



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

Citation: Duahn v Garbos, 2023 ONLTB 22577

Date: 2023-03-03

File Number: LTB-L-018520-22

In the matter of: 60 REDAN ST
ST THOMAS ON N5P1T7

Between: Eric Duahn Landlord
Isata Duahn

And

Brandon Garbos Tenant
Mark Garbos

Eric Duahn and Isata Duahn (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon Garbos and Mark Garbos (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

This application was heard by videoconference on February 9, 2023.

The Landlord's legal representative Trevor Scheib, and the first named Landlord, attended the hearing.

The Tenant's legal representative, Elena Dempsey, and the second named Tenant attended the hearing.

Determinations:

1. On March 24, 2022 the Landlord served an N8 notice on the Tenant with a termination date of July 31, 2022 with allegations the Tenant has paid his lawful rent persistently late.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
4. There is no last month's rent deposit.
5. The position of the Landlord is that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The Landlord provided dates included in the N8 notice detailing the Tenant had paid his rent late from the period of August 2021 to March 2022. The details show the Tenant has paid his lawful rent for

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those months anywhere from the tenth (10th) of the month to the twenty ninth (29th) of the month.

6. The Landlord is claiming the late rental payments is causing financial hardship and the Landlord has to cover the financial obligations of the rental unit until the Tenant makes the rent payments.
7. The Landlord submitted documentary evidence in the form of two orders, issued by members of the Board, where they defined what they determined to be persistently late.
8. The Landlord is seeking an order for eviction.
9. The position of the Tenant is that he receives income through OW. The Tenant submitted his son was living with him, but has since moved out and the Tenant fell behind with rent, however the Tenant has been paying his lawful rent on time, and in full, and on one occasion paid the rent early.
10. The Tenant submitted into evidence photo copies of his etransfers to the Landlord starting on April 29, 2022 where he has made his lawful rental payments on time and in full up to September 2022.
11. The Tenant is seeking a conditional twelve (12) month order for rent to be paid on time with s. 78 to be applied.
12. The Landlord submitted orders of other members of the Board to establish precedent for his request. I do not find the Landlord's submission regarding LTB-L-011275-22 and TEL-03678-19 to be persuasive as these are only two orders out of many other orders issued by the Board. While there may be similarities in certain cases, each case is unique in its own circumstances, and I am not bound to adhere to another decision of the Board.
13. The Landlord's evidence shows the Tenant was paying rent late for a period of time, however, it appears the Tenant has rectified this pattern, having been made aware of the issue by the Landlord. With the evidence before me and on a balance of probabilities I find the Tenant has shown he can pay his lawful rent on time and in full, as established by his etransfer receipts, for the months leading up to the hearing. I do not find the Landlord's claim meets the threshold for an eviction and I am granting the Tenant his request for a conditional order.
14. 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 not be unfair to grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act with the conditions as set out below.
15. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
16. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Tenant shall pay to the Landlord the lawful rent in full and on time for each consecutive month commencing April 2023 and continuing through March 2024.
2. In the event the Tenant fails to make the above said payment in full and on time, the Landlord shall be entitled to apply to the Board, no later than 30 days after a breach of this Order, without notice to the Tenant, for an Order terminating the tenancy and evicting the Tenant, pursuant to Section 78 of the Residential Tenancies Act, 2006.
3. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application on or before March 31, 2023.
4. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2023, they will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

March 10, 2023
Date Issued

Greg Brocanier
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.