



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

**Citation:** Padiyath v Esler, 2023 ONLTB 64697

**Date:** 2023-09-29

**File Number:** LTB-L-054359-23

**In the matter of:** 510, 340 Sugarcreek LONDON  
ON N5K5C5

**Between:** Radhakrishnan Padiyath and Sobha Padiyath Landlords

**And**

Jason Esler Tenant

Radhakrishnan Padiyath and Sobha Padiyath (the 'Landlords') applied for an order to terminate the tenancy and evict Jason Esler (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date (L2 application).

This L1/L2 application was heard by videoconference on September 11, 2023.

The Landlords' Legal Representative, P. Pacheco, one of the Landlords, Radhakrishnan Padiyath (RP), and the Tenant attended the hearing.

The following witnesses testified at the hearing:

Shane Byers (SB) – Property Manager for Condo Corp – on behalf of Landlords

**Determinations:** Rent

Arrears

1. As of the hearing date, the Tenant was still in possession of the rental unit.
2. The Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) at the root of this application is defective. The N4 Notice claims an incorrect amount calculated as owing by the Tenant. The N4 Notice claimed \$2,200.00 owing for June 2023 and \$2,200.00 owing for July 2023 for a total of \$4,400.00 to be paid to void the N4 Notice.
3. There was no dispute that the lawful rent is \$2,100.00. Therefore, I find that the amount owing/stated on the N4 Notice was incorrect.
4. A Landlords must give the tenant a valid N4 Notice before filing an L1 application in order for the Board to have the authority to issue an eviction order.
5. I granted the Landlords' Legal Representative's request for an order for rent arrears only.
6. Based on the Monthly rent, the daily rent/compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.
7. The Tenant has not made any payments since the application was filed.
8. The rent arrears owing to September 30, 2023 are \$10,500.00.

### Serious Impaired Safety

9. On June 23, 2023, the Landlords gave the Tenant a valid Notice to End Tenancy For Causing Serious Problems in the Rental Unit or Residential Complex (N7 Notice), deemed served on June 24, 2023. The N7 Notice contains the following allegations:
  - Commencing in January 2023 and continuing to the date of this notice, the Tenant has become hostile, taking an aggressive and concerning approach towards fellow residents and property staff;
  - The Tenant has unexpected outbursts leading to intimidation and threats; harassing behaviour, stalking behaviour, slander, threatening death, and social media threats;
  - As a result of this behaviour there is a warrant issued for the arrest of the Tenant.
10. Subsection 66(1) of the *Residential Tenancies Act, 2006* ("Act") states: A Landlords may give a tenant notice of termination of the tenancy if,
  - (a) an act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
  - (b) the act or omission occurs in the residential complex.
11. The Divisional Court decisions in *Musse v. 6965083 Canada Inc.*, [2021 ONSC 1085 \(CanLII\)](#) and *Furr v. Courtland Mews Cooperative Housing Inc.*, [2020 ONSC 1175 \(CanLII\)](#) confirm that serious impairment of safety includes both actual impairment and a real risk of impairment.

12. Based on the evidence before me, I am satisfied that the Tenant's conduct seriously impaired the safety of the building manager. The Tenant threatened harm and death to building manager by way of written notices placed under the door to her office. There was no dispute that the Tenant was subsequently arrested at the building for Criminal Harassment. The Tenant had also verbally abused the building manager by yelling obscenities at her. The building manager was asked to stay home and a safety plan was devised to keep her secure when she attended the building.
13. RP testified that he received an initial complaint from the Condo Corp that the Tenant was creating a nuisance at the building. RP testified that he then began to receive additional complaints related to the Tenant posting notices at the building and on social media regarding the building manager and that she is feeling threatened by this behaviour. RP testified that he attempted to contact the Tenant and was met with the same erratic behaviour.
14. The Landlords' witness, SB, testified that the Tenant's behaviour became concerning around January 2023 and continued until his arrest at the building on June 29, 2023. SB testified that it began with the Tenant calling to complain about the building manager and it escalated to unfounded accusations that the building manager was involved in sex trafficking and kidnapping of the Tenant's wife. SB testified that the Tenant began posting notices which included death threats on the office door and placing these notices under the office door.
15. SB also testified that the building manager would call him on the phone from the office and he could overhear the Tenant yelling obscenities in the background towards the building manager. SB further testified that it was his understanding that the Tenant would follow the building manager to the office and corner her there to verbally abuse her.
16. SB further testified that the building manager did not take a leave of absence when offered but that he had to instruct her to not attend work on a number of occasions and he also had to devise a security plan for when the building manager was on property to protect her. SB testified that the building manager and he reported the Tenant's conduct to the London Police Services.
17. The Tenant did not dispute the conduct listed in the N7 Notice. However, the Tenant testified that he believed that the notices he posted do not include death threats. The Tenant testified that the building manager has been listening to him in his unit, cut off his internet, shut off heat and A/C to the unit, and had the SWAT team illegally arrest him. He testified that he did all that stuff because the building manager tormented him day and night and she told him there was nothing he could do about it.
18. The evidence before me was insufficient to find that the building manager was responsible for the issues claimed by the Tenant. The Tenant did not provide any supporting evidence with respect to any these issues.
19. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

20. The Landlords collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
21. Interest on the rent deposit, in the amount of \$59.26 is owing to the Tenant for the period from July 27, 2022 to September 11, 2023.

### Relief From Eviction

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
23. The Landlords' Legal Representative submitted that the Tenant has removed the majority of his belongings from the unit. The Landlords' Legal Representative requested a standard order for termination as the allegations have not been denied and therefore the building manager's personal safety is still at risk if the Tenant continues to reside in the unit.
24. The Tenant maintains that he is the one who has been harassed and arrested unlawfully. The Tenant stated that his actions were the result of the Landlords and the Condo Corp not addressing these issues with the building manager. The Tenant acknowledged that he has moved most of his belongings out of the unit however he would like to continue the tenancy.
25. The Tenant does not deny his actions and conduct towards the building manager, nor did he state that he will refrain from similar conduct in the future. In these circumstances, I am not satisfied that a conditional order would be met by the Tenant. Since, it was undisputed that most of the Tenant's belongings have already been removed from the unit and he has not returned to the unit since his arrest, I see no reason to delay the eviction.

### Legal Representation Costs - Denied

26. The Landlords' Legal Representative's request for representation costs is denied. In accordance with the Board's Interpretation Guideline #3, costs to a successful party for the preparation/representation fees paid to a legal representative are generally only awarded in cases of unreasonable conduct in the proceeding by the opposing side. There was no evidence before me that the Tenant's conduct was unreasonable in this proceeding.

### **It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 10, 2023
2. The Tenant shall pay to the Landlords \$7,186.18. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlords owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

3. The Tenant shall also pay the Landlords compensation of \$69.04 per day for the use of the unit starting September 12, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlords the full amount owing on or before October 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 11, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before October 10, 2023, then starting October 11, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after October 11, 2023.

**September 29, 2023**

**Date Issued**

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Lisa Del Vecchio

Member, Landlords 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 11, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay because the tenancy is terminated**

Rent Owing To Hearing Date	\$9,159.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlords since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,100.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$59.26
<b>Less</b> the amount the Landlords owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlords</b>	<b>\$7,186.18</b>
Plus daily compensation owing for each day of occupation starting September 12, 2023	\$69.04 (per day)

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