



**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-102680-25

In the matter of: 903, 2267 LAKE SHORE BLVD W
ETOBICOKE ON M8V3X2

Between: Christopher Harze Landlord
Audrey Harze

And

Cynthia Anne Rea Tenant

Christopher Harze and Audrey Harze (the 'Landlord') applied for an order to terminate the tenancy and evict Cynthia Anne Rea (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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

This application was heard by videoconference on March 4, 2026.

The Landlord, Landlord's legal representative Lorrie McCullough, the Tenant and the Tenant's legal representative Samuel Mason attended the hearing.

Preliminary matter – Is the Application barred by Res Judicata, Issue Estoppel, or abuse of process

1. At the outset of the hearing, the Tenant raised a preliminary issue, submitting that the application is barred by the doctrines of issue estoppel and res judicata, or in the alternative constitutes an abuse of process.
2. The Tenant relies on a prior proceeding before the Board in which the Landlord served a Notice to End the Tenancy for Landlord's Own Use (Form N12) dated April 30, 2025. In that notice, the Landlord claimed that the rental unit was required for the occupation of the Landlord's spouse's mother. The Tenant submits that the prior application proceeded to a full merit hearing on October 6, 2025, and an order was issued on October 14, 2025, under file number LTB-L-045344-25.

3. The Tenant submits that the Board dismissed the prior application after finding that the Landlord had not established, on a balance of probabilities, a good faith intention to require the rental unit for residential occupation. The Tenant further submits that the Landlord filed a request to review the order, which was denied on October 24, 2025, and that no appeal has been filed with the Divisional Court. The Tenant submits that the prior decision is therefore final.
4. The Tenant submits that the present application is based on a new N12 served shortly after the prior decision became final and that it involves the same parties and the same intended occupant, namely the Landlord's spouse's mother. The Tenant submits that although the Landlord has described the intended occupant differently in the present application, the individual is the same, and the issue to be determined is identical to that decided in the prior proceeding.
5. The Tenant submits that all elements of issue estoppel are met, as the same question has already been decided, the prior decision is final, and the parties are the same. The Tenant further submits that allowing the application to proceed would undermine the finality of the Board's decision and would require the Tenant to relitigate the same issue. In the alternative, the Tenant submits that the application constitutes an abuse of process, as it is an attempt to relitigate a matter that has already been determined following a full hearing on the merits.

Landlord's Evidence and submission

6. The Landlord submits that issue estoppel should not be applied in this case, even if the technical requirements of the doctrine are met. The Landlord relies on the principle that issue estoppel is discretionary and should not be applied where doing so would result in an injustice. The Landlord submits that the prior proceeding was procedurally deficient, as the Landlord was self-represented and did not understand the requirement to call the intended occupant as a witness.
7. The Landlord submits that the intended occupant did not testify at the prior hearing and that this was a significant deficiency in the evidence presented. The Landlord submits that the present application will include materially different evidence, including testimony from the intended occupant regarding her circumstances and intention to occupy the rental unit. The Landlord further submits that the factual foundation of the present application differs from the prior proceeding, as the evidence will focus on the circumstances of the intended occupant rather than the Landlord's circumstances.
8. The Landlord submits that the Board has recognized in prior decisions that issue estoppel should not be applied where there is new and significant evidence or where a party did not have a meaningful opportunity to present their case. The Landlord submits that preventing the application from proceeding would elevate procedural finality over fairness and would deny the Landlord an opportunity to fully present their case. The Landlord further submits that each N12 application must be assessed on the evidence before the Board in the current proceeding and that applying issue estoppel in this case would result in an injustice.

9. The Landlord relies on the decision of the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc*, [2001] 2 S.C.R., which confirms that issue estoppel is discretionary and should not be applied where doing so would result in an injustice. The Landlord relies on Board decisions to support the proposition that issue estoppel should not be applied where there is new and significant evidence or where fairness concerns arise. The Landlord submits that preventing the application from proceeding would elevate procedural finality over fairness and would deny the Landlord an opportunity to fully present their case.

Analysis

10. The issue before me is whether the present application is barred by the doctrine of issue estoppel or, in the alternative, constitutes an abuse of process. Issue estoppel applies where three requirements are met. The same question of whether the Landlord served the Tenant with a notice of termination in good faith has been decided in a prior proceeding. The prior decision is final, and the parties to both proceedings are the same. I find that the parties to both proceedings are identical. I also find that the prior decision is final, as the request to review was denied and no appeal was pursued.
11. The central question is whether the same issue has been decided in the prior proceeding. I find that the prior application determined whether the Landlord, in good faith, required the rental unit for residential occupation by the Landlord's spouse's mother. The present application seeks possession of the rental unit for the occupation of the same individual.
12. Although the Landlord has described the relationship differently in the present application, the identity of the intended occupant has not changed. The substance of the issue whether the Landlord genuinely requires the unit for that individual remains the same. I have also considered whether the change in the termination date in the present N12 has any effect on the application of issue estoppel. In my view, a change in the termination date, on its own, does not alter the substance of the issue before the Board. The central question remains whether the Landlord, in good faith, requires the rental unit for residential occupation by the intended occupant. That issue is not dependent on the specific termination date set out in the notice, but rather on the genuineness of the Landlord's intention at the time of the application.
13. In this case, the new notice was served shortly after the prior decision became final. There is no evidence before me of any material change in the circumstances of the intended occupant or the Landlord in the intervening period. The change in termination date therefore reflects the passage of time rather than a substantively different claim. I accept that in some circumstances, the passage of a significant period of time could justify a different result. For example, where a considerable period such as a year or more has elapsed, and there is evidence of materially changed circumstances affecting the intended occupant's need for the unit, a subsequent application may raise a genuinely new issue that would not be barred by issue estoppel.
14. However, that is not the case here. The present application was brought within a short time of the prior decision, and the Landlord relies on the same intended occupant and substantially the same circumstances. In these circumstances, the change in termination

date does not create a new issue or materially distinguish the present application from the prior proceeding. The substance of the issue remains the same.

15. I therefore find that the same question has been decided in the prior proceeding and that the technical requirements for issue estoppel are met. I have considered the Landlord's submissions that issue estoppel should not be applied on the basis of fairness and that the present application will include additional evidence, including testimony from the intended occupant.
16. The Landlord submits that the absence of the intended occupant's testimony renders the prior proceeding unfair. I do not accept this submission. The intended occupant was available to testify, and the Landlord's failure to call that evidence does not constitute a procedural unfairness. Rather, it reflects a strategic or evidentiary omission. The Landlord further submits that the present application will include new and material evidence. However, the evidence identified namely, testimony from the intended occupant is not new in the sense contemplated by the jurisprudence. It is evidence that was available at the time of the prior hearing but was not presented.
17. In these circumstances, declining to apply issue estoppel would permit the Landlord to relitigate the same issue in order to supplement the evidentiary record. This would undermine the principle of finality.
18. The Supreme Court of Canada in *Toronto (City) v. C.U.P.E. Local 79*, 2003 SCC 63, confirmed that the doctrine of abuse of process serves to prevent relitigation where it would bring the administration of justice into disrepute. The Court emphasized that even where the technical requirements of issue estoppel are not strictly met, the doctrine of abuse of process may bar proceedings that attempt to reargue issues that have already been decided.
19. Applying those principles, I find that the present application is, in substance, an attempt to relitigate the same issue that was determined in the prior proceeding. The identity of the intended occupant has not changed, and the essential claim remains the same. Allowing the application to proceed would create a risk of inconsistent results and would undermine confidence in the finality of the Board's decisions. It would also unfairly require the Tenant to defend a second proceeding on the same issue.
20. While I accept that issue estoppel must be applied flexibly, I am not satisfied that declining to apply it in this case would promote fairness. Rather, it would permit duplicative litigation and undermine the integrity of the Board's process. In the alternative, I find that permitting the application to proceed would constitute an abuse of process within the meaning described in *Toronto (City) v. CUPE, Local 79*, as it would amount to a relitigation of an issue already decided after a full hearing.
21. The Landlord's intention to now call the intended occupant amounts to an attempt to supplement or improve the evidentiary record that was before the Board in the prior proceeding. I am not satisfied that the present application is based on a materially different factual foundation. The Landlord relies on the same intended occupant and the same essential basis for possession. In these circumstances, applying issue estoppel promotes finality and prevents relitigation of an issue that has already been determined following a full hearing.

22. In the alternative, I find that permitting the application to proceed would constitute an abuse of process. The application was commenced shortly after the prior decision became final and seeks to advance the same claim involving the same intended occupant. Requiring the Tenant to respond to a second application on the same issue would be unfair and would undermine the integrity of the Board's processes. Having regard to all of the circumstances, I find that the application is barred by issue estoppel and, in the alternative, constitutes an abuse of process.

23. The Tenant's preliminary motion is therefore granted, and the application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

May 1, 2026
Date Issued

Nathan Korenberg
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.