \$2,500 is appropriate in this circumstance. It is his position that the fact that the "Corporation is declining to produce the most basic (and statutorily mandated) document, a status certificate / PIC, is unfair, unreasonable and unprofessional."

[22] Other Tribunal decisions have spoken to the principle of ensuring that penalties are proportional, taking into consideration the number and nature of the records requested, and conduct of the Respondent which led to penalty. In this case only two records were requested and refused without a reasonable excuse. I

agree with Mr. Hawryliw that the request for the PIC should not have given TSCC 2309 pause given the nature of this record and an owner's clear entitlement to this record. However, the requested security footage is of different nature and entitlement is not as perhaps as straight forward, making this refusal not as flagrant as that of the refusal of the PIC.

- [23] Regarding, the conduct of TSCC 2309, there is evidence before me that indicates that there was some verbal communication between Mr. Hawryliw and the condominium manager about these records, which suggests that TSCC 2309 was not unaware of the request and need to respond to it. However, this type of informal communication is not a substitute for the formal response required by the Act and there no evidence before me to suggest that the corporation responded to Mr. Hawryliw on the appropriate form within the time prescribed by the Act.
- [24] Thus, while TSCC 2309 may well have disregarded its obligations under the Act which is unacceptable, considering the factors above, a \$2500 penalty would be overly punitive. In this case, I have determined that a penalty of \$500 is appropriate.
- [25] Finally, to get to this stage, Mr. Hawryliw was obliged to pay fees to the Tribunal. An order requiring the Respondent to reimburse those fees when the Applicant has been at least partially successful is usually made and I find it is appropriate in this case. The Tribunal filing fees to get to a Stage 3, hearing and decision are \$200. I find it reasonable for TSCC 2309 to reimburse this amount to Mr. Hawryliw.

C. ORDER

[26] The Tribunal Orders that:

1. TSCC 2309 provide Mr. Hawryliw with the Periodic Information Certificate issued most recently prior to September 2020 in electronic form, within seven (7) days of this decision, at no cost to Mr. Hwaryliw.
2. TSCC 2309 provide Mr. Hawryliw with security footage stills of himself on a ladder with a breathing device in the hallway outside of his unit on September 30, 2020 at 9:05 am. This record must be provided within 30 days of this decision at no cost to Mr. Hawryliw. Should this record no longer exist, TSCC 2309 is required within 30 days of this decision to notify Mr. Hawryliw of this fact in writing and explain why.
3. TSCC 2309 will pay a penalty of \$500 to Mr. Hawryliw within 30 days of this decision.

4. TSCC 2309 will pay costs of \$200 to the Hawryliw within 30 days of the date of this decision.
5. To ensure that Mr. Hawryliw does not have to pay any portion of the penalty and cost awards associated with this Order, he will be given a credit toward any common expenses that may be attributable to his unit, in the amount equivalent to his proportionate share of the penalty and costs awarded.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 12, 2021