Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Citation: 2398125 Ontario Inc. o/a Maple Lodge Retirement Home v. Registrar, Retirement Homes Regulatory Authority, **2021 ONLAT 13020**

Date: 2021-04-19
File: 13020/RHA

Appeal from Orders to pay an Administrative Penalty issued by the Registrar of the Retirement Homes Regulatory Authority pursuant to the *Retirement Homes Act, 2010*

Between:

2398125 Ontario Inc. o/a Maple Lodge Retirement Home

Appellant

-and-

Registrar, Retirement Homes Regulatory Authority

Respondent

CONSENT ORDER

ADJUDICATOR: Jennifer Friedland, Member

APPEARANCES:

For the Appellant: Oksana Mikouliak, Representative

For the Respondent: David Litwin, Counsel
Samantha Gagnon, Legal Clerk

Dates & Location of Hearing: April 12 & 13, 2021 by video

Background

[1] This was an appeal from two administrative penalties issued by the Respondent, the Registrar of the Retirement Homes Regulatory Authority (the "Registrar" or "RHRA)" against the appellant, 2398125 Ontario Inc. o/a Maple Lodge Retirement Home ("Maple Lodge") pursuant to the *Retirement Homes Act, 2010* (the Act).[1]

[2] The administrative penalties were issued on November 20, 2020 pursuant to section 93 of the Act. This section allows the Registrar to issue an administrative penalty if the Registrar believes on reasonable grounds that a person has contravened a requirement under the Act. Pursuant to s. 93(2) of the Act, the purpose of an administrative penalty is to encourage compliance with the Act.

[3] The Registrar issued the penalties on the basis of two inspections. The first was conducted on April 22, 2020 following which the appellant was found to have contravened s. 68(2) of the Act which states:

> **68** (2) No licensee of a retirement home and no external care providers who provide services in the home shall confine a resident of the home, other than in accordance with section 70 or under the common law duty mentioned in section 71. 2017, c. 25, Sched. 10, s. 14 (1).

[4] The appellant appealed this penalty on the basis that the incident of confinement arose during the start of the pandemic. The appellant's position was that its response was reasonable in the circumstances.

[5] The second administrative penalty relates to an inspection conducted on May 29, 2020 which found the appellant had contravened sections 67(1) and 75(1) of the Act.

[6] Section 67 (1) states

> **67** (1) Every licensee of a retirement home shall protect residents of the home from abuse by anyone. 2010, c. 11, s. 67 (1).

[7] 75 (1) states:

[1] S.O. 2010, c. 11

> **75** (1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Registrar:
>
> 2. Abuse of a resident by anyone or neglect of a resident by the licensee or the staff of the retirement home of the resident if it results in harm or a risk of harm to the resident.
>
> 3. Unlawful conduct that resulted in harm or a risk of harm to a resident.

[8] This contravention related to the behaviour of a male resident who had engaged in repetitive unwanted touching of female residents. The appellant was cited for not taking adequate measures to protect other residents from this behaviour and for failing to report the incidents to the Registrar as required under s. 75(1)

[9] The appellant appealed this penalty based on its position that the steps it had taken were reasonable in the circumstances.

[10] At the start of the hearing and prior to any evidence being called, the parties engaged in settlement discussions with my assistance.[2] Following these discussions the parties agreed to resolve the issues on this appeal pursuant to the terms set out below.

[11] Based on the above, the issues on appeal are resolved on the following basis.

The Tribunal orders on consent:

[12] The appellant will comply with the undertakings attached hereto as “Schedule A” which constitute obligations on the licensee’s licence pursuant to s.4 of the Act;

[13] The Registrar will remove the two administrative penalties from the appellant’s public register;

[14] The appellant will pay $500 into the RHRA’s Emergency Fund within 30 days of this Order; and

[2] Prior to settlement discussions taking place, the parties consented pursuant to Rule 14.3 of the Tribunal’s Rules to the hearing continuing before me, if settlement were to fail, notwithstanding that I participated in these settlement discussions.

[15] The Tribunal will close its file.

LICENCE APPEAL TRIBUNAL



Jennifer Friedland, Member

Released: April 19, 2021

SCHEDULE A

1. I, Ms. Mikouliak, acknowledge that Maple Lodge shall not confine any resident of the Home unless immediate action is necessary to prevent serious bodily harm to the person or to others. I acknowledge that confinement is a matter of last resort, that it represents fundamental restrictions on a resident's basic rights, and that all reasonable alternatives to confinement must be attempted before consideration is given to confinement.

2. I, Ms. Mikouliak, on behalf of Maple Lodge, undertake to train all staff not to, and ensure that staff do not, confine any resident except where immediate action is necessary to prevent serious bodily harm to the person or to others, and that all reasonable alternatives to confinement will be exhausted before consideration is given to confinement, in accordance with Maple Lodge's statutory obligations. In the unlikely event that confinement of a resident is necessary, I undertake on behalf of Maple Lodge to continuously seek alternatives to the confinement so that the confinement is terminated at the earliest possible opportunity.

3. I, Ms. Mikouliak, undertake to ensure that every suspected incident of abuse of a resident that results in harm or a risk of harm to the resident and any unlawful conduct that results in harm or risk of harm to a resident is immediately reported to the Registrar of the RHRA in accordance with section 75(1) of the *Retirement Homes Act, 2010*. I acknowledge that unwanted physical and/or sexual touching between residents constitutes unlawful conduct that must be reported to the RHRA in accordance with section 75(1). I, Ms. Mikouliak, undertake to ensure that all staff, including owners and operators, are re-trained and aware of the mandatory reporting obligations set out in section 75(1) of the *Retirement Homes Act, 2010*.

4. I, Ms. Mikouliak, undertake to ensure that all staff, including owners and operators, are re-trained within 60 days of this Order on the Home's written behaviour management strategy by a qualified professional, including techniques to prevent and address resident behaviours that pose a risk to the residents or others in the Home; strategies for intervention; strategies for monitoring the resident; and protocols for how staff and volunteers shall report and be informed of resident behaviours that pose a risk to the resident or others in the Home. I undertake to advise the RHRA as soon as this has been completed.

5. I, Ms. Mikouliak, undertake to ensure that if a resident exhibits behaviour that poses a risk to the resident or others in the Home, staff of the Home will, as soon as practicably possible, document the behaviour in the resident's Plan of Care and develop behaviour management strategies and interventions to address and prevent the behaviour. I acknowledge that behaviour management is an ongoing obligation and that if current strategies for behaviour management are not effective, my staff must develop and implement different strategies for behaviour management.

6. I, Ms. Mikouliak, undertake to ensure that all staff, including owners and operators, complete within 30 days of this Order the RHRA's Compliance Assistance Modules regarding Behaviour Management and Assessments and Plans of Care. I undertake to advise the RHRA as soon as this has been completed.