

CITATION: Shafikhani v. Degni, 2026 ONSC 2923
NEWMARKET COURT FILE NO.: CV-24-00004168-0000
DATE: 20260519

ONTARIO

BETWEEN:

REASONS ON MOTION

property”). The tenancy commenced on November 25, 2019, and terminated on November 10, 2021, when the Defendant left the property permanently.

- [4] In the claim, the Plaintiff seeks: 1) damages for property damage and costs of \$30,924.31 (net of payments by the Plaintiff’s insurer); 2) \$33,000 for rental income loss; 3) damages for emotional and psychological harm in the amount of \$30,000 caused by the Defendant filing a false and bad-faith claim with the Landlord Tenant Board (“LTB”); 4) damages for loss of opportunity and diminished property value of \$50,000; 5) damages for defamation of character from the Defendant’s false and defamatory statements made in the LTB claim and other communications; 6) punitive, aggravated, and exemplary damages of \$20,000; 7) legal costs, disbursements, additional damages for financial hardship, emotional stress, and defamation of character from the Defendant’s false and malicious claims filed with the LTB (in an unspecified amount); 8) special damages (in an unspecified amount); 9) “penalties” for misconduct in legal proceedings; 10) interest; and 11) further and other relief as the court deems just.
- [5] The claim is similar to, but not exactly the same as a previous “Amended Plaintiff’s Claim” brought in the Richmond Hill Small Claims Court and filed on November 21, 2022 (“the SCC claim”).
- [6] In the SCC claim, the Plaintiff sought: 1) \$30,000 for damages to the property; 2) \$5,000 for rental income loss; 3) special damages which have been and may be incurred: 4) punitive, aggravated, and exemplary damages as allowed; 5) cost of the claim; 6) interest; and 7) anything else the judge finds appropriate. Buried in the SCC claim under a separate paragraph (24) but set out under a sub-heading of “Detrimental Impact” is a claim that “the Plaintiff has suffered extensive financial hardship and loss due to the deliberate and malicious actions of the Defendant Degni making her property unlivable (sic), in addition to Degni’s actions after which prolonged the horrible condition of the property to its vacancy for over 10 months.”
- [7] On June 28, 2024, the Plaintiff’s SCC claim was struck for want of jurisdiction by Deputy Judge Darvish of the Richmond Hill Small Claims Court (respectively the Deputy Judge and the Deputy Judge’s decision). The Deputy Judge’s decision reads as follows:

This matter is dismissed for want of jurisdiction. As correctly identified by 2 previous orders of this court on July 22, 2022 and September 14, 2022. The Landlord and Tenant Board has exclusive jurisdiction related to Residential Tenancies Act including applications against former tenants who are no longer in possession of the leased premises on or after September 1, 2021, which is the case here. As such this court does not have jurisdiction to hear the matter. The case is therefore dismissed.

The Motion

- [8] The Defendant now moves to strike the claim in this court on three grounds:

- (1) That essentially the same claim was struck by a judge of the SCC (a division of this court) and therefore the claims set out are subject to *res judicata*;
- (2) That this court lacks jurisdiction because the proposed cause of action in the claim falls under the exclusive jurisdiction of the LTB; and
- (3) That the claims relative to the tenancy are time-barred by operation of s. 4 of the *Limitations Act 2002*, S.O. 2002, c. 24, Sch. B.

The Law

- [9] The court may strike out a pleading under r. 21.01(1)(b) on the ground that it discloses no reasonable cause of action. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: *Imperial Tobacco*, at para. 17.
- [10] Rule 21.01(3) also provides that a defendant may move before a judge to have an action stayed or dismissed on the grounds that the action lacks jurisdiction, the plaintiff lacks legal capacity, there is another pending proceeding, or the action is frivolous, vexatious or is otherwise an abuse of the process of the court.
- [11] Therefore, r. 21 allows the court to make a determination of law and to strike out the pleadings if it is plain and obvious that the claim cannot succeed and that the claim has no reasonable prospect of success.

Res Judicata

- [12] To the extent that the relief sought in the claim is identical to the relief sought in the SCC claim, the doctrine of *res judicata* applies to bar the Plaintiff's claim.
- [13] The doctrine of *res judicata*, which is a Latin term meaning "a matter judged", operates so as to preclude an issue or cause of action from being relitigated between the same parties where it has already been finally determined on its merits, as opposed to having been dismissed or struck on technical grounds. The doctrine is meant to ensure judicial finality, guard against conflicting decisions on the same issue, and prevent repetitive litigation.
- [14] The issue of jurisdiction was finally determined by the Deputy Judge on June 28, 2024, when she dismissed the Plaintiff's claim on the basis that the LTB had exclusive jurisdiction over the issues in question. This was not a technical or procedural decision, nor was it an interlocutory one. The Deputy Judge's decision was substantive; it determined that another juridical body had jurisdiction over the subject matter of the SCC claim; it was also final, since it finally disposed of the entirety of the SCC claim before the court.
- [15] Examining the SCC claim and the present claim in tandem makes it abundantly clear that nearly all of what the Plaintiff claims in the present claim was previously included in the

SCC claim: damages for destruction or damage to property, damages for lost rent, special damages, and punitive and exemplary damages, all of which arose from the tenancy.

- [16] The Deputy Judge's decision was never appealed. There is no motion to set it aside. The Plaintiff's attempt to raise the same issues again in a claim at this level of court cannot succeed. The Deputy Judge's decision, whether wrong or right, is a decision of a branch of this court. As a final decision, it was one subject to an appeal under the *Rules of Civil Procedure*. It is not now open to this court to entertain the same claim or afford the Plaintiff an opportunity to relaunch a claim seeking relief which a branch of this court has determined lies exclusively with the LTB.
- [17] The only new allegations new in the present claim pertain to damages for defamation and the psychological and mental harm brought about by the allegations made by the Defendant as a tenant in the application before the LTB under file number LTB-T—067190-22.
- [18] Subject to what is set out below, those new allegations do constitute new allegations which did not form part of the SCC claim and which, as pleaded, would not evidently be captured by the Deputy Judge's decision and dismissal order.
- [19] That said, the new allegations cannot spare the balance of the claim from the applicability of *res judicata*. A branch of this court has clearly and unequivocally determined that the LTB maintains exclusive jurisdiction over the issues raised in the SCC claim. That ruling applies to the allegations raised in the present claim and serves as a basis to strike those portions of the claim that are similar or identical.
- [20] *Res judicata* is therefore sufficient grounds to strike all portions of the claim except for the allegations of defamation and infliction of psychological and mental harm.

Exclusive Jurisdiction of the LTB

- [21] As for the exclusive jurisdiction of the LTB, I need not determine that question for the issues raised in both the SCC claim and the present claim. That has been determined by the Deputy Judge's decision.
- [22] That leaves the claims for damages for defamation and psychological and mental harm. Those claims do fall within the jurisdiction of this court.
- [23] The LTB has exclusive jurisdiction to determine all applications under the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("RTA") with respect to all matters in which jurisdiction is conferred on it by the RTA: s. 168(2). Where the LTB has jurisdiction, the civil court has no jurisdiction because the jurisdiction of the Board is exclusive and not concurrent: *Fraser v. Beach* (2005), 75 O.R. (3d) 383 (C.A.). For example, in *Fraser*, at para. 15, the court determined the LTB had exclusive jurisdiction to make an order terminating a tenancy and the Superior Court could not make that order.

- [24] The question of whether the dispute is the type in which the LTB holds exclusive jurisdiction must be decided by its “essential character”: *Mackie v. Toronto (City) and Toronto Community Housing Corporation*, 2010 ONSC 3801.
- [25] However, the LTB’s exclusive jurisdiction is subject to a number of restrictions, including monetary limits, which result in the civil court retaining jurisdiction. The LTB’s monetary jurisdiction is equivalent to that of the Small Claims Court’s monetary limit: see s. 207(1) of the *RTA*. Section 207(2) of the *RTA* establishes that in the event a claim exceeds the monetary jurisdiction, it can be commenced in Superior Court. As a result, the Superior Court holds all the jurisdiction of the LTB once a claim has exceeded the monetary jurisdiction of the LTB: see *Kaiman v. Graham*, 2009 ONCA 77, at paras. 14-16. This approach has been affirmed by the Court of Appeal in *Letestu Estate v. Ritlyn Investments Limited*, 2017 ONCA 442, 138 O.R. (3d) 651, at para. 10.
- [26] The difficulty for the Plaintiff is that she *did* commence her claim in the SCC. And she did so purposefully and with knowledge of the monetary jurisdiction of that court. At paragraph 1(h) of the SCC claim she alleges:

Total damages, at the hands of the vandalism by defendant Degni, for these 3 items, to date, has reached a total of \$74,217.40 plus HST and interest. Please also note there are also outstanding utility bills; **however, the Plaintiff, has limited her total claim to \$35,000 to keep this claim within the small claim court’s jurisdiction in hopes of expedited resolution and prevention of additional costs.” (emphasis added).**

- [27] In my view, whatever jurisdiction the Superior Court might have had to entertain her claim was foreclosed because the Plaintiff chose the forum within which to bring her claim. And that forum, a branch of this court, determined that it did not have jurisdiction to determine her claim because of the exclusive jurisdiction of the LTB.
- [28] This is not an appeal of that SCC order. This is not a motion to transfer the action to the Superior Court. The SCC dismissed the Plaintiff’s claim without leave to amend. Therefore, the commencement of a claim in Superior Court advancing the same allegations and prayer for relief as found in the SCC claim constitutes an abuse of process.

Limitation Period

- [29] I will now address whether the claim, including the new allegation for defamation and damages for psychological and mental harm, are statute-barred by operation of the *Limitations Act*.
- [30] The basic limitation period is set in s. 4 of the *Limitations Act*. The time of discovery is dealt with in s. 5. Those sections read as follows:

4 Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.

Discovery

5 (1) A claim is discovered on the earlier of,

- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
- (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. 2002, c. 24, Sched. B, s. 5 (2).

- [31] The claim in Superior Court was issued on September 8, 2024. The events surrounding the tenancy occurred between December 1, 2019 and November 10, 2021. The property damages alleged to have been suffered were discovered (according to the pleading) on either November 1 or November 10, 2021. Thus, the two-year prescription period would have expired on November 10, 2023.
- [32] There is nothing in the claim or the Plaintiff's materials which would point to or even suggest another date when the claim was "discovered". Indeed, the Plaintiff alleges that she issued the SCC action on January 7, 2022, on the basis of the damages she had suffered. And except for the monetary amounts, those claims arising from the tenancy and the

damage done to the property are simply repeated in the claim 32 months later, well beyond the two-year limitation period.

- [33] There is no basis upon which to find that the Plaintiff did not discover the essentials of her property damage until a later date.
- [34] Those aspects of the claim are therefore statute-barred and must be struck.
- [35] The Plaintiff's claim for "Loss of Opportunity and Diminished Property Value" is elaborated at paragraph 9 of the claim. There, the allegation is that "a loss of potential sales opportunities" occurred during the optimal market period (April - July 2022). On the basis of her own allegation, the Plaintiff first discovered this aspect of her claim (which is arguably a distinct cause of action) in July 2022. The prescription date to launch a claim was July 31, 2024 at the latest. This aspect of her claim is similarly statute-barred and must be struck.

Absolute Privilege

- [36] There remain the claims for emotional/psychological harm, and defamation pertaining to the Defendant's retaliatory and malicious actions in filing an LTB claim, the unfounded allegations in the claim, and the prolonged litigation process.
- [37] The SCC claim did not include these allegations; they are not caught by the Deputy Judge's decision about jurisdiction and can therefore survive the reach of *res judicata*. Nor are these allegations barred by the limitation period since they arise from a LTB application process initiated by the Defendant in November 2022.
- [38] Those remaining allegations therefore survive the doctrine of *res judicata*, the exclusive jurisdiction of the LTB and the operation of the limitation period.
- [39] The problem with these allegations is that they run afoul of the longstanding rule of absolute privilege. Absolute privilege protects not only pleadings in a legal action, but statements made in a judicial or quasi-judicial proceeding, such that no reasonable cause of action (including defamation) can be based upon these statements. Further, this privilege against suit for allegations in pleadings is not qualified in any way. It is not necessary that there be any foundation in fact for such statements before they enjoy protection: see *Big Pond Communications 2000 Inc. v. Kennedy* (2004), 70 O.R. (3d) 115 (S.C.), at paras. 7-19.
- [40] In *Dooley v. C.N. Weber Ltd.* (1994), 19 O.R. (3d) 779 (S.C.), the employee, Dooley, sued his former employer, C.N. Weber, for wrongful dismissal. The company defended on the basis that there was cause for dismissal, the employee having engaged in sexual harassment of other staff. At trial, this allegation was shown to be entirely without foundation.
- [41] Dooley subsequently sued his former employer for abuse of process and other intentional torts. The court held the privilege against suit was absolute. Reilly J. applied the principle

of privilege to allegations contained in documents filed in judicial or quasi-judicial proceedings, and stated:

In my view, the same principles apply to the case at bar. It matters not whether the action is framed in libel or slander, in defamation, intentional infliction of mental suffering, intentional interference with economic interest, or abuse of process. To the extent that any action is based upon statements in a pleading, the claim will disclose no reasonable cause of action. Otherwise expressed, the action has no reasonable chance of success in law, and to permit it to continue would constitute an abuse of the process of the court. [Emphasis added.]

- [42] That sound reasoning clearly applies to the case at bar. I find that it would amount to an abuse of process of the court to allow the plaintiff's new allegations with respect to defamation psychological/mental harm to proceed.
- [43] Abuse of process is a flexible concept arising from the court's inherent jurisdiction to control its process, thereby allowing a court to prevent the misuse of its procedure in a way that would be manifestly unfair to a litigant: *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at para. 40.
- [44] A fair reading of the claim leads to the inexorable conclusion that the basis for the claims for both defamation and psychological/mental harm stem: either from the damages allegedly done to the property no later than November 10, 2021 (which claims would be statute-barred); or are linked to the Defendant's "retaliatory" proceeding brought before the LTB in November 2022, in which case the doctrine of absolute privilege would serve to preclude those claims from being advanced. In either case, they amount to an abuse of process and must be struck.
- [45] The claims for "special damages" and "additional damages" must also fail because they represent heads of damages under a claim that is either statute-barred, subject to *res judicata* or forbidden under the doctrine of absolute privilege.

Should Leave to Amend the Claim be Granted?

- [46] I would deny leave to amend the claim. An excellent discussion on why leave to amend a claim should be denied in similar circumstances was provided by my sister Brown J. in 9383859 *Canada Ltd. v. Saeed*, 2020 ONSC 4883, at para. 54:

Where the claim has been struck as disclosing no reasonable cause of action or as frivolous, vexatious or an abuse of process, the plaintiff will be denied leave to amend that pleading where it contains a "radical defect" such that it could not be improved by an amendment: *Roche v McLeod Law Firm*, 2018 ONSC 2760. Further, leave to amend the claim should be denied where there is

no reason to suppose that the party can improve their case by amendment, or if an entirely new cause of action would have to be set up by way of amendments that prejudiced the defendants: *Dean v Immigration Consultants of Canada Regulatory Counsel*, 202 ONSC 2486.

- [47] The deficiencies in the claim are not technical; they constitute radical defects that cannot be improved by an amendment. I am of the view that no amendments can serve to resurrect the pleading or save it from the combined effect of *res judicata*, abuse of process, the limitation period, and absolute privilege.

Disposition

- [48] For the foregoing reasons, the Defendant's motion is allowed. The entirety of the claim dated November 8, 2024 is struck without leave to amend.
- [49] There shall be an order to go in accordance with the foregoing. Should the parties be unable to agree on the form and content of any order or the issue of costs, they may appear before me virtually on a date to be fixed by the Trial Coordinator at Newmarket (Newmarket.SCJ.TC@ontario.ca).

Translation

- [50] This was a bilingual proceeding. Accordingly, these reasons are to be translated in the French by court staff.

J.R. McCARTHY J.

Released: May 19, 2026