

HUMAN RIGHTS TRIBUNAL OF ONTARIO

INTERIM DECISION

Adjudicator:

██████████

Date:

March 8, 2019

File Numbers:

2018-32808-I; 2018-32809-I; 2018-32810-I; 2018-32811-I

Citation:

2019 HRTO 415

Indexed as:

ER v. ██████████

WRITTEN SUBMISSIONS

**ER and KR, as represented by their Litigation Guardian, AR, and
KR, Applicants**

)
) KR,
) Representative

L and A, Respondents

)
) D, Counsel

Stella Reddy, Respondent

Self-represented

[1] The purpose of this Interim Decision is to determine whether these four Applications should be consolidated and provide next steps.

[2] Applications 2018-32808-I and 2018-32810-I are filed by the Litigation Guardian, AR, on behalf of her children. KR (“KR”) filed Applications 2018-32809-I and 2018-32811-I. KR is the father of the children and the husband of AR. All Applications are dated June 4, 2018 and allege discrimination contrary to the [Human Rights Code, RSO 1990, c. H.19](#), as amended (the “Code”).

[3] The Applicants live in a rental apartment in a building owned by the Liscio respondents through Alto Properties Inc. The respondent Stella Reddy (Reddy) was the property manager of the building.

[4] By Registrar's Letter dated August 3, 2018, the Tribunal proposed to consolidate all the Applications and hear them together. It directed the parties to file any written submissions in response to the proposal.

[5] The applicants objected as does the respondent Reddy.

[6] The [REDACTED] respondents did not provide their position on consolidation.

[7] Reddy requested the two Applications against her be deferred because the issue was before the Landlord and Tenant Board (LTB) and is now on appeal before the Divisional Court.

[8] The [REDACTED] respondents requested a dismissal/deferral based on the completed LTB proceeding and raised the issue of delay.

[9] The applicants were requested to provide submissions on the deferral request pertaining to all the Applications and on the issue of timeliness on the Applications against the Liscio respondents. The applicants opposed deferral of the Applications.

CONSOLIDATION

[10] Rule 1.7(d) of the Tribunal's Rules of Procedure states that the Tribunal may consolidate or hear applications together in order to provide for the fair, just and expeditious resolution of any matter before it.

[11] The Tribunal generally considers the following factors when deciding whether to consolidate and/or hear Applications together:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
2. The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and
3. Whether there are common issues of fact or law.

See *Persaud v. Toronto District School Board*, [2008 HRTO 25](#)

[12] I find that these Applications should be consolidated. They raise substantially the same facts and issues and the applicants provided the same 268 pages of supporting documents for each Application. There is a compelling public interest in avoiding a multiplicity of proceedings in this case. Accordingly, the Tribunal will consolidate these Applications and hear them together.

[13] *Having reviewed the files, the Tribunal has decided to hold a joint preliminary/summary hearing to determine whether the Applications should be dismissed, in whole or in part, on the basis that:*

1. *it appears that some or all of the allegations may be untimely;*
2. *another proceeding has appropriately dealt with the substance of the Applications;*
3. *there is no reasonable prospect that the Applications or part of the Applications will succeed.*

PRELIMINARY ISSUE: DELAY

[14] Under section 34(1) of the *Code*, the Tribunal has no jurisdiction to deal with an application *filed more than a year after the incident, or the last incident in a series*, unless it is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[15] *The Applications filed on June 4, 2018 indicate June 2, 2018 as the date of the last event. The narrative of what happened in the Applications starts in 2015. The Tribunal will hear the parties' submissions on whether all or part of the Applications should be dismissed for delay.*

HAS ANOTHER PROCEEDING APPROPRIATELY DEALT WITH THE SUBSTANCE OF THE APPLICATIONS ([SECTION 45.1 OF THE CODE](#))?

[16] *It appears that the substance of these Applications may have been considered and appropriately dealt with in another legal proceeding.*

[17] *The LTB granted the Landlord's application to terminate the tenancy and evict the family in TEL-83876-17 (Re), [2017 CanLII 84930](#) (ON LTB). That decision was appealed to the Divisional Court.*

[18] *Consequently, there is an issue of whether the Application should be dismissed in whole or in part pursuant to [s. 45.1](#) of the Code, which reads as follows:*

The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.

[19] *In preparing their submissions, the parties may wish to consider the decisions of the Supreme Court of Canada in *British Columbia (Workers' Compensation Board) v. Figliola*, [2011 SCC 52](#), and *Penner v. Niagara (Regional Police Services Board)*, [2013 SCC 19](#), as well as previous Tribunal decisions considering [s. 45.1](#), including *Claybourn v. Toronto Police Services Board*, [2013 HRTO 1298](#), and the cases cited in that decision. All Tribunal decisions can be accessed free of charge on the website of the Canadian Legal Information Institute at: www.canlii.org/en/on/onhrt/index.html.*

3. IS THERE NO REASONABLE PROSPECT THAT ALL OR PART OF THIS APPLICATION WILL SUCCEED? (SUMMARY HEARING)

[20] *The applicants allege discrimination with respect to housing, goods, services and facilities because of race, colour, ancestry, place of origin, citizenship, family status, marital status, receipt of public assistance, association with a person identified by a ground listed above, and reprisal.*

WHAT IS A SUMMARY HEARING?

[21] *Where it appears that there is no reasonable prospect that all or part of an application will succeed, the Tribunal may determine it is appropriate to hold a “summary hearing” on that issue. The summary hearing gives an applicant an opportunity to more fully explain the allegations contained in the application. It also provides the Tribunal with the opportunity to hear arguments from the parties before it makes its decision. In some cases, such as this one, the Tribunal combines a summary hearing with a preliminary hearing dealing with other issues.*

[22] *No witnesses are called to testify at a summary hearing and the parties are not expected to submit documents for the summary hearing. Instead, the Tribunal will make its decision based on the materials already filed by the parties and their submissions in the summary hearing.*

[23] *The Tribunal will dismiss an application after a summary hearing, if it determines that there is no reasonable prospect it will succeed. In some cases, the Tribunal may find that only part of an application has no reasonable prospect of success and the Tribunal may permit the remainder of the application to continue in the Tribunal’s process.*

Summary Hearing Issues to be Addressed

[24] *It is not clear the applicants have any evidence to establish a link between their race, colour, ancestry, place of origin, citizenship, family status, marital status, receipt of public assistance, association, and reprisal or threat of reprisal and what the respondents have alleged to have done. That is, although the applicants may believe that the conduct of the respondents is connected to one or more of the above grounds, it is not clear that there is evidence available to prove the connection. The focus of this inquiry is on the evidence the applicants have or may be able to obtain. The applicants will be expected to explain what evidence they expect to be able to present at a merits hearing to support a link between the Code grounds identified in the Applications and what the respondents have alleged to have done*

[25] *It is not clear that the issues raised in the Application falls under the Code. The Tribunal cannot decide general allegations of unfairness unrelated to the Code. It is not clear that the applicants’ allegations against the respondents may be reasonably considered to amount to a Code violation. The focus of this inquiry is on the legal basis for the applicants’ claim and whether or not there is any reasonable prospect the allegations may amount to a Code violation.*

[26] *The section 8 reprisal protections only apply to the actions of a respondent that are intended as a reprisal for any of the following: (1) claiming or enforcing a right under the Code; (2) instituting or participating in proceedings under the Code; or, (3) refusing to infringe the right of another person under the Code. See for example Mirea v. Canadian National*

Exhibition, [2009 HRTO 32](#); *Chan v. Tai Pan Vacations*, [2009 HRTO 273](#), *Noble v. York University*, [2010 HRTO 878](#) at para. [31](#). To proceed with the Applications, **there must be a reasonable basis to believe that the applicants could establish the respondents reprisal against them for one of these three things.**

ANONYMIZATION

[27] The Tribunal's Practice Direction on Anonymization provides that the Tribunal may anonymize the name of a party to protect the confidentiality of personal or sensitive information where it is appropriate to do so. However, such an order is only made in exceptional circumstances. When determining whether to make an anonymization order, the Tribunal must balance the public interest in freedom of expression and open justice against any significant consequences of identifying the person requesting anonymization.

[28] I find that it is appropriate to anonymize the Applications to safeguard and prevent the identification of the minor children involved in these matters.

ORDER

[29] For the above reasons, the Applications are consolidated and the Tribunal will hear them together.

[30] For the above reasons, the style of cause for this proceeding will be amended to refer to the applicants' initials.

NEXT STEPS AND DIRECTIONS

[31] The Registrar will schedule a *half-day combined summary/preliminary hearing by conference call*. The parties will receive a notice of hearing, setting out the time, date and telephone numbers for the hearing.

Additional Documentation, witnesses and case law

[32] If the parties wish to refer to any additional documents in the hearing, they must deliver them to the Tribunal and each other no later than 5 weeks (35 days) after the date of this CAD. **Documents submitted for the hearing must be relevant to the issues identified above and avoid sending duplicates of documents already submitted at the Tribunal.**

[33] As noted above, no witnesses are called to testify for the summary hearing portion of this hearing. However, the parties will be permitted to call witnesses in relation to the delay and [s. 45.1](#) issues listed above. If the parties wish to call witnesses to testify about the delay or [s. 45.1](#) issues, they must deliver a witness list and a summary of the expected witness evidence to the Tribunal and to each other **no later than 5 weeks (35 days) after the date of this CAD.**

[34] If the parties wish to rely upon any case law in the hearing, they must provide the Tribunal and the other parties a list of cases they intend to refer to in the hearing **at least 14 days**

before the hearing. Parties are required to provide the other parties copies of the cases on their case list at the same time as they send them their list. Parties are not required to provide the Tribunal with copies of any cases that are publicly available on the CanLII legal website (<https://www.canlii.org/en/on/onhrt/>).

[35] For additional information on summary hearings, please consult the Frequently Asked Questions document included with this CAD and the Tribunal's Practice Direction on Summary Hearing Requests available on the Tribunal's website at <http://www.sjto.gov.on.ca/hrto/rules-and-practice-directions/>.

[36] *The applicants are directed to provide the Tribunal and the respondents with a copy of the judgement/decision with reasons of the Divisional Court with respect to their appeal of the LTB decision within 7 days of receiving the judgement/decision.*

[37] I am not seized of this matter.

Dated at Toronto, this 8th day of March, 2019.

"Signed by"

V

Vice-chair