

Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

This Guideline deals with interpretation questions respecting the steps required to bring an eviction application under the *Residential Tenancies Act, 2006* ("the RTA") and what will be the result of failing to follow those procedures.

Adequacy of the Notice of Termination

The Notice of Termination (the Notice) is an essential step in the landlord's process of evicting a tenant¹ (except section 77 and 78 applications). The Board will not terminate a tenancy and order eviction of the tenant unless the tenant has received a valid Notice of Termination from the landlord and the landlord has successfully proved the ground claimed in the Notice at the hearing of the application.

If the document given to the tenant or the method or time of service are defective, in most cases this will result in dismissal of the application or the denial of the eviction portion of the application.

The Notice of Termination must specify a date of termination without doubt or condition. The landlord must set a date which allows at least the minimum period of Notice for that ground for eviction, or the longest period if there are several grounds set out in the same Notice. The Board has no authority to shorten the notice period required by the RTA in view of section 56 of the regulations (O. Reg. 516/06) and Rule 1.4 of the Rules of Practice. If a shorter notice period is given than is required, the application will be dismissed.

The Divisional Court of Ontario has held that an unsigned Notice of Termination may be valid, so long as the landlord's name is shown.² However, other requirements may not be so easily resolved. An incorrect termination date in a Notice may render it invalid.³ For

¹ *Re Bransfield Construction Co. Ltd. And Cox* [1973] 3 O.R. 989 (Div. Ct.)

² *Darraugh Construction and Investment Ltd. v. Cain* (1988), 30 O.A.C. 1, in which the landlord's name was typed in by the landlord's solicitor

³ *Re Bianci and Aguanno* (1983), 42 O.R. 76 (Divisional Court)

example, stating a period of time but not a specific date (e.g., “14 days” rather than “April 16, 2001”) may not be sufficient.⁴

If the Notice of Termination is confusing to the degree that a reasonable person could not understand precisely what it means, a Member would find it defective.⁵ For example, in some cases this might include: uncertainty about whether the landlord is the person giving the Notice, vagueness about the reason for giving the Notice⁶, a lack of details about the reason, etc. A Notice which only specifies a reason which is not a ground for eviction under the RTA would be invalid; and even adding such a claim to a legitimate ground may confuse the Notice in some cases.

In the end, whether the Notice is adequate is a question of whether it communicates the necessary elements clearly enough that a tenant would be expected to understand it and the options they have. For example, Notices were found invalid which did not state the required information that the tenant need not vacate pursuant to the Notice.⁷

Adequacy of Service of the Notice of Termination

The Notice of Termination must be given to the tenant by a method set out in subsection 191(1) of the RTA and in Rule 5.1 of the Rules of Practice. If the landlord has used a different method (without specific permission through a direction signed by a Member), and the tenant does not voluntarily admit to receiving the Notice on time, an application for eviction may be dismissed. If the tenant acknowledges receipt of the Notice by the date required or if the landlord can prove that the tenant received it, this will be sufficient no matter how the Notice was served.

⁴ *Dumi Construction Ltd. V. Greenspan* (1977), 15 O.R. (2d) 808 (Co. Ct.)

⁵ *Kuzyk v. SK Properties* (November 22, 2001), Toronto Docket No. 106/01, [2001] O.J. No. 5260 (Div. Ct.) Re: TSL-18855

⁶ *Ball v. Metro Capital Property and Lockhurst* (December 19, 2002), Toronto Docket No. 48/02 (Div. Ct.) Re: TNL-31297

⁷ *Dumi* (above) and *Forrest Estates Home Sales Inc. v. Gwyn* (1987) Doc. No. 131-1987 (Ont. Dist. Co.)

Substantial Compliance with Forms

Some landlords like to produce their own versions of the approved forms for Notices of Termination and Applications. These forms usually use the wording found on the Board's form and are simply intended to allow computer inputting or other convenience to the landlord. So long as the landlord's form includes the information set out for the tenant in the Board form, the different form will usually be permitted. The Member who must rule on the adequacy of such a Notice may consider whether it substantially complies with the legal requirements as expressed in the form approved by the Board, taking into consideration the points mentioned above.

However, if the landlord seeks to communicate other messages in the form which are misleading about the tenant's rights or inconsistent with the provisions of the RTA, this may cause a Member to find it defective. Information may be provided which is not misleading, is not inconsistent with the law and does not confuse the essential information in the Notice.

Oral notice of termination cannot substantially comply with a requirement to give written notice. The statutory requirement to give written Notice cannot be waived by a Member.

Giving Multiple Notices of Termination

A landlord may believe there is more than one ground for eviction, and give a Notice with more than one ground or, more likely, two Notices of Termination together. The landlord may also find another ground for eviction while a Notice has not yet been resolved, and give another Notice for the new ground.

The RTA doesn't prohibit a landlord from starting eviction proceedings against a tenant relying on more than one ground and succeed on all or some of the grounds. For example, if the tenant is behind in the rent, and has damaged property in the complex, the landlord should be able to ask for eviction under both grounds. Sometimes the same event may give rise to more than one ground for termination, as a result the landlord may serve more than one Notice of Termination citing the same event as the reason for both of the Notices. For example, if the tenant damages the fire alarm system in the residential complex, the landlord may serve a Notice to Terminate alleging an illegal act and a second notice alleging an impairment of safety.

Although the landlord is permitted to give Notices of Termination with different termination dates, confusion to the tenant should be minimized. The Notices may be challenged on the basis that they are confusing and therefore defective. In the worst case, an application may be dismissed.

Date When Application May be Filed

In a Notice of Termination for non-payment of rent, the landlord may specify any date of termination, so long as it is at least 14 days (7 days for a weekly tenancy) after the day the notice is given to the tenant (see section 59). The landlord must then wait to apply until at least the day after the termination date specified in the Notice (see subsection 74(1)).

An eviction application based on damages, interference with reasonable enjoyment or overcrowding (sections 62, 64 or 67) may not be brought until after the seven day period for the tenant to remedy the situation has passed without the tenant complying with that remedy. For example, if the tenant paid for the damages within the seven days following the Notice being given, no application could be made. Otherwise, the tenant doesn't void the Notice and the landlord could apply on or after the 8th day after giving the Notice to the tenant.

For all other types of eviction applications (e.g., personal use, safety, illegal act, tenant's notice to vacate, etc.), the application may be filed on or after the day the Notice is given.

Under subsection 69(2), an eviction application based on any ground other than unpaid rent must be filed within 30 days after the termination date set out in the Notice of Termination; otherwise, the application will be dismissed.⁸

Completeness of the Application

It is the landlord's responsibility to ensure that their application is correct and complete.

Staff of the Board will check applications for completeness in accordance with Rule 8; however, the Board Member who will make a decision on the application will ultimately determine whether or not it meets the requirements of the legislation. Where it does not, the application may be dismissed.

Other Claims That May Be Filed With An Eviction Application

An eviction application may be combined with an application for which no Notice of Termination is required. For example, a landlord may seek termination of the tenancy for an illegal act and can also apply for an order for rent arrears and/or compensation for damages caused by the tenant. In such a situation the landlord would have to give the

⁸ *Knapp v. Herauf* (June 25, 2004), Ottawa Docket No. 03-DV-947 (Div. Ct.)
Re: EAL-36746

tenant a Notice of Termination for the illegal act, but would not have to give a Notice of Termination for the rent arrears or compensation for damages. It is desirable that an application for damages be supported by estimates for the work alleged to be necessary, preferably from a reputable contractor or supplier, since a Member may refuse to issue an order for an unsupported amount. If the landlord is unsuccessful in proving the application for illegal act, but is successful in proving the rent arrears or damages, the Board will issue an order for the rent arrears or damages, but will not issue a termination of the tenancy.

In any Board order which terminates a tenancy for damages or rent arrears the Board will inquire whether the landlord is holding last month's rent from the tenant and credit the tenant with this amount.

Where a Notice of Termination Becomes Void

Subsection 59(3) provides that a Notice of Termination given for rent arrears is void if, before the day the landlord applies for eviction, the tenant pays the rent arrears and any additional rent that is due under the tenancy agreement on the date the tenant makes the payment. The purpose of this provision is to create finality when the tenant pays the amount required to bring the rent up to date.

Thus, if the tenant pays the rent that was owed when the Notice was given, and does so before the end of the current rental period, the Notice is void. If the tenant has voided the Notice of Termination, the landlord cannot file an application with the Board based on that Notice. However, if the tenant does not pay the arrears before the end of that rental period and another rental period begins, the rent for that rental period as well as the previous arrears must be paid before the landlord applies in order to void the Notice.

For example:

A landlord gives a Notice of Termination for Non-Payment of Rent on May 2nd, specifying that the tenant owes \$800 for the rental period of May 1st to 31st, with a termination date of May 16th. The earliest date that the landlord could apply to the Board is May 17th and the tenant could void the Notice by paying \$800 on or before May 16th. However, if the landlord does not apply to the Board in the month of May the tenant could also void the Notice by paying \$800 on or before May 31st.

In the same example, if the landlord waited to give the Notice of Termination until May 20th, specifying a termination date of June 3rd, the tenant could void the Notice by paying \$800 on or before May 31st. However, if the payment was made on or after June 1st, the tenant would have to pay \$1600 in order to void the Notice.

Where a Notice of Termination is given for damages, interference with reasonable enjoyment or overcrowding (sections 62, 64 or 67), and it is the first Notice within six months, the Notice is void where a tenant corrects the behaviour that led to the giving of the Notice within seven days of receiving it. If the tenant does not correct the behaviour within the seven days the landlord then has thirty days to file an application with the Board. However, if the tenant corrects the behaviour within the seven days of receiving the Notice, but within six months after the first Notice was given, once again contravenes the RTA as specified under section 68, then the landlord may give the tenant a second Notice and can apply to the Board based on the second Notice immediately after the second Notice is served.

Payment of Arrears after the Application Is Filed

If, before the hearing, the landlord receives payment from the tenant of the full arrears (see the Guideline entitled “Eviction for Failure to Pay Rent” regarding the amount required), any additional rent that is owing as of the date the tenant makes the payment, plus the application filing fee, the landlord should advise the Board so that the application may be treated as discontinued pursuant to subsection 74(2) and the hearing may be cancelled.

However, if only partial payment is made, the landlord need not advise the Board before the hearing, but should do so at the hearing.

If the landlord informs the Board of receipt of a partial payment after filing the application, any such amounts will be taken into account in issuing the order.

Payment Made after the Order Becomes Enforceable

See Guideline 11 - Eviction for Failure to Pay Rent

Multiple Landlords

If more than one landlord entered into the tenancy, and only one of them gives a Notice of Termination, they take a risk that the tenant will object to it at the hearing. The Notice may not be sufficient if any of the landlords' names are missing from the Notice, although it is sufficiently signed if any one of the landlords signs it.

The same may be true of the application. If there are multiple landlords, all should be named in the application, although one may sign it as agent for the others.

If the Notice was given by a different landlord than the applicant, this may be proper if the property has been sold and the new landlord is the applicant. However, both the purchaser and vendor should be named and sign the application if there is rent owing to each.

Multiple Tenants

If the landlord has entered into a tenancy agreement with more than one tenant, the Notice of Termination should name and be given to all tenants. This may be done in one Notice naming all the tenants. Although a Notice to a tenant may be served by giving it to any apparently adult person in the unit, if one of the tenants lives at another address, they must be served separately in accordance with the RTA and Rules of Practice.

Where there is a subtenant or assignee these persons should also be named in the Notice of Termination. However, other occupants, such as guests of the tenant, need not be named on the Notice of Termination for the landlord to obtain possession of the rental unit because the Board orders vacant possession of the rental unit, in orders terminating the tenancy.

Expiry of the Eviction Order

Under section 81 of the RTA, an order of the Board that evicts someone expires within 6 months of the date the order unless it is filed with the appropriate Court Enforcement Office before that time. This expiration provision applies notwithstanding any appeal proceeding that may be initiated in a court of competent jurisdiction. Once an eviction order expires, there is no authority to renew it, nor will the landlord be able to apply again for the same remedy for the same time period.