HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Joyne Lavides

Applicant

-and-

Windsor Hill Non-Profit Housing Corporation

Respondent

INTERIM DECISION

Adjudicator: Denise Ghanam

Date: January 4, 2024

File Number: 2022-50545-S

Citation: 2024 HRTO 2

Filed as: **Lavides v. Windsor Hill Non-Profit Housing Corporation**

APPEARANCES

Joyne Lavides, Applicant	)	Self-represented
Windsor Hill Non-Profit Housing Corporation, Respondent	)	Farhad Shekib, Pinto Shekib LLP, Counsel

[1] The applicant filed an Application for Contravention of Settlement (the "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 for damages arising from the alleged contravention including mental anguish, suffering, aggravation of their disability, and disrespect to their person and dignity.

[2] The purpose of this Interim Decision (the "ID") is to determine if some or all of the allegations in the COS are timely. This ID is based on both submissions in writing, as well as oral submissions from the parties, on the jurisdictional issue of delay, heard during a Case Management Conference Call (CMCC) convened on November 27, 2023 for this Application for Contravention of Settlement (COS), which was filed on September 13, 2022.

[3] The applicant has included two personal respondents in this Application, who were the signatories on behalf of the organizational respondent when the settlement was made. As it is a COS application that applies to Minutes of Settlement (MOS) based on a previously filed Tribunal Application (2018-33469-I), this COS can only address issues of a breach to the MOS. While s 45.9(6) of the *Code* does allow the addition of respondents by the Tribunal, no proper request for such was made by the applicant. Therefore, the Tribunal recognizes only those who were parties to the original Application and to its settlement. See also Rule 24 of the Tribunal's Rules of Procedure.

[4] Section 45.9(3) of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*") states that contravention of settlement applications must be brought (a) within six months of the contravention, or (b) if there was a series of contraventions, within six months after the last contravention in the series. Section 45.9(4) states that a person may apply after the expiry of the time limit if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[5] The respondent argued that a number of allegations are untimely and therefore the applicant should not be permitted to proceed with those allegations.

[6] The applicant argued that all the allegations in the Application should be included as they form a series of events spanning from 2019 until August of 2022, after which the Application was submitted.

[7] This decision was made following a hearing in writing. As noted by the Divisional Court in *Iyirhiaro v. Human Rights Tribunal of Ontario and TTC,* 2012 ONSC 3015, the Tribunal is not required to hold an oral hearing on the issue of its jurisdiction. In this case, however, oral submissions from the parties were also heard and considered in this decision.

ANALYSIS AND DECISION

[8] In assessing whether allegations relate to a "series" of incidents, the Tribunal has used the test outlined in *Garrie v. Janus Joan Inc.,* 2012 HRTO 1955 at para 30 and applied the dictionary definition of series as "a number of things or events of the same class coming one after another in spatial or temporal succession". See for example *Pakarian v. Chen*, 2010 HRTO 457. The Tribunal has stated that to find there is a "series of incidents", the incidents must have some connection or nexus, such that they may reasonably be viewed as a pattern of conduct with a common theme, similar parties and/or circumstances, as opposed to events that are comprised of incidents relating to discrete and separate issues without some connection or nexus. See, for example, *Twyne v. Dominion Colour Corporation*, 2013 HRTO 1769 at para. 8.

[9] This Tribunal has held that a gap of one year between alleged incidents generally will be considered to interrupt the series. See, for example, *Chintaman v. Toronto District School Board*, 2009 HRTO 1225, *Grange v. Toronto (City),* 2014 HRTO 633. While these cases reference delay under section 34 of the *Code*, I am adopting the same analysis in relation to the requirements as outlined in section 45.9 of the *Code.* See also 2022 HRTO 1409, *The Regional Municipality of Waterloo Police Services Board v. Donovan*.

[10] The Tribunal has also held that this should not be regarded as a rigid rule, but where there is a significant gap between alleged incidents, this Tribunal nonetheless will

find that the series is broken. See, for example, *Henry v. Waterloo (Regional Municipality),* 2011 HRTO 1927 and *Stewart v. York Condominium Corporation 165*, 2023 HRTO 579.

[11] The applicant argues that these allegations form a "repetitive, systemic and prolonged series of contraventions and discriminatory practices within the last three years" by the respondent. The respondent argues that some of the allegations "raise new causes of action and/or allegations that are unrelated" to the original settlement and most are "time barred pursuant to the limitation period of the *Code*."

[12] In assessing the allegations in this Application, I find that there is a significant gap between each of the alleged incidents which occurred in 2019 through 2021, and the more recent allegations beginning in August of 2022. The incident referred to in 2019 is an annual unit inspection where the applicant requested certain repairs and was not satisfied with the manner in which they are completed. There is a gap of one year until the next inspection in 2020, and then another gap of one year until the annual inspection in 2021, and a third year long gap until 2022. These gaps of approximately one year in between events is too great for these incidents to be considered part of a series, as such a long lapse of time constitutes a clear break. Further, given that this is a COS application where the time limit is only six months and not one year as per s. 34 of the *Code,* I find all those allegations which predate August 2022 to be untimely and are not connected to a series of incidents.

[13] I then turn to whether the applicant has cited facts that constitute a "good faith" reason for the delay between the earlier allegations (2019 to 2021) and the more recent ones, under s. 45.9(4) of the *Code* and within the meaning of the Tribunal's case law. See *Corrigan v. Peterborough Victoria Northumberland and Clarington Catholic District School Board*, 2008 HRTO 424; *Cartier v. Northeast Mental Health Centre*, 2009 HRTO 1670; *Hayes v. 3076337 Nova Scotia Corporation o/a Steamworks,* 2021 HRTO 170 and *The Regional Municipality of Waterloo Police Services Board v. Donovan*, 2023 HRTO 276 ("*Donovan*").

[14] Such an explanation must show something more than simply an absence of bad faith. The Tribunal has set a high onus on applicants to provide a reasonable explanation for the delay, while recognizing that there will be legitimate circumstances, often related to the human rights claim itself, that justify the Tribunal exercising its discretion to accept that the delay was incurred in good faith. See, for example, *Miller v. Prudential Lifestyles Real Estate,* 2009 HRTO 1241.

[15] The applicant argued that they complained to the respondent condominium Board about the alleged contraventions, but the Board was slow to respond. After waiting for their action over several years, they finally issued a demand letter to the Board in August of 2022, recapping all their concerns since the Minutes of Settlement were signed in 2019. When the response to their letter was unsatisfactory, they filed this COS Application. However, this meant that for most of these allegations, the six-month timeline had long passed.

[16] I find that the Application and/or the applicant's oral submissions do not provide a sufficient "good faith" explanation as to why the applicant did not file their COS Application to protect their rights under the *Code* in a timely manner. The Tribunal has found that pursuing other legal remedies or processes does not constitute a good faith reason for delay. See for example *Salvatore v. Toronto (City),* 2020 HRTO 638, *Kadar v. Mercedes-Benz Canada Inc*., 2023 HRTO 1792 and *Donovan* at paras 27-29.

[17] In the circumstances of this case, I find that all the allegations of breach of the settlement which are dated before August 10, 2022 are untimely and therefore, outside of the Tribunal's jurisdiction.

ORDERS AND DIRECTIONS

[18] All allegations outlined in the COS Application that predate August 10, 2022 are dismissed for delay. Only those allegations raised in the Application that occur on or after August 10, 2022 will be considered.

[19] The Registrar has scheduled a half-day Hearing to be conducted by Zoom videoconference on the Merits of the Contravention of Settlement Application on March 6, 2024 at 9:30 am, where I will hear evidence on the remainder of the allegations in the Application.

Dated at Toronto, this 4th day of January, 2024.

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Denise Ghanam
Member