



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Amended this 30th day of
December, 2022 pursuant
to Rule 26.02(a) and Rule 26.03

ELSIE KALU

Plaintiff

Pat H. Kops
Register, Superior of Justice

-and-

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO represented by
THE ATTORNEY GENERAL OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defense in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defense, you may serve and file a notice intent to defense in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defense.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December , 2022

Issued by: _____

Local Registrar

Address: Cayuga Superior Court Courthouse
55 Munsee St. N, Cayuga, ON
N0A 1E0

TO: THE ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 8th Floor
Toronto ON, M7A 2S9

CLAIM

1. The plaintiff, on her own behalf and on behalf of the members of the Class as described herein, claims:
 - a. an order pursuant to the *Class Proceedings Act*, 1992 S.O. 1992, C. 6 certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff of the class;
 - b. compensation in a sum to be determined, or such sum as this Court finds appropriate for the *de facto* expropriation of the lands owned by the Class members;
 - c. costs of administration and notice, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act*;
 - d. costs of this action pursuant to the *Class Proceedings Act*, the *Courts of Justice Act*, R.S.O. 1990, c. C 43, and the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194;
 - e. pre- and post-judgment interest pursuant to the *Courts of Justice Act*; and
 - f. Such other relief as may be permitted by this Honourable Court.

THE REPRESENTATIVE PLAINTIFF

1. The plaintiff, Elsie Kalu, (“Elsie”) is a resident of Ottawa, Ontario. She purchased her property, located at 6390 Nuggett Drive, Ottawa, on April 6th, 2022 with the intention of moving into the property with her daughter, who is 5 years old and suffers from Autism Spectrum Disorder.

2. Elsie's plans were interrupted when she learned the tenant residing at her property, whom she believed would be moving out once she had purchased the property, had no intention of leaving, or paying rent.
3. Despite filing her L2 application with the Landlord and Tenant Board ("LTB") on May 10th, 2022, filing two Requests to Extend or Shorten Time (in order to expedite her hearing), and having a hearing scheduled for December 12th, 2022, Elsie has still not had her matter heard.
4. As a result, Elsie has suffered extreme financial hardship and loss, and emotional and psychological stress, due to the tenant being permitted and incentivized by the defendant to live rent free in Elsie's home, and fundamentally steal from her and her child.
5. Elsie states, the government policies controlling the private property of landlords in Ontario amounts to legalized theft through the incentivization of squatting, the likes of which would be inconceivable in Nigeria, her country of origin.
6. In order to purchase the home in the first place, Elsie's financial resources were stretched thin. Since taking title to her property, the additional financial burden of condo fees, the lack of rent payment, loan payments, property taxes, and mortgage payments for a property she is unable to live in, by law, has left her in a position where she is unable to afford the necessities of life for herself and her daughter.
7. Due to the extreme stress arising from her situation, Elsie's small immigration consultancy business collapsed, as she felt she could not properly take on new clients while being under such immense pressure.
8. In order to pay the bills for herself and her daughter, who are now tenants themselves in someone else's property, Elsie stopped taking new clients in her small business, and took

on a job with Co-operators as a financial advisor. Following her training, Elsie was unable to pass the company's mandated credit check due to her inability to pay her bills on time or at all, as she is being forced by the defendant to pay for her tenant to live in her property, and was let go.

9. As a result of the extreme stresses Elsie has undergone since purchasing her property, her daughter, has regressed in her development. Elsie can no longer afford the indispensable specialized therapy her daughter was previously receiving, causing her development in a key stage of life to perilously stagnate and decline.
10. Prior to filing her application with the LTB, Elsie attempted to negotiate with the tenant to better understand their situation and see if there was some way that she could assist them, or if they were dealing with a difficult situation themselves.
11. When Elsie first spoke to the tenant over the phone, they immediately took an extremely rude and confrontational stance. It was made clear that the tenant would not be cooperating with Elsie in any way.
12. Elsie, despite being shocked by this call, believed that these issues could be solved by having a face-to-face meeting. After convincing the tenant to speak with her at the property, Elsie and her daughter attended the property on April 12th, 2022.
13. Immediately upon Elsie's arrival at the property, the tenant screamed at Elsie and her daughter, warning them to not come any closer. When Elsie suggested they work something out, the tenant demanded that Elsie allow them to live in the house for one year without contacting them for any reason, and then they would be willing to discuss these issues with her. The tenant stated that if Elsie would not comply, then the LTB would allow them to do as they pleased with her property. The tenant stated further they understood the

law surrounding residential tenancies and would purposefully frustrate the LTB processes for years before Elsie could remove them.

14. Elsie then began taking steps to remove the tenant through the LTB. Elsie's application to evict the tenant so she and her daughter could live in their property was submitted on May 10th, 2022.
15. While Elsie waited months for the scheduling of her hearing, she filed two Requests to Extend or Shorten Time, on account of the significant financial hardship she was suffering due to her inability make any reasonable use of her private property.
16. The first request was denied on September 26th, 2022, with the LTB indicating that any financial issues that Elsie was enduring were the result of her own failure to budget for a situation where her tenant wouldn't pay rent. Following this denial, and in an attempt to understand if her situation was unique, or if others were also suffering the same Kafkaesque circumstances, Elsie approached the CBC to publicly discuss these issues. The CBC wrote and published a story outlining Elsie's situation.
17. Elsie then made a second request to expedite her hearing, which was denied on October 27th, 2022, on the basis that her circumstances had not changed. Four days later, Elsie was contacted by the LTB who indicated that her request had been reconsidered, and that her hearing would be "expedited".
18. Seven months after her application was filed, Elsie's hearing was finally scheduled for December 12th, 2022. However, prior to this hearing, Elsie was contacted by the LTB who informed her that the tenant had requested a bilingual adjudicator, despite the fact Elsie had only ever communicated with the tenant in English. Elsie was told her hearing needed to be rescheduled, and that it was now cancelled, pending an indeterminate period.

19. Elsie, however, in hoping that there had been some mistake, as the tenant clearly understood English, and she had received nothing in writing from the LTB regarding this cancellation, decided to attend the LTB hearing at her originally booked time. In doing so, she observed, despite the LTB's assurances that a bilingual adjudicator had to be assigned to her file, the adjudicator who had been originally scheduled to handle her hearing was bilingual.
20. The tenant's legal representative then contacted Elsie and the LTB stating they would be unable to attend any proceedings until April of 2023, at the earliest.
21. As of the date of issuance, Elsie has spent over \$150,000.00 to maintain a property she has never been able to make any use of; her hearing has yet to be rescheduled; and all issues have yet to be adjudicated.

THE CLASS

22. Elsie seeks to represent the following class (the "Class") of which she is a Class member:
- All persons and entities who were, and/or are party to residential tenancy arrangements as landlords in Ontario, who were, and/or are party to eviction proceedings before the Landlord and Tenant Board within the relevant limitation period.

THE DEFENDANT

23. The defendant, the Attorney General of Ontario, is the legal representative of Ontario.
24. The *Residential Tenancies Act* (the "RTA") is a statute of Ontario, which is in effect in the province of Ontario, and has been so at all material times.
25. The RTA states its purpose as follows, in section 1 thereof:

The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

26. The RTA is a complete code that governs all aspects of the relationship between residential landlords and tenants, beginning from the manner of contract and terms which can bind the parties, through to how tenancies are ended and any post-lease conduct by the parties.
27. The RTA is an enabling statute for the LTB, a statutory, quasi-judicial administrative tribunal, empowered with the exclusive authority to determine applications under the RTA.

***DE FACTO* EXPROPRIATION OF PRIVATE PROPERTY**

28. Through the regulation of the properties owned by Elsie and the Class members, the defendant in effect expropriates property. This concept is also known as *de facto* expropriation, or constructive taking.
29. The defendant, through the enactment of the RTA, and its operational decision to permit perpetual undue delay by the LTB, has effectively abolished the private rights of Elsie and the Class members, resulting in a near-complete loss of their interests therein, leaving each with no reasonable use of their property.
30. The regulatory scheme for residential tenancies in Ontario is intended to further the public purposes laid out in section 1 of the RTA. The application of the regulatory scheme, however, has the effect of expropriating private property for the purpose of furthering the defendant's public purpose.

31. As of the issuance of this claim, average wait times for the scheduling hearings regarding applications under the RTA are 10 months, and average wait times for the issuance of decisions following a final hearing are 2 to 3 months. This contrasts with the LTB's advertised service standards of applications being scheduled for a hearing within 25-30 business days, and decisions being issued within 4-10 business days of the conclusion of the final hearing.
32. Perennial delays have caused significant financial burden for landlords in Ontario, with many incurring tens of thousands of dollars in costs. The lack of effective recourse for addressing these issues has in many cases led to financial ruin for small landlords across the province, and a collapse of public trust in the defendant's ability to administer these systems.
33. While the regulatory scheme purports to provide for potential avenues with which Elsie and the class members can attempt to ultimately avail themselves of their property rights, the *de facto* application of the regulatory scheme, *per se*, eliminates all reasonable uses of the leased properties by their owners for an indefinite and indeterminable period, at the discretion of the defendant.
34. Expropriation of private property in Canada triggers a presumptive right to compensation which can be displaced only by clear statutory language indicating the intention of the state to not compensate those affected.
35. Under the common law, Elsie and the Class members are entitled to compensation for the *de facto* expropriation of their private lands in the public interest.

RELEVANT LEGISLATION

36. Elsie pleads and relies upon the following statutes:

- a. *Residential Tenancies Act*, 2006, S.O. 2006, c. 17;
- b. *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
- c. *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
- d. Such other statutes as may be advised and this Honourable Court may permit.

PLACE OF TRIAL

37. Elsie requests this action be tried in Cayuga, at the Cayuga Superior Court Courthouse.

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ELSIE KALU

and

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO represented by THE
ATTORNEY GENERAL OF ONTARIO

Plaintiff

Defendant

Court File No. CV-22-00000074-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Cayuga, Ontario

AMENDED STATEMENT OF CLAIM

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