



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Wilgosz v Mazarese, 2023 ONLTB 72067

**Date:** 2023-10-30

**File Number:** LTB-L-058181-23

**In the matter of:** 855 OLIVE AVE OSHAWA  
ON L1H2S7

**Between:** Michael Wilgosz Landlord

**And**

Brianna Mazarese Tenant  
Megan McBride

Michael Wilgosz (the 'Landlord') applied for an order to terminate the tenancy and evict Brianna Mazarese and Megan McBride (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 October 25, 2023.

The Landlord and the Tenant attended the hearing. The Landlords were represented by Hamraz Toor.

**Determinations:**

1. As explained below, the Landlord has not compensated the Tenant an amount equal to one month's rent and the termination date has passed. As a result, the Landlord's application must be dismissed.
2. By way of background, the Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession as of the hearing date.

N12 Notice of Termination

3. On June 27, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2023 pursuant to subsection 49(1) of the Act. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by Mohammad Faizur Rahman and Rubina Hossain Laaz.

**File Number:** LTB-L-058181-23

4. At the hearing, a preliminary issue arose with respect to the one-month's compensation that was required to be paid pursuant to section 49.1 of the Act.
5. The Landlord's evidence was, this amount had not been paid by the termination date but that the Landlord was willing to make this payment as soon as possible, and had previously made offers to the Tenant, which were refused by them.
6. The Landlord's evidence was that several texts, emails and in-person meetings concerning 'cash for keys' offers were made to the Tenant but that no actual cheque, bank draft, etransfer, cash or waiver of rent was provided to the Tenant from the date the N12 was served up to the termination date of August 31, 2023 or thereafter, to the hearing date. The Landlord also confirmed that the Tenant was not in rent arrears for that period up to the hearing date.
7. The Landlord submits that this technicality should not be the basis of their application being dismissed as the Landlord has been trying to work with the Tenant to ensure that they can meet their requirements under the agreement of purchase and sale. The Landlord seeks to proceed with their application.
8. The Tenants confirmed they did not receive any compensation from the Landlord nor did they refuse to accept any provision of compensation.

#### ANALYSIS

9. Section 55.1 of the Act requires that where compensation is due to a tenant, it shall be paid by the termination date set out on the notice of termination.

If the landlord is required to compensate a tenant under section 48.1, 52, 54 or 55, the landlord **shall compensate the tenant no later than on the termination date specified in the notice of termination** of the tenancy given by the landlord under section 48 or 50.

[Emphasis added.]

10. This is outlined on the N12 notice of termination and on the L2 application where the applicant selects whether they have paid or whether they will pay by the termination date.
11. One of the purposes of the compensation requirement, when an N12 notice is served, is to ensure that a tenant has funds to enable the move. Once a tenant receives the notice of termination, he or she has the choice to move on or before the termination date and if a tenant receives compensation, the tenant has funds to facilitate the move. If the landlord fails to pay compensation by the termination date, the tenant does not have these funds for the move and so may not have a

realistic choice to move. In other words, the failure to pay compensation on time may frustrate the tenant's choice. In recognition of this, landlords are held strictly to the deadline for payment in s.55.1 of the Act.

12. Subsection 83(4) of the Act states:

The Board **shall not** issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation, demolition, conversion to

**File Number:** LTB-L-058181-23

non-residential rental use, renovations or repairs until the landlord has complied with section 48.1, 52, 54 or 55, as the case may be.

[Emphasis added.]

13. In this case, the compensation had to be paid to the Tenants by August 31, 2023, which the Landlord failed to do.
14. The Landlord testified that offers to compensate were made to the Tenant, but the Tenant did not accept. The Act is explicit that actual compensation must be paid – not offers to compensate.
15. Given all of the above, the Landlord's application must be dismissed.
16. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The Landlord's application is dismissed without prejudice.

**October 30, 2023**

**Date Issued**

---

Sonia Anwar-Ali

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.