



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

Citation: Adyemi Ogundairo v Richard Harding, 2023 ONLTB 47087

Date: 2023-06-29

File Number: LTB-L-028591-23

In the matter of: UNIT 1, UPPER LEVEL, 24 JUNE BERRY
RD
THOROLD ON L2V0B2

Between: Adyemi Ogundairo Landlord

And

Richard Harding Tenant

Adyemi Ogundairo (the 'Landlord') applied for an order to terminate the tenancy and evict Richard Harding (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 15, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Leon Presner and Sarah Matthews and called as a witness: Pha-Luan Ho (the 'Process Server'). The Tenant was represented by Vanessa Robb.

Determinations:

1. The Landlord's application for an eviction order must be dismissed because the Landlord's evidence is insufficient to prove that it is more likely than not that the Tenant received the Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) at least 14 days prior to the date of termination.
2. Pursuant to s. 59(1)(b) of the Act a landlord of a monthly tenancy like this one is required to give at least 14 days' notice of termination for non-payment of rent.
3. On March 3, 2023, the Process Server drove to the residential complex in which the unit is located and knocked and rang the doorbell. Eventually an adult female came to the front door of the residential complex. She refused to give her name but accepted from the Process Server the N4 intended for the Tenant, and said she would give it to him.
4. Pursuant to s. 191(1) of the Act, a document is deemed to be "sufficiently given" if it is delivered pursuant to one of the listed methods. In other words, if one of the approved methods of delivery is used for service, the Landlord does not have to prove actual receipt by the Tenant.

5. Pursuant to s. 191(1)(c) one of the approved methods is “handing it to an apparently adult person **in the rental unit**”. [Emphasis added.]

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6. The problem that arises here is that the rental unit in question here is a room. The residential complex is a boarding house. I believe there are four rental units with four separate tenancies. The tenants share a kitchen and one or more bathrooms.
7. The definition of “rental unit” in the Act is set out in s. 2(1). It says: “rental unit” means any living accommodation used or intended for use as rented residential premises, and “rental unit” includes,
 - (a) a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises, and
 - (b) **a room in a boarding house**, rooming house or lodging house and a unit in a care home;

[Emphasis added.]

8. This means that in a rooming house situation, the rental unit is the room or rooms that the tenant rents and has exclusive possession of. The shared or common areas are included in the definition of “residential complex” which is also set out in s. 2(1).
9. The reason this is important is because when the Process Server handed the N4 to the unknown adult female neither of them were in the rental unit. She was standing just inside the front door of the residential complex which is a shared or common area and not the Tenant’s room or an area in his exclusive possession. That means the deemed service provision in s. 191(1)(c) does not apply.
10. However, that is not the end of the inquiry. Pursuant to s. 191(2): “a notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period.”
11. The date of termination on the Landlord’s N4 is March 27, 2023. That means if the Landlord can prove it is more likely than not that the N4 came to the Tenant’s attention on or before March 13, 2023, the notice is valid and the hearing for an eviction order can proceed.
12. But the Landlord here cannot meet that burden of proof. The only evidence of when the Tenant became aware of the N4 is from the Tenant. He says he was out of the country travelling and returned home on or about March 15, 2023. He found the N4 among his mail on one of March 15, 16 or 17, 2023. He is not sure of the exact date he saw it.

13. Given all of the above, I am not satisfied that it is more likely than not that the Landlord gave the Tenant at least 14 days notice of termination as required by the Act. Therefore, the notice is not valid and the application for eviction filed pursuant to s. 69 cannot succeed.
14. In response to my question, the Landlord indicated he wished to proceed with the hearing for rent arrears only pursuant to s. 87(1).
15. The Tenant has at all material times been in possession of the rental unit.
16. The lawful monthly rent is \$687.00.

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17. The Tenant has made no payment to the Landlord since the application was filed.
18. There is no dispute that the arrears of rent owing for the period ending June 30, 2023 as of the date of hearing total \$5,496.00.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. Therefore, an order shall issue requiring the Tenant to pay to the Landlord a total of \$5,682.00.
21. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord \$5,682.00 for arrears of rent up to June 30, 2023 and costs.
2. If the Tenant does not pay the Landlord the full amount owing on or before July 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 11, 2023 at 6.00% annually on the balance outstanding.

June 29, 2023
Date Issued

Ruth Carey
Vice Chair, Landlord and Tenant Board

15 Grosvenor St, Ground Floor Toronto
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.