



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

**Citation:** Grace Communities Corporation v Clarke, 2024 ONLTB 789

**Date:** 2024-01-08

**File Number:** LTB-L-076131-22

**In the matter of:** 1113, 2015 LAWRENCE AVE E  
SCARBOROUGH ON M1R5H2

**Between:** Grace Communities Corporation

Landlord

**And**

Ray Anthony Clarke

Tenant

Grace Communities Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Ray Anthony Clarke (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant by negligently clogging the toilet with wooden sticks and twigs.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises by negligently clogging the toilet with wooden sticks and twigs.

Grace Communities Corporation (the 'Landlord') also applied for an order requiring Ray Anthony Clarke (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

The Landlord also sought daily compensation for rent beginning from the day after the termination date.

This application was heard by videoconference on November 29, 2023.

The Landlord's legal representative Mark Ciobotaru and employee Bryan Thompson attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for undue damage in the application. However, having considered all of the circumstances I find that it would not be unfair to grant relief from eviction. Therefore, the Tenant shall pay the sum of \$2,883.93.
2. The Tenant was in possession of the rental unit on the date the application was filed.

*N5 Notice of Termination*

3. On November 21, 2022, the Landlord served the Tenant with an N5 Notice of Termination (N5 notice) with a termination date of December 14, 2022. The N5 Notice alleges that the Tenant has substantially interfered with the Landlord's reasonable enjoyment of the residential premises and/or awful rights, interests, and privileges, and wilfully or negligently caused undue damage to the rental unit or residential complex.
4. The specific allegations in the N5 notice are as follows:
  - on September 10, September 14, and October 17, 2022 the Tenant negligently placed wood and twigs in the toilet causing it to clog;
  - the Tenant is using harmful chemicals in the rental unit;
  - the Tenant negligently caused damage that had a cost of \$2,883.93 to repair. The damages stem from repairing the toilet as described above.

*Landlord testimony*

5. Mr. Thompson, who has worked for the Landlord for 20 years as maintenance and a superintendent, testified on behalf of the Landlord. On September 10, 2021 he received a complaint that the toilet was not working in the rental unit. He attended the unit with a plumber and witnessed several leaves and twigs in the toilet which were the cause of the clogging. The toilet was removed and additional twigs were found in the pipe. The Tenant was instructed to refrain from putting items in the toilet which did not belong.
6. On October 17, 2022 there was another complaint that the toilet was not working in the rental unit. Mr. Thompson attended the rental unit and witnessed twigs and wood in both the tank and the drain. The Landlord submitted an invoice from Able Mechanical Services

which detailed the findings and remedy. The total cost to the Landlord for the services was \$2,883.93.

7. On October 17, 2022 the Landlord received a complaint from a different unit regarding the smell of chemicals in the building. Upon investigation, Mr. Thompson attended the rental unit and found a bottle of Varsol (a strong chemical used to clean paint). The Tenant was instructed to not use any chemicals in the rental unit as they are a safety hazard and have extremely strong odours. According to Mr. Thompson, the Tenant agreed to refrain from using the Varsol as he had been using it to clean his boots.
8. Jim Doudoumis, the plumber who attended the rental unit with Mr. Thompson, also testified. Mr. Doudoumis verified the testimony of Mr. Thompson and confirmed the cost to repair the damage caused by the Tenant.

Analysis

9. The portion of the N5 notice alleging substantial interference was served pursuant to section 64 of the *Residential Tenancies Act, 2006* (the Act). Subsection 64(3) provides that the tenant may void the notice by correcting the activity or conduct that gave rise to the notice within seven days of being served with the N5 notice. In this case, the seven-day voiding period was from November 22 - 29, 2022.
10. The Landlord was unable to provide the Board with evidence of a specific date or incident that occurred during that seven day period. Therefore, I find on a balance of probabilities that the Tenant voided the substantial interference portion of the N5 notice (Reason 1).
11. The portion of the N5 notice alleging undue damage was served pursuant to section 61 of the Act, which states in part:

**62 (1)** A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.
12. Based on the evidence before me, I find that the damage was undue, caused by the Tenant, and was done wilfully and/or negligently.
13. Under section 62(3) of the Act, the Tenant had an opportunity to void the damages portion of the N5 notice (Reason 2) by paying the Landlord the demanded amount to do the repairs or the repairs themselves within 5 days of being served with the N5 notice.
14. I also find that the Tenant did not void Reason 2 on the N5 notice as they failed to either pay the damages of \$2,883.93 or do the repairs themselves during the remedial period of November 22 - 29, 2022.

15. The Landlord's claim for compensation for damages is made under section 89 of the Act which states:

**89** (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex.

16. As set out above, I am satisfied that the Tenant wilfully or negligently causes or caused undue damage to the rental unit by placing wood and sticks in the toilet that caused undue damage.

17. I am satisfied that the Landlord has incurred or will incur reasonable out of pocket expenses of \$2,883.93 to repair the damage of the toilet based on the invoice submitted into evidence.

Relief from eviction

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 not be unfair to grant relief from eviction to subsection 83(1)(a) of the Act. Given the submissions of the Landlord, there is a concern regarding the mental health of the Tenant. Given the nature and amount of the damage, an eviction order is not appropriate.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$2,883.93, which represents the reasonable costs of repairing the damage of the toilet.
2. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
3. The total amount the Tenant owes the Landlord is \$3,069.93.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 20, 2024 at 7.00% annually on the balance outstanding.

**January 8, 2024**

**Date Issued**

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**Brett Lockwood**

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.