HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Joyne Lavides

Applicant

-and-

Windsor Hill Non-Profit Housing Corporation

Respondent

DECISION

Adjudicator:	Denise Ghanam
Date:	June 21, 2024
File Number:	2022-50545-S
Citation:	2024 HRTO 878
Indexed as:	**Lavides v. Windsor Hill Non-Profit Housing Corporation**

APPEARANCES

Joyne Lavides, Applicant	)	Self-represented
Windsor Hill Non-Profit Housing Corporation, Ramona Hossu, Respondents	)	Farhad Shekib, Counsel

INTRODUCTION

[1] The applicant filed an Application for Contravention of Settlement ("COS") pursuant to subsection 45.9(3) of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). They seek compensation of $35,000 in general damages for injury to dignity and physical pain and suffering and $5000 in specific damages for contravening the settlement agreement.

[2] For the reasons that follow, the Application is dismissed.

BACKGROUND

[3] The applicant was, and continues to be, a resident at the organizational respondent's building. She raised concerns about accommodations for her disability through an Application with this Tribunal which was assigned file number 2018-33469-I.

[4] The parties participated in a mediation at the Tribunal which resulted in a settlement dated August 14, 2019. The Minutes of Settlement ("MOS") contained a number of terms, but the clause at issue in this Contravention of Settlement Application reads as follows:

> On a going forward basis, the Applicant shall submit all future requests concerning her tenancy in writing to the office, and shall be provided with a stamped copy of her written request to confirm that her request was received. The Applicant may also communicate via email.

[5] The applicant alleges that the respondents breached the agreement beginning on August 15, 2019 and continuing until the date of this Application in numerous ways. The applicant also filed a new Application (2022-50571-I) which contained similar allegations to those in this COS Application.

[6] The Tribunal held a combined case management conference call ("CMCC") on November 27, 2023 for both files. Prior to the CMCC, it directed the parties to file written submissions on the question of delay in this COS application, as well as heard oral

submissions on that issue at the CMCC. This resulted in Interim Decision 2024 HRTO 2, which found that many of the allegations in this Application were untimely and the applicant had not provided sufficient "good faith" reasons for the delay. All allegations which pre-dated August 10, 2022 were dismissed. Subsequently, through a hearing in writing, the other Application was also dismissed as outside the Tribunal's jurisdiction.

EVIDENCE

[7] A half-day hearing was held by videoconference on March 6, 2024, during which the Tribunal heard evidence from two witnesses: (a) Joyne Lavides, the applicant; and (b) Ramona Hossu, who had been incorrectly named as an individual respondent. COS Applications can only include those who were parties to the original Application. Ms. Hossu was removed as an individual respondent by the Interim Decision noted above. She testified in her capacity as the General Manager for the organizational respondent.

[8] The alleged breach advanced by the applicant occurred on August 10, 2022, when the applicant sent a demand letter to the Board of the organizational respondent, outlining their concerns with an alleged lack of accommodation of their disability and a breach of the settlement agreement. They specifically allege that they were not provided a stamped copy of the letter to confirm that it had been received by the respondent, as per paragraph 5 of the MOS noted above. They did receive a reply to their letter dated August 19, 2022, which occurred after the annual unit inspection on August 15. They alleged they were not provided a copy of the annual inspection report as outlined in the Resident's Guide.

[9] The respondent refutes that they have contravened the settlement agreement. They indicate that there are stamped copies of all documents in the applicant's file in the office. They testified that the staff does not have the time to hand deliver a stamped copy of every document related to the applicant's unit to their door. Rather, they expect the applicant to come to the office to request the stamped copy if they want it.

[10] The applicant further alleges that the repairs undertaken by the respondent, in response to their letter and as a result of the annual inspection, were not scheduled

appropriately, taking into consideration their disabilities. However, these same allegations were made in the other Application and were deemed to lack a clear connection between the alleged behaviour of the respondent and the prohibited ground under the *Code*. Those allegations were dismissed and as such, I will not consider them again here.

[11] Finally, the applicant alleges that the respondent never provided them with an email address, so as to correspond with them about their concerns regarding the tenancy, as indicated in para 5 of the MOS. The respondent asserts that the email address is part of numerous notices posted around the building or, in some cases, delivered to each unit. Further, they indicate that the applicant had their email address from the Form 2 in the original application as well. The applicant stated that they believed the respondent would provide them with a different email address, and send them an email specifically to ensure that they had the correct address.

ANALYSIS

[12] A settlement agreement is a contract. As such, the principles of contract law provide the appropriate framework for analysing alleged contraventions of settlement. See for example *Asim v. Cybersecurity Umbrella Corporation*, 2022 HRTO 321 at para. 11. As stated by the Ontario Court of Appeal in *Dunn v. Chubb Insurance Company of Canada*, 2009 ONCA 538 at para. 32:

> The primary goal of contractual interpretation is to give effect to the intentions of the parties. As Estey J. explained in *Consolidated-Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, 1979 CanLII 10 (SCC), [1980] 1 S.C.R. 888, [1979] S.C.J. No. 133, at p. 901 S.C.R., "the normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract".

[13] In *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53 (para 57), the Supreme Court of Canada adopted the following principles of contractual interpretation:

> While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62)

[14] In reading the clause under dispute, the intent of the parties is clear. The applicant is to ensure that all requests for repairs or any accommodations required in light of their disabilities are provided in writing to the organization. The respondent testified that this is done because there is turnover in maintenance and office staff. Based on a verbal request in 2018 involving the applicant, the respondent insisted this clause was to be included in the MOS. If requests are not submitted in writing, they cannot be tracked and addressed when there are staffing changes. The respondent provided numerous copies of stamped correspondence to and from the applicant that they had on file, as well as work orders showing that they installed a new fridge, and new kitchen and bath single lever faucets for the applicant's unit, as per the applicant's request for accommodation.

[15] How the respondent is to provide stamped copies to confirm receipt is not clear in this clause. The respondent claims that the copies were in the office but that the applicant never requested them, waited for them when they dropped them off or came to the office to attain them. The applicant indicated that the office hours were limited, but admitted that they had not asked for the copies under cross examination. With respect to the question of the email, the respondent provided evidence that the email address was readily available on documents given to the applicant, posted around the building, and was also the same as the address used by the applicant during the process with the Tribunal leading to the MOS. The clause again does not state specifically that the respondent must provide the email address to the applicant, but rather indicates that email as a form of written correspondence, would also suffice.

[16] I find that the applicant is unable to prove, on a balance of probabilities, that the respondent contravened the clause at issue in this COS Application. Specifically, the applicant must take some ownership for the lack of effective communication that has taken place. Without actually requesting the stamped copies of the documents from the GM or office staff, the applicant is not doing their part to live up to the requirements of the MOS. The same applies for the email address, which was readily available and would have created a built-in record of receipt of correspondence, had the applicant chosen to use it. Accordingly, the Tribunal finds that the respondent has not contravened the settlement agreement.

ORDER

[17] The Application is dismissed.

Dated at Toronto, this 21st day of June, 2024.

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Denise Ghanam
Member