



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Hoenow v Murray, 2024 ONLTB 59108

Date: 2024-08-26

File Number: LTB-L-020243-24-RV

In the matter of: 1801, 28 FREELAND ST
TORONTO ON M5E0E3

I hereby certify this is a true copy of an Order dated

AUG 26, 2024

Landlords

Between: Tyler Hoenow
Eva Duplessis

Landlord and Tenant Board

And

O'Neill James Murray

Tenant

Review Order

Tyler Hoenow and Eva Duplessis (the 'Landlords') applied for an order to terminate the tenancy and evict O'Neill James Murray (the 'Tenant') because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

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

This application was resolved by order LTB-L-020243-24 issued on August 13, 2024.

On August 24, 2024, the Tenant requested a review of the order.

A preliminary review of the review request was completed without a hearing.

Determinations:

1. The Tenant submits that the order under review conflicts with another order respecting the same tenancy, LTB-L-090579-23, which resolves an L1 application for review. The Tenant submits that these orders conflict with respect to the daily compensation charges in each order. These orders both calculate daily compensation as \$83.84 so they do not conflict. The periods of time for which compensation is payable do overlap as between these orders. However, this does not mean that the Tenant must pay the same compensation twice. The order under review states that the amount owed for compensation is to be reduced by what the Tenant has already paid. The Landlord will only be able to enforce an amount owing based on compensation in the amount of \$83.84 per day, less what has been paid, for any given period of time covered by either order or both orders.

2. The Tenant submits that the total amount required to void the eviction order appears inflated and includes errors in calculations. The order under review is not a voidable order and so even if this submission is true, it is not material to the outcome of the proceedings.
3. The Tenant submits that the order fails to address evidence of theft and s.82 arguments. The Tenant refers to “serious breaches” and so I interpret this submission to refer to subs. 83(3)(a) of the Act, which requires the Board to deny an eviction application when the Board is satisfied that the Landlord is in serious breach of the Act or an obligation under the tenancy agreement. At the hearing of this application, the Tenant alleged that the Landlords stole his belongings in December 2023 and that this constitutes serious breach. This issue was decided in order LTB-L-090759-23, issued on July 26, 2024. Order LTB-L-090759-23 was upheld on review by order LTB-L-090759-23-RV, issued on August 13, 2024. Order LTB-L-090759-23 finds that the Member was not satisfied that the Landlords were in serious breach with respect to this alleged incident because the Tenant had not established that this incident had taken place. The review order adds that even if the Tenant had established that this incident took place, it would not constitute serious breach because for the purposes of subs. 83(3)(a), the breach must be ongoing as of the date of the hearing. The alleged incident took place in December 2023 and is/was not ongoing.
4. The issue of serious breach has been decided in a final order and so the Tenant is barred from raising it pursuant to the doctrine of *res judicata*, specifically issue estoppel. When *res judicata* applies, a litigant is “estopped” by the previous proceeding. In the case of issue estoppel, a litigant is estopped because the issue has clearly been decided in the previous proceeding.
5. There are three requirements for issue estoppel:
 - a. The issue is the same as that decided in the earlier decision.
 - b. The prior judicial decision was final.
 - c. The parties in both proceedings are the same (or their privies).
6. In this case the issue is the same as that decided in LTB-L-090759-23, the decision in LTB-L-090759-23 is final, and the parties are the same.
7. The Courts have consistently maintained that although *res judicata* prevents the re-litigation of matters, it is subject to an overriding discretion to ensure justice in each case. I see no reason to exercise discretion to override issue estoppel in this case.
8. For the reasons above, on the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.

It is ordered that:

1. The request to review order LTB-L-020243-24 issued on August 13, 2024 is denied. The order is confirmed and remains unchanged.

August 26, 2024
Date Issued



Renée Lang
Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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