



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

Citation: Allen v Buchanan, 2024 ONLTB 8720

Date: 2024-02-22

File Number: LTB-L-037878-23

In the matter of: 40 SHERINGHAM ST
BRAMPTON ON L6Z3P8

Between: Gregory Allen Landlord

And

Monique Buchanan Tenant

Gregory Allen (the 'Landlord') applied for an order to terminate the tenancy and evict Monique Buchanan (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 January 11, 2024.

The Landlord, Landlord's legal representative D Yaromich and Landlord's witness R. Wu ('R.W') and the Tenant and Tenant's Legal Representative M. Addo attended the hearing.

Determinations:

Preliminary Issue – Service of the N12 Notice of Termination (N12) and one month rent compensation:

1. At the beginning of the hearing, I informed the Landlord's legal representative that the Board doesn't have the N12 in the file. The Landlord's legal representative explained that it was an error; the Landlord forgot to upload the N12. During the hearing, I provided the Landlord's legal representative with an opportunity to upload and send the N12 to the file.

2. At the hearing the Tenant testified that she did not receive the N12 from the Landlord, nor did she receive the compensation in an amount equal to one month's rent owing under s.48.1 of *Residential Tenancies Act, 2006* ('Act').
3. A Certificate of Service ('COS') filed with the Board indicating that the N12 was sent to the Tenant on February 1, 2023, by courier. The Landlord's legal representative stated that his colleague, R.W, served the N12 and the compensation cheque to the Tenant. During the hearing, I gave the Landlord's legal representative an opportunity to call R.W to attend the hearing and provide testimony.

Serve N12 Notice of Termination:

4. R.W testified that he placed the N12 and the Landlord's affidavit into an envelope and sent it to the Tenant by courier on February 1, 2023. R.W testified that the courier service did not require a signature of the recipient. R.W received a confirmation sheet from the courier company on February 2, 2023.
5. The Landlord's legal representative submitted this confirmation sheet as evidence during the hearing, I observed that the sheet indicated that the envelope package contained N12 was delivered to the Tenant's rental unit on February 2, 2023, by placing it under the doormat of the rental unit. The confirmation sheet included an image of the front door with the package under the doormat in front of the rental unit front door. Additionally, it also indicated that no signature was required from the recipient. The Tenant admitted that the image depicted her rental unit's front door.
6. The Tenant testified that the front door of the rental unit is an open space accessible to the public, with no fence or gate in the front yard. She further testified that she did not see the N12 package when she arrived home.

Serve compensation cheque:

7. R.W further testified that he sent a \$1,300.00 TD bank cheque to the Tenant on April 10, 2023, using the same courier service. The Landlord's legal representative submitted a confirmation sheet as evidence, indicating that the envelope package contained the cheque was delivered to the rental unit on April 11, 2023, and no signature was required for acceptance. In response my question about whether the cheque had been cashed by the Tenant, the Landlord's legal representative stated that he had no knowledge.
8. The Landlord's legal representative stated that the N12 notice of termination was served to the Tenant on February 2, 2023, and one month rent compensation was sent to the Tenant on April 11, 2023 pursuant to s.191 (1) of Act and the Board's Rule of Procedure 3.1f.
9. The Tenant testified that she never received this cheque, and she was only aware that this possible \$1,300.00 cheque existed when she saw a copy of the it in the Landlord's LTB hearing evidence package received from the Landlord's legal representative prior to the hearing.

Analysis:

10. The s.191 (1) of Act set out: A notice or document is sufficiently given to a person other than the Board: (a) *by handing it to the person;*
 - (b) *if the person is a landlord, by handing it to an employee of the landlord exercising authority in respect of the residential complex to which the notice or document relates;*
 - (c) *if the person is a tenant, subtenant or occupant, by handing it to an apparently adult person in the rental unit;*
 - (d) *by leaving it in the mail box where mail is ordinarily delivered to the person;*
 - (e) *if there is no mail box, by leaving it at the place where mail is ordinarily delivered to the person;*
 - (f) *by sending it by mail to the last known address where the person resides or carries on business; or*
 - (g) *by any other means allowed in the Rules. 2006, c. 17, s. 191 (1).*
11. The Board's Rule of Procedure 3.1f states: *In addition to methods of service identified in the RTA a document may be served on a person or party, other than a party covered by Rule 3.3, by: f. courier to party's address or, the case of a non-profit housing co-operative, to its head office or business office.*
12. The evidence presented by the Landlord demonstrates that the N12 package was placed under the mat of the Tenant's front door, not in the mailbox, and left in a publicly accessible location. The courier did not deliver the package directly to the Tenant, occupant, or any adult person in the rental unit. And it also problematic that it was covered up by the mat, it is barely peaking out. I accept the Landlord's uncontested evidence that the courier delivered the N12 package to the Tenant's front door, and I am equally satisfied that the Tenant did not receive the N12 and compensation cheque because the rental unit front door is accessible location without restrictions by any member of the public. Therefore, I am not satisfied that the Landlord served the N12 notice of termination and compensation cheque in accordance with s.191(1) of the Act.

Determinations:

1. I am not satisfied that the N12 notice was validly served upon the Tenant. Service of a valid N12 notice is a prerequisite to filing an L2 application. Therefore, the Landlord's application is dismissed.
2. In addition, I am not satisfied that the Landlord paid the Tenant the compensation equal to one month's rent on or before the termination day set out on N12 notice of termination as required by sections 48.1 and 55.1 of the Act.

It is ordered that:

1. The Landlord's L2 application is dismissed.

February 22, 2024

Date Issued

Joy Xiao
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.