



Order under Section 69 / 88.1 Residential Tenancies Act, 2006

Citation: Elia v Agyropoulos, 2026 ONLTB 6756

Date: 2026-01-21

File Number: LTB-L-074966-25

In the matter of: 418, 205 THE DONWAY W
NORTH YORK ON M3B3S5

Between: Patricia Elia Landlord

And

Gus Agyropoulos Tenant
Helena Cabral

Patricia Elia (the 'Landlord') applied for an order to terminate the tenancy and evict Gus Agyropoulos and Helena Cabral (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.

Patricia Elia (the 'Landlord') also applied for an order requiring Gus Agyropoulos and Helena Cabral (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on January 14, 2026.

The Landlord, the Landlord's Legal Representative, Jonathan Wright, Robin Macina, the Tenant's Legal Representative, Christina Nastas, and the Tenant attended the hearing.

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

1. At the outset of the hearing, the Tenant stated that he did not receive the N12 notice of termination and did not receive the required compensation. The Landlord filed a Certificate

of Service indicating that the N12 was sent to the Tenant by regular mail on August 26, 2025.

2. The Landlord's legal representative, Robin Macina (RM), stated that their office attempted delivery on multiple occasions. She stated that on or about August 21, 2025, a package containing the N12, and the compensation cheque was sent by registered mail to a concierge or building manager, but the package was returned to the sender by August 26, 2025, by Canada Post. She further stated that on August 19, 2025, a process server was retained to deliver the N12 and the compensation cheque to the rental unit, but the process server did not enter the building and the package was returned.
3. RM further stated that on August 26, 2025, she mailed the N12 to the rental unit by regular mail, and on August 28, 2025, she mailed a second package to the rental unit by regular mail containing a bank draft equal to one month's rent. According to her evidence, both envelopes were returned to their office in October 2025. RM described the envelopes as opened and resealed with transparent tape, bearing handwritten notations that read "*Wrong address, Return to Sender.*" She stated that she did not know who wrote the notations or who returned the envelopes. Copies of the two envelopes were submitted at the hearing.
4. The Tenant testified that he did not receive any of the packages that the Landlord or the Landlord's representative attempted to deliver. He testified that he did not write on the envelopes and did not return them to the office of the Landlord's representative.
5. The Landlord's Legal Representative submitted that section 191 of the *Residential Tenancies Act, 2006* (the 'Act') permits service by mailing to the last known address and that deemed service arises on the fifth day after mailing. The Landlord argued that any non receipt was the product of the Tenant's refusal to accept delivery or building practices outside the Landlord's control.

Analysis:

6. Section 191 subsection 1 of the Act provides that a notice or document may be given by leaving it in the mailbox where mail is ordinarily delivered to the person. Rule 3.9 of the *Board's Rules of Procedure* states that a document sent by regular mail is therefore deemed served on the fifth day after it is mailed. That is a rebuttable presumption that may be displaced by credible evidence showing that the recipient did not receive the document. Service concerns receipt by the other party rather than the mere act of placing a document in the mail. The Landlord bears the burden to prove effective service on a balance of probabilities, which means it is more likely than not that service occurred.
7. Based on the evidence before me, I accept the Tenant's direct testimony that he did not receive the N12 and the compensation. The registered mail package was returned by August 26, 2025. The process server's attempt on August 19, 2025, did not result in delivery because the server did not enter the building. With respect to the regular mailings of August 26 and August 28, 2025, the envelopes were returned approximately one month later and were described as opened and resealed, with handwritten notations indicating a wrong address and a request to return to sender. There is no reliable evidence that the Tenant opened the envelopes, wrote the notations, or caused their return. No chain of

custody evidence was provided to connect those markings to the Tenant. While the Landlord relies on section 191 and the deemed service rule, the Tenant led credible evidence of lack of receipt that rebuts the presumption. Proof of mailing alone does not, in these circumstances, satisfy the evidentiary burden that the Tenant actually received the N12. I find more likely than not; the Tenant did not receive the N12 notice of termination and one months' rent compensation.

8. I find that the Landlord has not proven effective service of the N12 on a balance of probabilities. I further find that the Landlord has not established that the compensation equal to one month's rent was paid to the Tenant on or before the termination date stated in the N12 as required by sections 48.1 and 55.1 of the Act. This portion of the application is therefore dismissed.

Compensation for substantial interference

9. Following my oral determination that the N12 notice was defective, the Landlord's legal representative requested consent to withdraw the claim for compensation for substantial interference. There was no objection, and I granted consent.

It is ordered that:

1. The Landlord's L2 application is dismissed without consideration of its merits.

January 21, 2026

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.