



Order under Section 30 Residential Tenancies Act, 2006

Citation: Bokovay v Portobello Partnerships, 2026 ONLTB 1753

Date: 2026-01-05

File Number: LTB-T-068607-24

In the matter of: 1157 BRASSEUR CRES
ORLEANS ON K4A4Y5

Between: Lara Bokovay Tenant
Melody Johnson

And

Portobello Partnerships Landlord

When the capitalized word “Landlord” is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word “Tenant” is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Lara Bokovay and Melody Johnson (the 'Tenant') applied for an order determining that Portobello Partnerships (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was heard by videoconference on September 25, 2025.

The Landlord's witness Debbie Pickup (DP), the Landlord's legal representative Trevor Jacquard and the Tenants attended the hearing.

Determinations:

Preliminary issues:

1. Tenants submitted two T6 applications, the first T6 Application T-042155-24 was filed with the Board on May 27, 2024, the second T6 Application as subject of the hearing on September 25, 2025 was filed on August 26, 2024. The Landlord submits that both applications overlap, that the Tenants have attempted to split their action and raised estoppel suggesting that the Tenants ought to have argued all other issues at that time, and not proceeded to second application filing.

2. That once the Tenants reviewed the Landlord's evidence, they submitted an amended application in September 2025, anticipating that the slip and fall case law as relied upon by the Landlord would preclude them from proceeding on the basis of the original August 2024 filing.
3. The Landlord submitted that the issue of uneven patio stones as outlined in LTB-T-068607-24, should be statute barred and referred to decision of then member Renee Lang in LTB-T-068607-24-RV, (DOC # 6293211).
4. The issues referenced in the decision concerned an allegation of an illegal entry, where it was outlined that:

"13. At the hearing the Landlord's legal representatives submitted that the illegal entry allegation should be dismissed in accordance with the principle of res judicata.

14. The Tenant filed application TST-67983-15 on November 3, 2015. In that application the Tenant alleged that the Landlord illegally entered the rental unit on November 6, 2014. At the time that the Tenant filed application TST-67983-15, he was aware of the alleged illegal entry of June 8, 2015, which is the allegation in the current application. At the hearing, I explained that it appears that the illegal entry allegation in this application would be barred by the doctrine of cause of action estoppel, which is a branch of res judicata. Cause of action estoppel precludes a litigant from asserting a claim or a defence that he or she had an opportunity of asserting and should have asserted in past proceedings.

15. At the hearing, when the Tenant was asked for his submissions on whether the doctrine of cause of action estoppel applies to the illegal entry allegation in this application, the Tenant requested that this allegation be withdrawn. I granted the Tenant's request. This allegation is therefore withdrawn, with prejudice, because the Tenant requested that this part of the application be withdrawn after hearing about the cause of action estoppel issue. In other words, the Tenant's request to withdraw this part of the application is a concession that this part of the application is barred by cause of action estoppel."

5. The Tenants submitted that while they filed the second application on August 26, 2024, on August 29, 2024 they wrote to the LTB seeking the Board's consideration in combining the matters to be heard together pursuant to their first application filing in LTB-L-049689-24. That on September 9, 2024, the LTB denied the Tenants request to combine the matters noting that the applications are distinct, one noting issues regarding landscaping, while another addresses issues with faulty appliances. Neither application sharing enough evidence that may result in inconsistent decisions if the matters were heard separately.
6. The Tenants submit that only the issues of appliances were addressed in the prior T6 Application in T-042155-24, therefore the application is not barred by cause of action estoppel.
7. The Tenants further submit that this is not a slip and fall claim, that the issues are brought in accordance to subsection 20(1) of the Act. That while the Landlord suggests this was a slip and fall issue, the Tenants maintain that as early as August 2024, when they wrote to

the LTB to combine the T6 applications, the Board recognized these as claims characterized regrading "landscaping," in the reply of September 9, 2024.

8. The Landlord again reiterated that the cause of action estoppel precludes a litigant from asserting a claim or a defence that he or she had an opportunity of asserting and should have asserted in past proceedings. In this case in the prior filed application as contained in LTB-T-042155-24.
9. When asked as to why the Tenants did not include the issues of the patio stones as subject of the current application in the prior filing, the Tenants submitted that they waited through the wintertime to June 14, 2024 when the issues were raised again with the Landlord. And while the Landlord attempted repairs in July 18, 2024, the attempted repairs made issues worse and they did not hear back from the Landlord until their application filing on August 26, 2024.
10. As outlined at the time of hearing, the doctrine of *res judicata* operates to ensure finality of decisions and prevent abuse of process. It stops a party from being able to seek another order on the same issue.
11. In effect, it prevents a "second kick at the can". It has two aspects, issue estoppel and cause of action estoppel. The test for issue estoppel has three elements, which must all be present:
 - (1) the same question has been decided;
 - (2) the decision which is said to create the estoppel was final; and,
 - (3) that the parties to the prior decision were the same persons as the parties to the proceedings in which the estoppel is raised.
12. In the case before me, the Tenants sought to combine her applications, the request was denied by the Board.
13. The Tenants had a valid explanation for the later filing of the second T6 as before me in that the issue complained of was a backyard landscaping matter and which was while noted to be in existence in January 2024, the Tenants only filing the application when a satisfactory response was not received or acted upon by the Landlord.
14. As outlined, I considered the issues as contained in LTB-T-068607-24 as a distinct cause of action and that the Tenants were not bound to raise all issues in the May 2024 filing in T-042155-24 if in fact at that time, there was a chance that the issues of the patio would be addressed by the Landlord in a satisfactory manner.
15. Additionally, the Board has a residual discretion as to whether to apply the doctrine of *res judicata* even if all three of these criteria are satisfied. And *res judicata* or issue estoppel should not be applied in circumstances that would create an injustice.

Amended application – September 3, 2025

16. As noted, the original application was filed by the Tenants on August 26, 2024, they subsequently filed a request to amend the application with the Board on September 3, 2025.
17. The Landlord confirmed that the application was served upon them within prescribed timelines, in consideration of factors as outlined in LTB Rule 15, the request to amend was granted.

Late submissions

18. The Tenants requested that the Board exclude the Landlord's late evidence of September 22, 2025 not filed in accordance to prescribed disclosure rules, they submit that the late submission is prejudicial.
19. The Landlord submitted that they are able to proceed with matter without the reliance on the late submission, therefore the late DOC-644758 was excluded.
20. For the outlined reasons, the matter proceeded to hear the merits of the Tenants' T6 Application.

T6 Application

21. As explained below, the Tenants did not prove on a balance of probabilities the allegations contained in the application. Therefore, the application is dismissed.
22. The Tenants allege uneven and unstable backyard patio stones and front step and that these hazards persisted for nearly 10 months.
23. The Tenants moved into the rental unit on December 19, 2023, the lawful rent at the time of filing was \$2,600.00.

Tenants evidence

24. The Tenants rely on DOC-6414940 in evidence. As contained therein, on January 4, 2024 the Tenants wrote an email to the Landlord's property manager Jean Lacroix (JL) outlining a number of issues, issue #8 outlined the following:

"Also on January 1st when I took my dog out to pee I tripped on the uneven patio stone in the back and severely damaged my Achilles and broke my hand which ended in 600\$ two casts for both my leg and hand."

25. On January 5, 2024 (JL) responded that he would forward the outlined concerns to the appropriate parties and in respect of the fall he stated that he was sorry to hear about the incident.

26. The next time the Tenants reach out to (JL) about the patio stones is on June 14, 2024 by way of another email in which the Tenants state:

“Attached you will find pictures of patio stones in the front and the back of the house. As you can see some are uneven and wobbly, some worse than others, we have already endured one injury and a couple of trips. The front continues to worsen with every rain.

We would like this taken care of as soon as possible so we aren’t at risk of personal injury or any issues with the tenant insurance from personal liability standpoint.”

27. The email contained photos outlined on pages 16-19 of DOC-6414940. The Tenants submitted that the front steps wobbled when stepped on to access the driveway, suggesting that the steps were not installed properly.
28. On June 21, 2024 (JL) responded that the property has been inspected and that he would be in touch with plans to move forward.
29. On July 14, 2024 (JL) wrote to the Tenants that the patio stones were being addressed during that week.
30. On July 18, 2024 the Tenants reply to (JL) that it appears that the landscapers have been at the property, that the front looks great but that the stones at the back have yet to be fixed.
31. The Tenants evidence photos as taken on July 18, 2024, on pages 22-24 of DOC-6414940 where it is shown that parts of the patio stones have been removed, screening material being levelled and patio stones being re-laid.
32. The Tenants submitted that they believed that the stones that were removed were not the source of concern, that the very far rows once removed created more instability issues.
33. Once more on July 31, 2024, (JL) wrote that someone would be coming out on August 2, 2024 to inspect the patio stones.
34. On August 2, 2024 a video as contained in DOC-6414980 shows the Landlord’s witness Debbie Pickup (DP) inspecting the patio stone repairs as indicated in (JL’s) email of July 31, 2024.
35. In the video (DP) is shown to be stepping on various patio stones, noted one stone being unstable and taking photos of stones that appeared not to be completely level.
36. On August 6, 2024 the Tenants advise the (JL) that the *“patio stones are even more wobbly since work has been done”* and that they are concerned about their liability and wellbeing.
37. The Tenants submitted that no further information was received from the Landlord until August 26, 2024 after they filed their T6 application with the Board advising that the patio stones would be inspected the next day, August 27, 2024.

38. On August 27, 2024 in a video (DOC-6415029) it is shown that (JL) and (DP) attended at the property to reinspect the patio stones. The Tenants submit that one stone in the third row towards to lawn appears to still be "rocking."
39. In the second video (DOC-6415096) also taken on the same date, (DP) is shown to be taking more photos. The Tenants suggests that the Landlord was aware of the existing and ongoing issues as they continued to investigate.
40. In the third and final video as taken by the Tenant on September 13, 2024 (DOC-6415000), Tenants suggesting that almost two months after the initial repair work commenced that the patio stones appear to still be unstable and moving when stepping on corners of the stones. That without being hyper vigilant, further injury could result.
41. On October 10, 2024, (JL) informs the Tenants that another work order has been put in to address the patio stones.
42. On October 18, 2024, this time all backyard patio stones were lifted up, and the relevening of stones was done. The Tenants submitted that the issues were finally fully addressed as pertaining to the backyard patio.
43. The Tenants submitted that as a result of the backyard issues, they faced daily safety risk and restrictive use of the yard.
44. The front patio stones were fixed on or about January 29, 2025, however after heavy rain the gradient material is said to be washed away and in turn the steps have moved again. As of the date of the hearing the condition of the front steps was good, recently remerging issues were addressed as recently as September 5, 2025.
45. The Tenants ask that the Board award them \$35,000.00 in compensation for their loss of use of the yard, for trips and falls by their younger daughter and to recognize an extended period of time of the state of the patio during which they say that the Landlord did not act in a timely manner, resulting in a delay of 10 plus months and in recognition that the initially attempted repairs were ineffective.
46. On cross examination the Tenants did not dispute that the Landlord was not able to address the repair when initially raised on January 4, 2024 given the winter season.

Landlord's evidence

47. The Landlord's witness Debbie Pickup (DP) testified that she is a builder of the home.
48. That the builder initially attended at the property on January 8, 2024 in response to the trip and fall, that snow was removed to expose the patio stones during this initial inspection. That while there was a sang on one of the tiles, it was not in the location of the trip and fall as outlined by the Tenant. That the witnessed conditions were that of normal patio settlement pattern.
49. That in July 2024 the builder removed two rear rows of patio stones, that settlement is not covered under warranty and that this is a maintenance issue. Further, that pressures on stones slabs are impacted by factors such as patio furniture or BBQ placements and

normal settlement being further impacted by water draining from eavestroughs and downspouts creating a possible movement in the stones.

50. (DP) submitted that they attended at the property in September 2024 and provided a direction to the builder's contractor in October 2024 to remove all patio stones and relay them in an effort to "*make the Tenant happy*." That movement in patio stones is inevitable and that while there were no tripping hazards detected on the days she was on the premises, that is not to say that there will not be future movement.
51. That out of 34 units in this subdivision built, this is the only one experiencing a backyard patio issue, and that the Tenants have once more submitted another concern regarding the backyard patio in September 2025.
52. On cross examination by the Tenant, (DP) submitted that the reason the Landlord continued to investigate and resorted to removing all backyard patio tiles/ stones is to satisfy the Tenants' concerns, not as an admission of liability as it is their position that the patio while experiencing settlement, was within a normal range of what is to be expected.

Analysis

53. Section 20 of the Act holds the Landlord responsible for providing and maintaining the rental unit in a good state of repair.
54. In *Onyskiw v. CJM Property Management Ltd.*, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
55. In this case the evidence shows that the Landlord actively responded to the Tenants concerns by acknowledging their emails, reviewing the complaints and sending out contractors to rectify the issues complained of. The date of reporting of the patio stone issues inevitably created inherent delays in the Landlord's ability to complete any repairs, if required. This was not clear to them in January 2024. I do not agree with the Tenants' submissions that by virtue of actively responding to the noted patio stone concerns that this is an admission of disrepair by the Landlord. I am more compelled by the evidence of the Landlord's witness (DP) when she said that this was done to make the Tenants happy. I say this as the evidence does not demonstrate the severity of the issues as the Tenants have portrayed.
56. While it is regrettable that the parties did not have better communication to have possibly addressed the issues at the earlier date in July 2024, the Tenant (LB) submitted that she did not tell the Landlord which stones posed a hazard and that she was never asked. In my view, it would not have been unusual for a party raising a concern to have provided greater clarity of what area of the patio was of particular concern if the entire patio was not the issue complained of.
57. The Landlord's witness acknowledged that the patio is not perfect, nor that it will ever be, given the nature of the elements and usage. That settlement and outdoor elements create

conditions for which the patio stones will move, through my knowledge of other cases as before the Board I accept this to be the case. And as this was a newly built home, movement and settlement of the ground surrounding the home and building's envelope is expected.

58. It is not disputed that the photos and video evidence submitted by the Tenants indicate that some of the patio stones were uneven, however, the impact to the Tenants appears to be minimal despite their submissions of concern for their safety and decreased utility. Although the Tenants said the backyard patio was unsafe, the photos and video evidence does not support this testimony. Nor am I able to conclude that the first named Tenant's fall on January 1, 2024 was in connection to the condition of the patio. As outlined at the time of hearing, there was the possibility of snow and ice in the yard which naturally could have created conditions for a slip and fall. And as of October 2024 the rear yard patio and January 2025 the front step repairs were submitted to have been completed although the Tenants suggest these are issues that may arise again in the future given that they continue to question the repairs effected.
59. In conclusion, as I am not satisfied that the Landlord failed to meet their obligations under subsection 20(1) of the Act to repair or maintain the rental unit and did not fail to comply with maintenance standards, the Tenants' application must be dismissed.
60. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenants' application is dismissed.

January 5, 2026
Date Issued

Alicia Johnson
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.