



Order under Section 69 Residential Tenancies Act, 2006

Citation: CENTRALE RESTAURANT AND BAR INC. v Honnouvo, 2023 ONLTB 41847

Date: 2023-06-05

File Number: LTB-L-068272-22

In the matter of: 815, 75 CANTERBURY PL
NORTH YORK ON M2N0L2

Between: CENTRALE RESTAURANT AND BAR INC. Landlord

And

Jean Marc Honnouvo Tenant

CENTRALE RESTAURANT AND BAR INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Jean Marc Honnouvo (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 23, 2023.

The Landlord's legal representative, Alexander Surgenor, and the Landlord attended the hearing.

Determinations:

1. The Landlord served the Tenant with a Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.

PRELIMINARY ISSUE: INVALID SERVICE OF NOTICE

2. The certificate of service filed with the Board indicated the Landlord's legal representative had emailed the Tenant's representative the N4 notice.
3. The position of the Landlord is that the N4 notice was properly served to the Tenant as the notice was emailed to the Tenant's "representative" and the Tenant and the Landlord had written agreement in the tenancy agreement to receive documents by email.
4. The Landlord's legal representative submitted as evidence, the tenancy agreement in support of the Landlord's claim the notice was properly served.

The Act and Analysis

5. Section 191 f the Act states: How

notice or document given

191 (1) 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.

5. Section 202 of the Act states:

Findings of Board

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

6. Section 3 of the Rules of Procedure states:

Service by Email

3.5 Parties may consent in writing at any time to service by email.

7. The Landlord's certificate of service indicated the N4 notice was served to the Tenant's "representative" in this case the Tenant's real estate agent that brokered the tenancy agreement on behalf of the Tenant with the Landlord.
8. The Tenant signed the tenancy agreement and on page 4, section 11 of the OREA tenancy agreement the Tenant had authorized his real estate agent to accept documents on his behalf "pursuant to this agreement".
9. In my view, the intent of the Tenant allowing documents to be emailed to the Tenant's real estate agent was meant for the purposes of the rental agreement and for the real estate agent to facilitate the terms for the Tenant. Upon completion of the transaction of signing the tenancy agreement I find it reasonable to assume the relationship between the Tenant and the real estate agent had ended. Upon completion of the signing of the tenancy agreement the Tenant and the real estate agent would have no reasonable expectation of an ongoing relationship, and certainly not as a "representative" as indicated by the Landlord in the certificate of service.
10. Further, in my view, I do not find it reasonable for the Landlord's legal representative to serve a notice on anyone other than the Tenant, and the Landlord had other options available pursuant to section 191 of the Act for serving a notice on the Tenant.
11. Pursuant to section 202 of the Act, given the usual relationship and activities of a real estate agent and client, I find it more likely the Tenant and real estate agent were not in communication regarding the N4 notice the Landlord emailed to the real estate agent, and as the real estate agent was not acting as the Tenant's "representative" he would have no obligation to forward the N4 notice to the Tenant.

12. I note that while email is an approved method of serving notices if the parties consented to this method in writing, the Tenant did not provide his email in the tenancy agreement, and as such the Landlord had an obligation to make sure the Tenant himself was properly served the N4 notice, and not through his real estate agent.
13. Given all the above, in my view the Landlord has not fulfilled the requirements to serve the N4 notice to the Tenant, and on a balance of probabilities, and with the evidence before me I find the Landlord did not properly serve the Tenant with the N4 notice, and therefore the notice is invalid.

Landlord's L1 Application

14. Given the above, I afforded the Landlord 2 options: 1) he could withdraw the application and file again with the Board and serve proper N4 notice to the Tenant, or 2) the Landlord could proceed to convert the L1 application to an L9 and proceed on the arrears only.
15. The Landlord chose to proceed with the arrears only, and the application is amended from an L1 to an L9.
16. Pursuant to the Board's Rules of Procedure, under Rule 15 - Amending Applications, subsection 15.4 I granted the Landlord the request as there is no prejudice to the Tenant for seeking only the arrears on the L9.
17. The lawful rent is \$2,600.00. It is due on the 1st day of each month.
18. Based on the Monthly rent, the daily rent/compensation is \$85.48. This amount is calculated as follows: \$2,600.00 x 12, divided by 365 days.
19. The Tenant has paid \$2,600.00 to the Landlord since the application was filed.
20. The rent arrears owing to May 31, 2023 are \$18,200.00.
21. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
22. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
23. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord \$18,386.00. This amount includes rent arrears owing up to May 31, 2023 and the cost of filing the application.
2. If the Tenant does not pay the Landlord the full amount owing on or before June 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 17, 2023 at 6.00% annually on the balance outstanding.

June 5, 2023

Date Issued

Greg Brocanier

Member, Landlord and Tenant Board

15 Grosvenor Street, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to the Landlord

Rent Owing To June 30, 2023	\$18,200.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	\$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to the Landlord	\$18,386.00