



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

File Number: LTB-L-069013-24-IN

In the matter of: 43 OTTAWA ST N
HAMILTON ON L8H3Y8

Between: Sabina Palka

And

Matthew Williams
Cassandra Musgrave

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

MAR 18 2025

Landlord and Tenant Board

Landlord

Tenant

Sabina Palka (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Williams and Cassandra Musgrave (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

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

This application was scheduled by videoconference on October 24, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Jordan Nieuwhof.

Also in attendance were the Landlord's witnesses: Karl Sadowski, Sandra Askew and Christopher Pollock.

It is determined that:

PRELIMINARY ISSUE

1. At the hearing, the Tenant raised a preliminary issue with respect the Landlord's N7 notice of termination – specifically that it was barred by the doctrine of cause of action estoppel,

since the Landlord had previously filed an N7 with respect to Board file LTB-L-017853-24 which contained different incidents from the same time period.

2. Cause of action estoppel precludes a litigant from asserting a claim or a defence that: (a) it asserted; or (b) it had an opportunity of asserting and should have asserted in past proceedings. The criteria for cause of action estoppel are as follows: (a) there must be a final decision of a court of competent jurisdiction in the prior action; (b) the parties to the subsequent litigation must have been parties to or in privy with the parties to the prior action; (c) the cause of action in the prior action must not be separate and distinct; and (d) the basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence (see: *Angle v. Minister of National Revenue*, [1974] 2 S.C.R. 248 and *Grandview (Town) v. Doering*, supra).
3. The L2 application under LTB-L-017853-24 was filed on March 1, 2024 by the Landlord and alleged the following breaches: serious impairment of safety and wilful damages. It included incidents from the period January 2024 – February 2024; the hearing took place on October 3, 2024 and an order was issued on October 22, 2024.
4. The L2 application currently before the Board (LTB-L-069013-24) was filed on August 28, 2024 and speaks to the same allegations of serious impairment of safety and wilful damages and includes separate incidents from December 2023 to August 2024.
5. The Landlord submits that the incidents on the current N7 are separate and distinct from those found on the previous N7 and were therefore not adjudicated in the previous order. The Landlord accepts that the issues of smoke detectors and unauthorized electrical work were adjudicated.
6. The Tenant submits that the Landlord should have included the incidents from this N7 onto that one before it was served on February 28, 2024. The incidents contained thereafter could have and should have been discussed at the hearing in October 2024.

ANALYSIS

7. It is uncontested that the order issued on October 22, 2024 was a final order and that the parties to that application are the same parties on this application. It is also uncontested that the grounds alleged on the first N7 are also alleged on the second N7 notice of termination.
8. With respect to the incidents, I am not satisfied that the Landlord did not have a full opportunity to raise the incidents from December 2023 to February 2024 on the previous N7 notice of termination. They certainly had the opportunity to do so and should have done so. This would have been diligent on their part.
9. Thus, I find that the incidents prior to February 28, 2024 are barred by the doctrine of cause of action estoppel.
10. However, the N7 notice of termination also contains incidents from a period after (March – August 2024), that while could have been discussed at the hearing in October 2024, in the context of the Landlord's section 83 circumstances, but could not have formed the basis of a termination of the tenancy.

11. Notices of termination cannot be amended and therefore, the Landlord could not have raised the issues after February 28, 2024 for the basis of a termination of the tenancy without serving another notice and bringing forth another application.
12. As such, the motion to dismiss the Landlord's application on the basis of the doctrine of cause of action estoppel is denied and only the following incidents from the second N7 form the basis of the application going forward:
 - March 5, 2024 – damage to the siding of the home and shed; unauthorized use of firearms on the property.
 - June 5, 2024 - tampering and disconnecting the sump pump.
 - August 22, 2024- damage to closet door upstairs; and tampering with electrical wiring at the property (but not the attic).
13. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The hearing of the Landlord's L2 application is adjourned to a date to be set by the Board on an expedited basis.
2. The parties are directed to attend the hearing and be prepared to proceed on the merits of the original application. This includes obtaining any legal advice and/or representation prior to the next hearing date.
3. The parties are directed to give to each other and to the LTB any evidence that has not already been disclosed/does not comply with the Practice Direction and that relates to the original application by the following dates. This includes any documents, receipts, photographs, recordings or like things the party intends to rely on at the hearing.
 - The Landlord's disclosure is due to the Tenant and the Board on or before March 31, 2025.
 - The Tenant's disclosure is due to the Landlord and the Board on or before April 15, 2025;
4. Disclosure evidence shall be organized in accordance with the Board's [Practice Direction on Evidence](#):
 - a. All documents, photographs and other items provided to the other parties and the LTB as evidence must:
 - i. be readable;
 - ii. have consecutively numbered pages; and
 - iii. include a list or table of contents identifying each item in order, and by page number, if more than one item is being submitted.
5. The following allegations form the basis of the N7 notice of termination that are to be adjudicated by the Board:

- a. March 5, 2024 – damage to the siding of the home and shed; unauthorized use of firearms on the property.
 - b. June 5, 2024 - tampering and disconnecting the sump pump.
 - c. August 22, 2024- damage to closet door upstairs; and tampering with electrical wiring at the property (but not the attic).
6. Disclosure to the Board shall be made through the Tribunals Ontario Portal. If a party experiences difficulty with the portal, they may submit their disclosure to the Board **BY E-MAIL**. The LTB e-mail address is ltb.evidence@ontario.ca.
 7. Pursuant to Rule 19.7 a party who fails to comply with an order for disclosure may not be permitted to rely on evidence that is not properly disclosed.
 8. A party may ask the LTB to issue a summons for a witness by completing and filing a Request for LTB to Issue a Summons form. The request must be made as soon as the party becomes aware a summons is required.
 9. I am seized of this matter.

March 18, 2025
Date Issued

S. Anwar-Ali

Sonia Anwar-Ali
Member, 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.