



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Gold v Cummings, 2024 ONLTB 9477

Date: 2024-02-05

File Number: LTB-L-078942-23

In the matter of: Front APT, 770 MORRISH RD
Toronto ON M1C1G3

Between: Rhonda S Gold Landlord

And

Oleksa Cummings Tenant

Rhonda S Gold (the 'Landlord') applied for an order to terminate the tenancy and evict Oleksa Cummings (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to demolish the unit.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 17, 2024. The named Landlord on the application and the Tenant attended the hearing. The Tenant was represented by Joseph Behar.

Determinations:

1. The application names Rhonda S Gold as the 'Landlord' to the tenancy. For the reasons below I will refer to Ms. Gold as the applicant and not the Landlord.

Preliminary:

2. At the hearing the Tenant's representative raised a preliminary motion to have the application dismissed. The Tenant argues that the named landlord on the application (Rhonda Gold) is not the lawful landlord of the rental unit and as such, does not have standing to file a L2 application before the Board.
3. The application was filed on October 5, 2023 and is based on a notice of termination served to the Tenant on this same date.
4. By way of background the parties were previously before the Board on October 5, 2023 for application file number LTB-L-057244-23 which was a L1 application filed by the applicant. The order for this file was issued on January 2, 2024 and found that the named landlord on the application (Ms. Gold) had defaulted on her mortgage on or about April 19, 2023 and

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that the Mortgagee, 2724582 Ontario Inc. became a mortgagee in possession of the rental property pursuant to section 47 of the *Mortgages Act R.S.O. 1990, C.M.40*. The order dismissed the landlord's application as the Board found that Ms. Gold was not a landlord at the time the application was filed and that the Mortgagee was the lawful landlord.

5. The *Residential Tenancies Act, 2006* is clear that only a landlord may serve a notice of termination under section 50 of the Act or file and application under section 69 of the Act to terminate a tenancy. As stated above, the Board has already determined on January 2, 2024 in order LTB-L-057244-23 that Ms. Gold (the applicant) was no longer a landlord to this tenancy.
6. The doctrines of res judicata and estoppel promote fairness and integrity in the justice system by ensuring finality of decisions. The test for issue estoppel was set out by the Supreme Court in *Angle v. Minister of National Revenue, 1974 CanLII 168 (SCC), [1975] 2 S.C.R. 248* at p. 254:
 - (1) that the same question has been decided;
 - (2) that the judicial decision which is said to create the estoppel was final; and,
 - (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised their privies.
7. In *Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 2 S.C.R. 460*, the Court confirmed that the doctrine of issue estoppel applies to administrative tribunals.
8. At para. 33 of *Danyluk, Binnie, J.*, who gave the judgment for the Court, stated that issue estoppel involves a two-step analysis:

The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson J. in *Angle, supra*. If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied.
9. In this case, the Board has already determined that the applicant is no longer a landlord of the rental unit and that there is a mortgagee in possession of the rental unit pursuant to section 47 of the *Mortgages Act R.S.O. 1990, C.M.40*. Although the applicant may disagree with the Board's findings on order LTB-L-057244-23, that decision is final and has not been successfully reviewed or appealed. Therefore, the three preconditions necessary for the application of issue estoppel are present.
10. At the hearing, the applicant stated that she has commenced legal proceedings before the Superior Court against the mortgagee. However, as of the hearing date, no final order has been issued from the Court with respect to that claim. Therefore, I find that there has not been a change in circumstances since order LTB-L-057244-23 was issued and as such, I find that there is still a mortgagee in possession of the rental unit and that the applicant does not have lawful standing as a landlord in this tenancy. As the applicant was not the

lawful landlord at the time the notice of termination was served or when the application was filed, she ultimately did not have the right to serve a notice of termination under the Act or file an application to terminate the tenancy.

11. The Landlord's application must therefore be dismissed.

Request for costs and Vexatious Litigant Motion:

12. At the hearing, the Tenant's representative request that the Board order costs against the applicant and further declare her as a vexatious litigant. The Tenant's representative argues that Ms. Gold has filed several applications against the Tenant after defaulting on her mortgage in April 2023.
13. The Board's records confirm that the applicant has filed approximately 6 applications against the Tenant since she ceased to be a landlord on or about April 19, 2023, however the Board's records also confirm that all these applications were filed prior to the Board issuing its decision with respect to order LTB-L-057244-23 on January 2, 2024.
14. The Board's Interpretation Guideline 3 speaks to ordering costs against a party and requires that, in considering a request for costs awarded against a party, the Board consider whether the party's actions were unreasonable. A party's actions will be considered unreasonable if they cause undue expense or delay.
15. Rule A8.2 of the Board's Rules of Procedure states that the Board may find a party to be vexatious litigant when satisfied that a person has persistently instituted vexatious proceedings or conducted a proceeding in a vexatious manner.
16. In my view, I do not find that costs are warranted under circumstances, nor do I find that there is sufficient evidence to declare the applicant as a vexatious litigant. The evidence before the Board is clear that all the applications previously filed by the applicant were prior to the Board issuing order LTB-L-057244-23 and as such, the applicant was not aware at the time of filing these applications that she would not be deemed a landlord by the Board pursuant to section 47 of the *Mortgages Act R.S.O. 1990, C.M.40*. The applicant has been self-represented throughout the Board proceedings and in filing the applications. I do not find that the applicant has acted in bad faith.
17. The applicant is however cautioned that continuing to proceed on subsequent applications before the Board prior to resolving the issue with the mortgagee may result in costs being ordered by the Board on those applications at their respective hearings.

It is ordered that:

1. The Landlord's application is dismissed.

February 5, 2024
Date Issued

 Fabio Quattrociochi
 Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.