



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

**Citation:** Grgic v Yorke, 2023 ONLTB 13804

**Date:** 2023-01-05

**File Number:** LTB-L-037449-22

**In the matter of:** UPSTAIRS, 404 PARENT AVE  
WINDSOR ON N9A2C1

**Between:** Marijan Mario Grgic Landlord

**And**

James Yorke Tenant

Marijan Mario Grgic (the 'Landlord') applied for an order to terminate the tenancy and evict James Yorke (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

The Landlord also applied for an order requiring 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.

This application was heard by videoconference on December 20, 2022. Only the Landlord attended the hearing. As of 1:38 p.m., 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 not proven on a balance of probabilities the grounds for termination of the tenancy. However, the Landlord has proven the claim for compensation for damages in the application, in part. Therefore, the Landlord is entitled to some compensation for damages.
2. The Tenant was in possession of the rental unit on the date the application was filed.

**N7 Notice of Termination**

3. On June 25, 2022, the Landlord gave the Tenant an N7 notice of termination. The notice of termination contains the following allegations:
  - On August 3, 2021, people were observed climbing on the roof of the house, damaging the ceiling.
  - On October 22, 2021, there was flooding in the Tenant's washroom, damaging the ceiling.
4. The Landlord testified that on August 3, 2021, the neighbours of the rental unit reported to him that several people were climbing on the roof of the residential complex. The neighbours told the Landlord that when they spoke to the people, they said that the Tenant instructed them to do this. When they entered the building from the roof, they caused damage to the ceiling. Submitted into evidence were photographs of the people on the roof and of a large hole in the ceiling.
5. The Landlord also testified that on October 22, 2021, the Tenants purposely clogged the toilet on October 22, 2021 and then in November 2021. Submitted into evidence were photographs of the water on the floor of the bathroom and damage to the ceiling of the unit below. The Landlord stated he knew the toilet was clogged intentionally because he used the plunger on the toilet and the water was clear but there was significant amount of tissue in the toilet.

**Inconsistent Use**

6. The Landlord has not proven that the Tenant, an occupant of the rental unit or a person permitted in the residential complex by the Tenant has used the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that has caused or can reasonably be expected to cause significant damage.
7. The test that must be met for this Notice to be valid is that the Tenant must have used the rental unit in a manner that is "inconsistent" with its use as residential premises. This type of Notice was intended to be used in cases where a tenant is using the rental unit for purposes other than for residential occupation, such as a car repair shop which can result in undue damage to the rental unit.
8. The allegations in the Notice do not lead me to believe that the Tenant was using the unit for a purpose other than residential occupation. As such, the tenancy cannot be terminated on this basis.

**Serious Impairment of Safety**

9. The Landlord has not proven that the Tenant, another occupant of the rental unit, or a person permitted in the residential complex by the Tenant has seriously impaired the safety of another person.
10. In my view, for the Board to terminate a tenancy and evict a tenant for impairing the safety of any person, I must believe that the effect or potential effect of the act or omission threatened the well-being of an individual to such a degree that the termination of the

tenancy is reasonable to ensure the safety of others. The seriousness of this issue is emphasized by the fact that a tenant has no opportunity to void the notice of termination by correcting the problem.

11. There is insufficient evidence for me to conclude the Tenant, his occupants or guests seriously impaired the safety of another person by climbing on the roof. The Landlord's evidence is that the neighbour's told him that the people on the roof were told by the Tenant to go on the roof. There is insufficient evidence to draw this conclusion as the Landlord bases this on information from the neighbours, who were not present at the hearing to satisfy me that they had this conversation. In addition, the fact that the people were trying to enter the unit through the roof leads me to believe these people were uninvited. As such, I am not satisfied that the people were occupants or guests of the Tenant, and therefore, I cannot conclude that they seriously impaired the safety of another person.
12. I am also not satisfied that the issue with the toilets constitutes a serious impairment of safety. While I appreciate the flooding was unpleasant and dirty, I do not find that it rises to a level of *serious* impairment of safety. There was no evidence that anyone became ill from the flooding or that there was any real risk to the structural integrity of the residential complex. As such, I cannot conclude that the issue with the toilets seriously impaired the safety of any person. The tenancy cannot be terminated on this basis.

### **Undue Damage**

13. The Landlord has not proven that the Tenant, an occupant of the rental unit, or a person permitted in the residential complex by the Tenant has wilfully caused undue damage to the rental unit or residential complex.
14. "Wilful" has been defined as conduct that is wanton or reckless disregard and though often claimed in conjunction with negligence, it is a different legal concept because wilful suggests a deliberate or conscious intent to act or not act whereas negligence is defined as a disregard to a legal duty owed and consequences to another part or marked departure from the standards by which responsible or competent people.<sup>1</sup>
15. The Landlord submitted that the Tenant's guests forcefully entering the unit from the roof and falling through the ceiling was wilful. As found above, the Landlord has not satisfied me that the people on the roof were guests or occupants. As such, I cannot find that the Tenant's guests or occupants wilfully caused undue damage.
16. In addition, the Landlord submitted that the Tenant intentionally flooded the toilet as the water was clear and there was a substantial amount of tissue in the toilet. I am not satisfied that this evidence alone establishes the Tenant intentionally flooded the toilet. There was insufficient evidence, such as a report or testimony from a plumber, that would lead me to

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<sup>1</sup> Walker v. Coates et al. (1968) 1968 CanLII 79 (SCC), SCR 599 at 601.

believe that that overflowing the toilets was intentional. As such, I cannot find that the Tenant, occupants or guests wilfully caused undue damage.

### Compensation for damages

17. The Landlord has proven that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex negligently caused undue damage to the rental unit or residential complex regarding the flooding of the toilets but not for the roof.
18. Negligence has been defined as “a lack of slight diligence or care.”<sup>2</sup>
19. As found above, the Landlord has not satisfied me that the people on the roof were guests or occupants of the Tenant. As such, I cannot find that the Tenant’s guests or occupants wilfully or negligently caused undue damage.
20. Regarding the damage to the ceiling from the overflowed toilets, I am satisfied that the Tenant, occupant or guests negligently caused the flooding. I base this on the photographs of the flooding and the Landlord’s testimony that there were excessive amounts of toilet paper in the toilet.
21. The Landlord submitted into evidence a quote to repair the ceiling damage both from the people on the roof and the overflowed toilets. The amount was \$3,955.00. I am satisfied that the Landlord is entitled to half of that amount for the repair to the ceiling from the overflowed toilets. The Landlord is entitled to \$1,977.50.
22. This order contains all of the reasons within it. No further reasons shall be issued.

### It is ordered that:

1. The Tenant shall pay to the Landlord \$1,977.50, which represents the reasonable costs of repairing the damage.
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 \$2,163.50.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 10, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 11, 2023 at 5.00% annually on the balance outstanding.

**January 5, 2023**  
**Date Issued**

Camille Tancioco  
 Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
 Toronto ON M7A 2G6

<sup>2</sup> *British Columbia Telephone Co. v., Quality Industries Ltd.*, 1984 CanLII 368 (BC CA), 59 BCLR 68 (BCCA) at 71.

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.