



Order under Section 94.7 Residential Tenancies Act, 2006

Citation: Stoneworth Co-operative Homes Inc. v Duncan, 2026 ONLTB 9072

Date: 2026-02-04

File Number: LTB-C-031255-25

In the matter of: 41, 2 ELITE DR
HAMILTON ON L8W3M1

Between: Stoneworth Co-operative Homes Inc. Co-op

And

Alana Duncan Co-op Member
Brandon Halliday

Stoneworth Co-operative Homes Inc. (the 'Co-op') applied for an order to end the occupancy of the member unit and evict Alana Duncan and Brandon Halliday (the 'Co-op Member') because the Co-op Member did not pay the regular monthly housing charges that the Co-op Member owes.

A Case Management Hearing was held on August 6, 2025. The Parties were unable to resolve the application. Therefore, the matter proceeded to a merits hearing.

This application was heard by videoconference on December 17, 2025.

The Co-op's Representative, Francisco Gomez, attended for the Co-op. The Co-op Member, Alana Duncan, also attended the hearing.

Determinations:

1. On or about February 26, 2025, the Co-op served the Co-op Member with a Notice to End Occupancy for Non-payment of Regular Monthly Housing Charges (N4C Notice) for the rental periods of May 1, 2022 to February 28, 2025, in the amount of \$11,241.00.
2. At the hearing, it was confirmed that the Co-op had a previous C1 application, before the Board, LTB-C-051188-24, that named the Co-op Member, Alana Duncan and that sought housing charges for the period of May 1, 2022 to January 31, 2024. At a case management hearing on October 9, 2024, the Co-op's representative requested that the Board discontinue that application, as all outstanding monthly housing charges and the application filing fee had been paid by the date of the hearing.

3. As a result of the evidence given that all payments had been made, the C1 application LTB-C-051188-24 was resolved by order on October 24, 2024, which discontinued the application to the period ending October 31, 2024.
4. The Co-op's representative confirmed that the N4C Notice, upon which this application is based, claims regular monthly housing charges for the period of May 1, 2022 to February 28, 2025. On the basis of this evidence, I find that the N4C before me overlaps the rental period included in the prior application, LTB-C-051188-24.
5. As the prior application was discontinued by the Co-op having advised the Board that all monthly housing charges and fees had been paid for that time period, I find that the N4C is invalid on its face. The amount of monthly housing charges cannot now be claimed as owing. The previously paid amounts cannot now be claimed with the Co-op providing contradictory and inconsistent evidence. As a Notice cannot be amended or corrected once it has been served, I find that the Notice is void and the application must be dismissed.

Abuse of Process and Res Judicata

6. I further find that as the periods for the housing charges overlap the prior claim of the Co-op, the claim would also be denied as an abuse of process and pursuant to the principles of res judicata.
7. The Co-op's representative stated that the matter should proceed to be heard as the previous order only reflected one of the members, Alana Duncan, and this current application lists both Co-op Members, Alana Duncan and Brandon Halliday, and is therefore different. I disagree with the representative's assertion. It was the Co-op's testimony before this Board that was relied upon in order to obtain the prior discontinuance order. It would be an abuse of process for the Co-op to now attempt to claim the same amount by stating that they misled the Board at the last hearing, either in relation to the payments made or in relation to who the members were that were entitled to be served with the Notice.
8. The doctrines of *res judicata* and issue 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 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.
9. Furthermore, 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.
10. In both applications, the rental unit, some of the periods of monthly housing charges claimed are identical, and one of the parties is identical.

11. Although the Co-op has now filed their application with both Co-op Members named, it does not change that the amount of regular monthly housing charges claimed in the previous application overlaps the same rental periods previously claimed and dealt with, being May 1, 2022 to February 28, 2025, in LTB-C-051188-24.
12. An order resolving LTB-C-051188-24 was not challenged or overturned on review. The order is final.
13. Therefore, the three preconditions necessary for the application of issue estoppel are present. The N4C in which this application is based included \$11,241.00 of regular monthly housing charges arrears that an order has already finally dealt with, and thus, cannot be claimed again on a subsequent N4C.
14. Therefore, I find that the notice is fatally flawed, and, pursuant to section 94.7(1) of the Act, the Board does not have the jurisdiction to grant an eviction based on this application.
15. At the hearing, and after being informed of the Board's decision regarding the fatal flaws of the N4c, the Co-op's representative did not want to withdraw their application, nor did they request an order for arrears only.
16. As such, the application cannot proceed and will be dismissed.

It is ordered that:

1. The Co-op's application is dismissed.

February 4, 2026

Date Issued

Colette Myers

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.