



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-016937-25

In the matter of: 107, 3575 BATHURST ST
NORTH YORK ON M6A2C8

Between: SKPM RENTS 1 Landlord

And

KARL SMYTH Tenant

SKPM RENTS 1 (the 'Landlord') applied for an order to terminate the tenancy and evict KARL SMYTH (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Representatives Preston Haynes, Gail Kukor Lang, the Tenant and the Tenant's Representative, George Berger attended the hearing.

Background

1. The Landlord filed eight L1 applications with respect to rental units located within the same residential complex. Each application arose from substantially similar factual circumstances and raised the same preliminary legal issues, including the amount of the lawful rent, which rests on the validity of a Notice of Rent Increase ('NORI'), the application of the doctrines of *stare decisis* and *res judicata*, and the issues raised under section 82 of the *Residential Tenancies Act, 2006* (the 'Act').
2. Given the overlap of issues, the applications were scheduled to be heard within the same hearing block and were heard by me. The evidence and submissions with respect to the preliminary issues were the same across the applications. Hearing the matters together promoted procedural efficiency and reduced the risk of inconsistent findings.
3. While the applications were scheduled within the same hearing block and heard by me, each application was heard individually. The matters were grouped only for the purposes of addressing common preliminary issues arising from the same residential complex and the same Notice of Rent Increase.

Preliminary Issues

Request to amend L1 application to L9 application

4. At the onset of the hearing the Landlord requested that all L1 applications be amended to L9 applications for arrears owing only as the Landlord is not seeking eviction. The Tenant did not oppose to the amendment. I granted the amendment for the application.

Stare Decisis / Res Judicata

5. The Landlord argued that the legal principles of *stare decisis* and *res judicata* should apply to bar the Tenant from challenging the validity of the NORI as that issue was already decided in a previous LTB order, LTB- L-016994-25.
6. In order LTB-L-016994-25, the Vice Chair considered whether the NORI served on the tenant was valid. In that decision, the Vice Chair found that the Landlord had served the lawful NORI on September 23, 2022, which was at least 90 days before the effective date of January 1, 2023. The Vice Chair further found that although the Tenant alleged receipt of the NORI on November 25, 2022, the documentary and testimonial evidence, including emails exchanged with the Landlord's agent, supported a finding that the NORI was properly served in September 2022, at least 90 days before it took effect. The Vice Chair noted that the NORI was valid but also noted that each application must be assessed within the context of the specific application before the Board and that a distinct NORI had been issued to each tenant for their respective rental unit.
7. I am not persuaded that the principles of *stare decisis* or *res judicata* apply to stop the Tenant from raising the issue of the validity of the NORI in this proceeding. *Stare decisis* is a legal principle that requires courts and tribunals to follow historical cases when deciding a similar issue. It requires adjudicators to treat like cases alike so that there is consistency and predictability in the law. However, decisions of individual Board Members or Vice Chairs are not binding on other Members of the Board. While such decisions may be persuasive, they do not have precedential authority that compels a Member to adopt the same outcome as a previous order.
8. The doctrine of *res judicata* – and particularly issue estoppel - does not apply in this matter. The preconditions for *issue estoppel* are: 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 are the same persons as the parties to the proceeding in which the estoppel is raised. Although the Landlord seeks to rely on findings made in order LTB-L-016994-25, that decision arose from a separate Landlord's application concerning a different tenancy and a different tenant/party. As the Vice Chair in that matter noted each application must be assessed on its own merits. Accordingly, I find that the prior decision does not preclude me from independently considering the Tenant's arguments regarding the validity of the NORI in this proceeding.

Section 82 Issues and Adjournment Request

9. The Landlord argued that any issues the Tenant intended to raise under s. 82 of the Act in this proceeding should be raised in their own application (LTB-T-096177-24).

10. The Tenant disagreed with the Landlord's position and submitted that the issue of the lawful monthly rent is central to the current application. However, the Tenant also submitted that the issue of the lawful monthly rent is also the crux of their application for file LTB-T-096177-24. The Tenant requested an adjournment so that the two applications could be heard together.
11. The Tenant relies on the Divisional Court decision in *Oz v. Shearer*, 2020 ONSC 6685 with respect to the section 82 issues they intend to raise. In that case, the Court acknowledged that the Board must address legal questions raised under the *Residential Tenancies Act, 2006* including the proper interpretation and application of sections 82 and 83 of the Act and cautioned against procedural barriers that would prevent the adjudication of such issues within the Board's jurisdiction. In addition, the Court confirmed that issues raised under these sections cannot be summarily dismissed but must be heard on their merits when they are properly raised, and that tenants must not be deprived of the statutory protections afforded by those provisions merely because they arise in the context of a landlord's application. Accordingly, the Tenant submits that their section 82 and section 83 issues should be considered and decided on their merits in this hearing rather than being deferred to their own application.
12. Further the Tenant relies on the LTB's order LTB-L-080535-22, which was made in the context of an Above Guideline Rent Increase application and states in paragraph 30:

Sixteen Tenants filed submissions, and all take issue with the adequacy of the form N1 notices of rent increase because the Landlord did not serve the notices at least 90 days before the intended rent increase was to take effect. The Landlord disputes these assertions. Under section 126, the Residential Tenancies Act authorizes the Landlord and Tenant Board to determine the rate of rent increase, not whether it may be collected. The adequacy of the N1 notices are not relevant to the Board's discretion under section 126 of the Act. The Tenants noted in their submissions that they intend to challenge these issues by filing a T2 application with the Board. That is an appropriate forum to determine whether adequate notice was given to the Tenants and, if so, the consequences.
13. I considered the parties' submissions and the interim order LTB-T-096177-24-IN, which was issued on October 9, 2025, for the Tenant's application and states at paragraph 3 that, "Accordingly, the issue of the lawful monthly rent will be determined in those L1 matters." I find that the issue of the lawful monthly rent needs to be determined in the present application, as it will determine the arrears owing. Therefore, I will consider that issue as well as the validity of the NORI. Further, pursuant to Rule 1.6 of the LTB's Rules of Procedure I have discretion to determine if the applications should be heard together if it is fair to do so.
14. In this matter, the lawful monthly rent is a central issue that must be decided in order to determine the amount of arrears owing. The Board also scheduled eight of the Landlord's applications be heard within the same hearing block by the same Member, the Board is

required to be expeditious and the parties were in a position to respond to the issue of the lawful monthly rent. Therefore, I allowed the Tenant to raise this issue during this hearing for the Landlord's application but denied the Tenant's adjournment request.

Validity of the NORI

15. The Tenant challenged the lawful monthly rent because he testified that he received a NORI with the effective date of January 1, 2023, less than 90 days before the increase was to take effect, which would render the NORI invalid.
16. The Landlord disputes the Tenant's claim regarding the NORI. The Landlord responded that the Tenant's receipt of the NORI is not accurate. The Landlord provided an email from their employee, dated September 27, 2022, that confirms that he had served the NORI to all affected units, identified by unit number, on September 23, 2022 and an affidavit evidence sworn by its agent, Kepher Mwesigwa, together with a serving list purporting to show that Notices of Rent Increase were delivered to multiple rental units within the residential complex on September 23, 2022.
17. The serving list filed by the Landlord sets out a list of unit numbers and tenant names, with handwritten notes of personal service, the date and time of service. I accept that the serving list is evidence of an intention to serve notices on that date and that it supports the Landlord's position that efforts were made to distribute the NORIs. I also note that while the serving list refers to "personal" service, the affidavit evidence explains that service was effected by placing the notices under the doors of the rental units. The serving list reflects service to a large number of units within a short time window. While this does not render the evidence unreliable, it limits its probative value in establishing, on a balance of probabilities, that the NORI was in fact delivered to this particular Tenant in accordance with section 116 of the Act.
18. Each application before me was decided on the evidence admitted in that proceeding. In this application, the Tenant testified that the Notice of Rent Increase was not received until November 25, 2022. The Tenant provided documentary evidence of communications with the Landlord including a letter from the "Tenants of 3575 Bathurst Street" to Sterling Karamar Property Management stating that they had not received the NORI until November 25, 2022, making the notice invalid, this was sent in an email in December to one of the Landlord's agents. The Tenant also submitted screenshots of a WhatsApp group chat involving tenants in the residential complex dated November 25, 2022. The screenshot shows tenants discussing a document that had just been delivered, including statements such as "Just got this!", questions about whether the document had been slipped under the door, whether a cover letter was attached, and confirmation that no envelope or cover letter accompanied the document. One tenant further noted that "legally they have to give 90 days notice, which they haven't." I found the Tenant's testimony regarding the date they were given the NORI to be clear, internally consistent, and responsive to cross-examination.
19. In assessing the reliability of the Tenant's account, I was also mindful that similar testimony was given by other tenants in related applications arising from the same

residential complex and the same alleged Notice of Rent Increase. In some of those proceedings, additional materials were entered into evidence and explained by witnesses. While those materials were not entered into evidence and are not determinative in this application, the consistency of the testimony heard across the related proceedings supports the overall plausibility of the Tenant's evidence in this matter.

20. I considered the Landlord's evidence, including the internal email dated September 27, 2022, and the service form completed by the Landlord's agent, which claims that the Notice of Rent Increase was served in September 2022. However, this evidence was not supported by direct testimony from the Landlord's agent who allegedly served the NORI. In the absence of viva voce evidence from the individual who claims effected service, I find that the documentary evidence alone is insufficient to establish that, on a balance of probabilities, that the NORI was served on the Tenant in September 2022, particularly in the face of the Tenant's direct and reliable testimony to the contrary.
21. On a balance of probabilities, I am not satisfied that the Landlord served the Notice of Rent Increase on September 23, 2022. I prefer the Tenant's evidence that the NORI was given on November 25, 2022. Accordingly, I find that the Notice of Rent Increase was not served in accordance with section 116 of the Act and is therefore void.

Does Section 135.1 or 136 deem the NORI lawful?

22. The next issue is whether section 135.1 or 136 of the Act deems the January 1, 2023, rent increase lawful despite the Tenant's position that the NORI was void for non-compliance with section 116.
23. Under s. 135.1 of the Act, a rent increase that would otherwise be void due to lack of proper notice under s. 116(4), is deemed not void if the tenant has paid the increased rent each month for at least 12 consecutive months, unless the tenant has made an application contesting the validity of the rent increase within the 12-month period. In the present case, this provision does not apply because the Tenant did not pay the increased rent for 12 consecutive months.
24. Similarly, the increased rent is not deemed lawful under s. 136. Section 116(4) of the Act provides that a rent increase is void if the landlord has not given the tenant notice in accordance with section 116. The legal effect of a void rent increase was considered by the Ontario Court of Appeal in *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408. In that decision, the Court held that a rent increase imposed without the required notice is of no legal force or effect; it is a nullity and cannot be cured by the deeming provisions now found in section 136 of the Act.
25. Applying the reasoning in *Price*, where a rent increase is void as a result of non-compliance with section 116, section 136 does not operate to deem that increase lawful.
26. In this matter, I have found that the NORI was not served in accordance with section 116 due to the Landlord not providing 90 days' notice as required, therefore the January 1,

2023, rent increase is void. Accordingly, the lawful monthly rent for this tenancy remains 816.32, as confirmed by the parties' evidence.

27. When I apply the lawful monthly rent of \$816.32 to the rental periods covered by the application, I find that no rent arrears are owing for those periods. The Landlord has therefore not proven, on a balance of probabilities, that any amount is owed by the Tenant.

28. The application is therefore dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 27, 2026
Date Issued

Joshua Labbe
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.