



**Order under Section 69 and 89  
Residential Tenancies Act, 2006**

**Citation:** SARMA v WILSON, 2022 ONLTB 12730  
**File Number:** LTB-L-033296-22

**In the matter of:** 143 FERRIE STREET EAST  
HAMILTON ONTARIO L8L3T4

**Between:** ONIRIK SARMA Landlord

**And**

ROBIN WILSON Tenant

Onirik Sarma (the 'Landlord') applied for an order to terminate the tenancy and evict Robin Wilson (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

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 19, 2022.

The Landlord's Legal Representative G. Gosling and the Tenant attended the hearing.

**Determinations:**

Non-Payment of Rent

1. The Landlord served the Tenant with an N4 notice of termination under section 59 of the *Residential Tenancies Act, 2006* ("Act") with a termination date of December 05, 2021. The Landlord filed the L1 application on December 3, 2021.
2. Section 74(1) of the Act states that a landlord may not apply to the Board for an order terminating a tenancy and evicting the tenant based on a notice of termination under section 59 before the day following the termination date specified in the notice. Therefore, the Board cannot terminate the tenancy based on the L1 application as it was filed before the N4 termination date.
3. I granted the Landlord's Legal Representative request to seek arrears only on the L1 application pursuant to section 87 of the Act.
4. As of the hearing date, the Tenant was still in possession of the rental unit.

5. The lawful rent is \$1,275.00. It is due on the 1 day of each Monthly.
6. Based on the Monthly rent, the daily rent/compensation is \$41.92. This amount is calculated as follows: \$1,275.00 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 October 31, 2022 are \$16,575.00.
9. The Tenant testified that there was a verbal agreement with the Landlord to fix the roof of the rental unit which would bring the rent arrears down to \$3000.00. The Tenant did not provide any supporting evidence of such an agreement. He also stated that after that the communication between him and the Landlord broke down completely. The Tenant stated that the Landlord would never express his agreement since he wanted the Tenant out of the rental unit. The Tenant was also more inclined towards bringing his own applications before the Board. Since the Tenant did not provide any compelling argument to show his agreement to fix the roof against rent arrears, I proceeded with the rental arrears as per the Landlord's update sheet.
10. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
11. The Tenant mentioned in the hearing that he will be raising his own applications with the Board and did not raise any s. 82 issues.

#### L2 Application – Persistent Late Payment of Rent

12. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 11 times in the past 11 months from January 2021 till November 2021 when the Tenant stopped paying rent.
13. After the notice was served, the Tenant has not made any rent payments.
14. The Landlord collected a rent deposit of \$1,275.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$53.75 is owing to the Tenant for the period from June 1, 2019 to October 19, 2022.

#### Relief from Eviction

16. The Tenant testified that his business suffered due to COVID-19 and his partner also left the rental unit which caused the rental arrears. The Tenant has had two long bouts of COVID-19 himself causing further delay in the payments of rent.
17. The Tenant request until November 30, 2022 to move out of the rental unit which I am willing to grant him.

18. 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 since the amount of rent arrears is substantial.

**It is ordered that:**

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 4, 2022.
2. The Tenant shall pay the Landlord rent arrears \$14,968.73, which is the amount owing up to the date of the hearing and the Landlord' filing fee. The amount of the rent deposit and interest the Landlord 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 Landlord daily rent/compensation of \$41.92 per day for the use of the unit starting October 20, 2022 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 5, 2022 at 4.00% annually on the balance outstanding.
5. If the unit is not vacated on or before December 4, 2022, then starting December 5, 2022, the Landlord 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 Landlord on or after December 5, 2022.

**November 23, 2022**

**Date Issued**

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Sheena Brar

Member, Landlord and Tenant Board

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 of the Tenant expires on June 5, 2023 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 the tenancy is terminated**

Rent Owing To October 19, 2022	\$16,096.48
Application Filing Fee	\$ 201.00
NSF Charges	\$ 0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$ 0.00
<b>Less</b> the amount the Tenant paid into the Board since the application was filed	- \$ 0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,275.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$ 53.75
<b>Less</b> the amount the Landlord 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 Landlord</b>	<b>\$ 14,968.73</b>
Plus daily compensation owing for each day of occupation starting October 20, 2022:	\$ 41.92 (per day)