



Order under Section 69 Residential Tenancies Act, 2006

Citation: Khrystych v Khrystych, 2026 ONLTB 19333

Date: 2026-03-04

File Number: LTB-L-049206-25

In the matter of: 223, 17 CONEFLOWER CRES
Toronto ON M2R0A5

Between: Viktor Khrystych
Zrazhevskia Daria

Landlords

And

Elena Khrystych

Tenant

Viktor Khrystych and Zrazhevskia Daria (the 'Landlords') applied for an order to terminate the tenancy and evict Elena Khrystych (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on October 24, 2025.

The Landlords, the Landlord's Legal Representative Clive Preddie, the Tenant, and the Tenant's Legal Representative Olga Leyenson attended the hearing.

Procedural History:

1. This matter was adjourned from September 15, 2025, to allow the parties to provide further submission regarding service and validity of the N4.

Preliminary Issue:

1. The Tenant's Legal Representative Ms. Leyenson argues that the RTA does not apply to this tenancy. She claims under section 5(i) of the RTA, the Act does not apply if a tenant share a kitchen or bathroom with the owner or the owner's child.
2. Ms. Leyenson argues that the owner Viktor Khrystych, is the biological father of the second tenant Lydia Khrystych. The Tenants (mother and daughter) share a kitchen and bathroom, and because Lydia is the owner's child and live in the rental unit, the "Act" should not apply.
3. Additionally, Ms. Leyenson claims that even if the Board were to have jurisdiction, that the N4 is not valid. The N4 was received by the Tenant on May 31, 2025, but that the

termination date listed on the N4 was June 12, 2025. Which failed to provide the mandatory 14-day notice period required. She states the proper termination date in the N4 should have been June 14, 2025.

4. The N4 also claimed rent arrears for May 2025, she contends that the Tenants already paid May's rent with an explicit instruction to apply the payment to that month. The Tenant cited *Malva Enterprises Inc. v. Rossgate Holdings Ltd.* (1993), which established that landlords must apply rent payments as directed by tenants. In that case, the Ontario Court of Appeal held that when a tenant specifies that a payment is for current rent and the landlord accepts it, the landlord cannot later reallocate it to arrears. Ms. Leyenson argues this principle applies here and the Landlords are obligated to apply payments as directed by the Tenant.
5. Lastly, the N4 Notice only names Elena Khrystych and the Landlord has omitted the second joint Tenant Lydia, which the Tenant argues that it is fatal to the proceedings as not all the Tenants are listed, which prejudices Lydia's ability to participate in the proceedings. Also referencing the Landlord's N12 application LTB-L-042615-25, which has both tenants listed.
6. The Landlord's Legal Representative Mr. Preddie states that the N4 Notice was issued on May 23, 2025. This tenancy began in 2019 at a monthly rent of \$1,200.00. The Landlord filed a certificate of service confirming that the N4 was mailed/Xpress post.
7. Mr. Preddie submitted that the N4 Notice was properly served by regular mail on May 23, 2025, with a termination date of June 12, 2025, thereby providing 20 days' notice. The Landlord relied on the Certificate of Service and emphasized that the notice exceeded the minimum 14-day requirement under section 59(1)(b) of the Act.
8. The Landlord further argued that only Elena Christage was named in the N4 Notice because she was the sole signatory to the lease agreement. Although Lydia Christage was listed on the lease, she did not execute the agreement and was therefore not pursued for monetary relief. The Landlord clarified that the N12 Notice, served earlier on May 15, 2025, listed both tenants because it sought vacant possession, not monetary relief. The Landlord maintained that the N4 was accurate and valid for the purposes of the L1 application. He contends that Landlord's N12 application LTB-L-042615-25 was served to both Tenants on May 15, 2025, by Xpress post.
9. Mr. Preddie presented the Board supporting case of *Di Bartolomeo v Ryan* (2025 ONTLTB 22735). He argued that the Board upheld an N4 Notice despite a clerical error, listing November rent before it was due. The Board ruled that the N4 Notice "substantially compliant" because the total dollar amount was correct. This decision cited Section 212 of the 'Act' (Substantial Compliance): This section allows the Board to overlook technical defects in a notice (like the clerical date error in the N4) if the error does not mislead the tenant. Since the total amount owing was accurate and the tenant understood she was in arrears, the notice remained valid.

10. I find the testimony of both parties was conflicting and largely self-serving. Neither Mr. Preddie nor Ms. Leyenson provided persuasive evidence to corroborate their respective positions regarding when the notice was mailed or received.
11. The only objective and independent evidence is the Canada Post envelope bearing a postal stamp dated May 26, 2025. I give this significant weight as the postal stamp is generated and applied by Canada Post, an independent third party, as part of their regular business operations. The stamp is not created or influenced by either the Landlord or the Tenant.
12. Second, the postal stamp is an official contemptuous record of the date the envelope was processed by Canada Post. It is more reliable than recollections or assertions made by the parties.
13. Third, there is no evidence presented by either party to suggest that the postal stamp is inaccurate or that the envelope provided was not the same envelope used to mail the N4 Notice.
14. Finally, the postal stamp provides a clear, objective point of reference which allows the Board to determine the service date with sureness, in accordance with section 191(3) of the 'Act' which states:

How notice is given

191 (1) A notice or document is sufficiently given to a person other than the Board,

Mail

(3) A notice or document given by mail shall be deemed to have been given on the fifth day after mailing. 2006, c. 17, s. 191 (3).

and the Board's Rules of Procedure.

15. Based on this objective and independent evidence, I find that the N4 Notice was mailed on May 26, 2025. Pursuant to section 191(3) of the Act and Rule 3.1 of the Board's Rules of Procedure, documents served by regular mail are deemed to be served on the fifth day after mailing. Therefore, the N4 Notice is deemed to have been served on May 31, 2025.
16. Under section 59(1)(b) of the Act, a landlord must provide a tenant with a notice of termination that meets the statutory minimum notice period. Because the deemed service date is May 31, 2025, and the termination date is June 12, 2025, the notice period provided was only 12 days, which is insufficient of the mandatory 14-day period.
17. Upon reviewing the N12 application LTB-L-042615-25, the Board notes that both Tenants, Lydia and Elena Christage, are listed on the notice and Certificate of Service. This matter was alleged to have been served on May 15, 2025. I will note that only eight days separate the service dates of the N12 and N4 notices, yet the N4 notice fails to include both Tenants.
18. On the N4 application, both Tenants are not listed on the notice of termination. Upon examination of the lease agreement, Lydia Christage is listed as a tenant. The failure of

the Landlord to name Lydia in the N4 Notice contradicts section 59(2) of the Act. Furthermore, there is no proof of service on Lydia for the N4 application.

19. For all the reasons given above, I find that the N4 is invalid. The Landlord's Legal Representative provide submissions on October 24, 2025, that the Landlord would not pursue an L9 arrears if the N4 was deemed not valid. He sought to withdraw the application, and I will consent to the request.
20. Given my findings regarding service and failure to name the second tenant, it is unnecessary to address the issue of allocation of rent payments and given the lack of evidence if the *Residential Tenancies Act* applies. The parties are free to file a separate application for a determination on if the 'Act' applies should they wish to pursue that issue further.

It is ordered that:

1. The application having been withdrawn, the LTB's file is closed.

March 4, 2026
Date Issued

Anthony Bruno
Hearings Officer, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-32