



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-069050-25

In the matter of: 39 Cyprus Glen
East Gwillimbury ON L9N1G5

Between: Hariharan Nesarajah Landlord

And

Victoria Deliberato Tenant
Antonio Deliberato

Hariharan Nesarajah (the 'Landlord') applied for an order to terminate the tenancy and evict Victoria Deliberato and Antonio Deliberato (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 December 10, 2025.

The Landlord and the Tenant attended the hearing. The Landlord's Legal Representative Sriram Rangan and the Tenant's Legal Representative Claire Hardy also attended.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant.

Determinations:

The Prior Notice's

1. At the hearing the Tenant's Legal Representative requested the Landlord's Application be dismissed as it failed to identify prior N12 Notice's of Termination and did not comply with Section 71.1(3) of the Residential Tenancies Act, 2006 which states:

Previous use of notices under s. 48, 49 or 50

(3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

(a) indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and

(b) set out, with respect to each previous notice described in clause (a),

(i) the date the notice was given,

(ii) the address of the rental unit in respect of which the notice was given,

(iii) the identity of the intended occupant in respect of whom the notice was given if the notice was given under section 48 or 49, and

(iv) such other information as may be required by the Rules. 2020, c. 16, Sched. 4, s. 11 (2).

Non-compliance with subs. (3)

(4) The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3). 2020, c. 16, Sched. 4, s. 11 (2).

2. The Tenant indicated that the Landlord's Application discloses 3 prior Notices of Termination, however they have listed the incorrect postal code and have listed the Tenants as the intended occupant.
3. Therefore, the Tenant's Legal Representative contends that the L2 does not comply with section 71.1(3).
4. The Tenant's Legal Representative indicated that as per *Miller Estate v. Arguelles*, 2025 ONSC 112 the appropriate remedy is to refuse the Application for filing, and therefore I do not have the jurisdiction to hear the Application.
5. I disagree with the Tenant's Legal Representative interpretation of *Miller*.
6. *Miller Estate v. Arguelles*, 2025 ONSC 112 defined the purpose of Section 71.1(3) as follows:

[31] The provisions in question attempt to balance the good faith rights of a landlord to take occupation of a residential unit with the rights a tenant to be free from wrongful eviction.

[32] The required disclosure ensures tenants have at least some of the information necessary to legitimately question the landlord's good faith use of the s. 48 notice. That information may allow for further investigation by the tenant that reveals the landlord has not acted in good faith on earlier occasions. It may allow the Board to infer that a landlord is not acting in good faith in the application before it.

7. The court also held that appropriate remedy is for the LTB to refuse the Application for filing when there is an error on its face.

8. However, Miller also states at paragraph 35 and 35:

[35] Once the application is accepted for filing, there is nothing that prohibits amendment to include additional notice information. Indeed, Rule 15.4 of the *Landlord and Tenant Board Specific Rules* anticipates amendments to applications provided the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.

[36] In this case the landlord made some disclosure in the application, and it was accepted for filing. As the tenant was the very person who had been served with the undisclosed N12 (and therefore must have known of it), it cannot be said she was prejudiced by its omission from the application

9. Accordingly, as the Application in the case before me has been accepted for filing there is nothing which prevents the Board from amend the Application where there is no prejudice to the Tenant in doing so.
10. The Tenant's Legal Representative indicates that the Tenant was prejudiced because in the original 3 notices they indicated that a company was moving in, therefore the Tenant has not had an opportunity to make submissions on this and the Board has not a had an opportunity to make an assessment as to the good faith notice of the Landlord. Which created confusion for the Tenant.
11. The Landlord's Legal Representative indicated that there is not prejudice to the Tenant's as they were able to attend all three of the hearing based on the 3 prior N12 Notice's of Termination and were clearly aware of these prior notices.
12. In this case I am satisfied that there would be no prejudice to the Tenant in amending the Application.
13. The three prior notices were declared on the L2, they simply were not done so correctly, using an incorrect postal code and the wrong intended occupants. However, I am not satisfied that this has prejudiced the Tenant's in any meaningful way, and I am not satisfied that the Tenant's Legal Representative has articulated any clear or concrete prejudice to the Tenant. It is clear that the Tenant's were aware of the prior notice's and able to participate in the proceedings which flowed from them, accordingly I am not satisfied that the Tenant's were prejudiced in any meaningful way in their preparation for this proceeding.
14. Accordingly, I am satisfied that it is appropriate to amend the Landlord's Application.

The Validity and Service of the N12

15. The Tenant's Legal Representative also disputed the service and validity of the N12. The Tenant's Legal Representative indicated that while N12 was allegedly served by mail and email on August 4, 2025, it was not received by both Tenants. The Tenant's Legal Representative testified that the N12 identifies the rental address as 39 Cyprus Glen, East Gwilimbury, Canada L9N 1G5 which is not the correct address for the rental unit. She testified that both the city and postal code are incorrect.

16. The Tenant's Legal Representative indicated that the correct rental address is 39, Cyprus Glen, Holland Landing L9N0S8. In support of this the Tenant's Legal Representative relied on the Canada Post find a postal code lookup and a letter address to the Landlord from the CRA and from the Town of East Gwillimbury and a letter from BMO Bank all of which used the 39, Cyprus Glen, Holland Landing L9N0S8 address. She indicated that as the BMO bank envelope is addressed to the Landlord, he has evidently provided this address to them and is aware that this is the correct address.
17. The Tenant's Legal Representative also indicated that the compensation cheque which was sent via FedEx was addressed to the 39, Cyprus Glen, Holland Landing L9N0S8 address.
18. Therefore, the Tenant's Legal Representative indicated that the N12 fails to properly identify the rental unit as it uses an incorrect address.
19. The Tenant's Legal Representative testified that the Tenants were prejudiced because they did not both receive the N12 or affidavit.
20. She testified that only one Tenant Antonio Deliberato was served by the Landlord via email while the Tenant Victoria Deliberato was served via mail. She also indicated that while Antonio Deliberato received an email from the Landlord on August 4, 2025, it did not have the N12 and Affidavit attached. In support of this the Tenant's Legal Representative relied on an email from the Landlord's Legal Representative dated August 4, 2025. She indicated that the email is addressed to one of the Tenant's and the Tenant's son, and while it references an attachment there is nothing attached to the email.
21. The Tenant's Legal Representative indicated that the Landlord's certificate of service confirms that the N12 was served via mail to the incorrect address and to only one of two Tenant's via email, and was not served on the Tenant Victoria Deliberato by email.
22. The Tenant's Legal Representative also indicated that the Tenant Victoria Deliberato did not consent to service via email in the lease agreement, and the Landlord did not provide an email address for service in the lease.
23. The Tenant's Legal Representative also testified that the N12 was mailed during the Canada post Postal Strike.
24. The Tenant's Legal Representative also pointed out that the Landlord's August 4, 2025 email indicates that the Landlord is withdrawing the previously issued N12 with a termination date of October 2, 2025.
25. The Tenant's Legal Representative then directed me to an email from the Landlord's Legal Representative dated August 2, 2025, wherein the Landlord had served the Tenant with the previous N12 with a termination date of October 2, 2025. I note that this email from the Landlord's Legal Representative indicates that the Termination date is October 3, 2025.
26. The Tenant's Legal Representative indicated that this caused confusion for the Tenant's and when she was retained the Tenant's were under the impression that they were responding to the previous N12 with an October 2 or October 3, 2025, termination date and were confused as to which notice the Landlord's Application was based. The Tenant's

Legal Representative also indicated that the most recent affidavit received by the Tenant's was dated August 2, 2025, and was signed by a person other than the Landlord.

27. The Landlord's Legal Representative indicated that the N12 was attached to the email sent to the Tenant on August 4, 2025. He indicated that there is another two pages of the email which is not contained within the evidence package.
28. The Landlord's Legal Representative also indicated that the Tenant has filed a T2 Application LTB-T-058764-26 and has uploaded the N12 as part of the evidence for this Application, therefore there is no way the Tenant can say they have not received the N12. He testified that this document was uploaded to the T2 on August 5, 2025
29. With respect to the address the Landlord's Legal Representative indicated that prior Notice's of Hearing for prior hearing were sent by the Board to the Tenant at the 39 Cyprus Glen, East Gwilimbury, Canada L9N 1G5 address and the Tenant has been able to attend these proceedings.
30. He also testified that the Tenant was clearly aware of the N12 Notice of Termination and was able to retain representation and participate in this proceeding without any prejudice.

Analysis

31. Section 43 of the Act states:

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

- (a) identify the rental unit for which the notice is given;
- (b) state the date on which the tenancy is to terminate; and
- (c) be signed by the person giving the notice, or the person's agent.

32. In this case I am satisfied that the N12 Notice of Termination does not contain the correct address for the rental unit, which I am satisfied is 39, Cyprus Glen, Holland Landing L9N0S8 based on the magnitude of documents addressed to both the Landlord and Tenant and this address.

33. Therefore, I am not satisfied that the N12 complies with Section 43 of the Act.

34. Additionally, I am not satisfied that the N12 Notice of Termination was served on both Tenant's. I disagree that there was an active mail strike at the time the N12 was mailed. While other labour actions may have been occurring, I am satisfied that a full strike did not begin until September 25, 2025.

35. However, despite this it is not clear which Tenant received the N12 Notice of Termination from the Landlord, or by which method of service, and it is not clear to me that this was received by both Tenant's within adequate time.

36. While it is clear from the N12 uploaded to the Tenant's Application that the N12 was received by at least one Tenant, it is not clear to me which Tenant received the N12, and by which method it was received, and it is not clear to me that both Tenant's were served with the N12 Notice of Termination.

37. Section 212 of the Act states:

Substantial compliance sufficient

212 (1) Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient. 2006, c. 17, s. 212.

When error still constitutes substantial compliance

(2) For greater certainty, an error in the contents of a form, notice or document still constitutes substantial compliance with this Act, as long as the error does not significantly prejudice a party's ability to participate in a proceeding under this Act. 2024, c. 28, Sched. 24, s. 1.

38. While Section 212 give the Board the ability to overlook minor errors when there is no prejudice to the other party and find that the notice, form, or document still complies I am not satisfied that the Landlord's N12 is saved by Section 212 on these circumstances as I am satisfied that the Tenant was significantly prejudiced.

39. I note that the Landlord appears to have served multiple N12's within a short time frame, often withdrawing and reserving these within a short span. For example, the Landlord's August 4, 2025 indicates that the previously N12 with a termination date of October 2, 2025 is being withdrawn. This N4 appears to be have been served via email on August 2, 2025, and I note that in that email the Landlord references the termination date as October 3, 2025.

40. Given these inconsistencies and the issues with the service of the Notice of Termination, I am prepared to accept that the Tenant's were confused as to which N12 the Landlord intent to proceed on, and which termination date the Landlord intended to terminate the tenancy.

41. I also note that the Tenant's T2 Application appear to have been filed on the basis of the multiple N12 Notice's Received by the Tenant's and the confusion flowing from the multiple notice's and challenging the Landlord's practice of serving the N12 via email.

42. Therefore, I am satisfied that the Tenant would be significantly prejudiced if I were to find substantial compliance with the Act.

43. Therefore, the Landlord's Application shall be dismissed.

It is ordered that:

1. The Landlord's Application is dismissed.

January 16, 2026
Date Issued

Reid Jackson
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.