

Request to Refuse Application to Evict

1. Ms. Leah Dyck requests that the application to evict Ms. Dyck brought by the Barrie Municipal Non-Profit Housing Corporation (“BMNPHC”), also known as Barrie Housing, be refused under s. 83(1)(a) of the *Residential Tenancies Act* (“the Act”), which states that the Board may, despite any other provision of this Act or the tenancy agreement, refuse to grant the application, unless satisfied, having regard to all the circumstances, that it would be unfair to refuse.
2. Pursuant to s. 83(2) of *the Act*, if a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1). 2006, c. 17, s. 83 (2).
3. Pursuant to s. 83(3) of *the Act*, without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,
 - (a) the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement;
 - (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord’s violation of a law dealing with health, safety, housing or maintenance standards;
 - (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights. 2006, c. 17, s. 83 (3).
4. Pursuant to s. 83(3) of *the Act*, there are circumstances where refusal of an application to evict is required. Ms. Dyck submits that Barrie Housing’s application to evict Ms. Dyck must be refused for reasons listed in s. 83(3)(a), (b) and (c) of *the Act*.

THE FACTS

5. The facts regarding the fraud scheme are laid out in the *Affidavit of Leah Dyck* document dated March 21, 2025. This affidavit was recently submitted to the Ontario Superior Court of Justice for Ms. Dyck's derivative action case.
6. On November 30, 2024, Ms. Dyck emailed Barrie Housing's other lawyer, Riley Brooks, with her Notice of Intent to prosecute Barrie Housing with a derivative action, pursuant to s. 182-184 of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15.
7. On January 27, 2025, Ms. Dyck served and filed a Statement of Claim against the Ontario Ministry of Municipal Affairs and Housing ("MMAH"), with seven causes of action, including vicarious liability.
8. On January 28, 2025, Ms. Dyck withdrew her Human Rights Tribunal of Ontario ("HRTO") application for various reasons, one of these reasons being that the HRTO told her it doesn't have jurisdiction over allegations of fraud.
9. On February 13, 2025, Barrie Housing emailed Ms. Dyck a Notice of Hearing with the Landlord and Tenant Board ("LTB"), which is taking place on June 11, 2025.
10. On February 19, 2025, Ms. Dyck learned that she first needed to give the MMAH a Letter of Intent before she could serve her Statement of Claim, and then wait 60 days to file her Statement of Claim against the Crown.
11. On March 18, 2025, Ms. Dyck attended an urgent motion hearing to have her Notice of Application for Leave to Commence a Derivative Action against Barrie Housing heard. The Honourable Justice M. McKelvey was the presiding judge that day. Justice McKelvey endorsed the derivative action with court file number CV-24-00003257-0000, and assigned it to case management with Justice S. Fraser, whom is also the case management judge for the defamation action Barrie Housing has commenced against Ms. Dyck.
12. On April 1, 2025, Ms. Dyck and Barrie Housing will be attending triage court to get hearing dates for Ms. Dyck's Motion to Dismiss Barrie Housing's defamation action under s. 137.1

of the *Courts of Justice Act*, as well as a hearing date for Ms. Dyck's Notice of Application for Leave to Commence a Derivative Action to be heard.

13. On April 26, 2025, Ms. Dyck intends to re-file her Statement of Claim against the MMAH.

THE LAW

14. It is a well-established fact of contract law that there is an implied covenant of good faith and fair dealing in every contract. Ms. Dyck entered into a rental agreement to rent from Barrie Housing, and is in contractual privity with Barrie Housing as a result.
15. Barrie Housing has a positive legal duty to use reasonable care to perform its legal obligations to its tenants, including, but not limited to supplying safe and affordable housing, free from fraud by the landlord. Barrie Housing also has a fiduciary duty to its tenants.
16. The evidence shows that Barrie Housing fraudulently concealed the following material facts from Ms. Dyck:
 - a) that Barrie Housing overcharged Ms. Dyck **for seven years**;
 - b) the amount of Ms. Dyck's overcharge for eight months despite the fact that Ms. Dyck had requested this information on four different occasions throughout an eight-month period;
 - c) that Barrie Housing had been overcharging Ms. Dyck for two distinct reasons, the first being; 1) double-paying her rent for 16 non-consecutive months and the second being; 2) receiving income supplements she wasn't entitled to at no fault of her own;
 - d) that the calculated rate of **Ms. Dyck's rent for April 2018 was not \$116.53** and that this miscalculation resulted in the wrongful determination of Ms. Dyck's total rent owed in 2018, which led to Ms. Dyck being charged a \$175 filing eviction fee, and the unlawful attempt to evict Ms. Dyck in February 2019;
 - e) that Ms. Dyck was being charged a parking fee each month in 2020; and

- f) that the audit/review document Barrie Housing produced in relation to its housing services rendered to Ms. Dyck did not exist.
17. These false representations are a breach of Barrie Housing's fiduciary duty of good faith, fair dealing and honest performance to Ms. Dyck.
18. Barrie Housing has engaged in fraudulent misrepresentations by committing the following acts against Ms. Dyck:
- a) attempting to unlawfully evict Ms. Dyck in 2019;
 - b) failing to address its attempted unlawful eviction of Ms. Dyck in 2019;
 - c) charging Ms. Dyck with a \$175 eviction filing fee, claiming Ms. Dyck still owed rent money several days after instructing Ms. Dyck not to pay rent because she didn't owe money;
 - d) claiming the notice titled, 'Application to Evict a Tenant' that Barrie Housing left on Ms. Dyck's door in 2019 was specifically not an eviction notice;
 - e) failing its Duty to Accommodate Ms. Dyck by providing her with the financial breakdown that Mary-Anne told Ms. Dyck she'd be provided with;
 - f) claiming Ms. Dyck overpaid her rent in or about May 2022;
 - g) miscalculating Ms. Dyck's rent for seven years and denying its on-going miscalculations, and its refusal to return all of Ms. Dyck's overcharged rent monies; and
 - h) alleging a portion of Ms. Dyck's overcharge needed to be returned to ODSP, when in fact, Barrie Housing did not return any portion of Ms. Dyck's overcharge to ODSP.
19. These acts of fraudulent misrepresentation have led to and resulted in Ms. Dyck being defrauded on multiple occasions, and are a breach of Barrie Housing's fiduciary duty of good faith, fair dealing and honest performance to Ms. Dyck.

20. Barrie Housing breached its duty of care to Ms. Dyck by negligently supplying “safe and affordable” housing and by failing to ensure that housing services were fit for its intended purpose. The aforesaid loss suffered by Ms. Dyck was caused by this negligence, particulars of which include, but are not limited to, the following:

- a) failing to properly implement the Rent-Geared-to-Income (“RGI”) program such that, under normal conditions, Ms. Dyck experienced discrimination from Barrie Housing, including attacks. These attacks include, but are not limited to, threats of lawsuits, actual lawsuits, harassment, fraud by concealment, intentional infliction of severe emotional distress, negligent infliction of emotional distress, and conspiratorial acts;
- b) failing to properly operate housing services to subsidized renters such that, under normal conditions, Ms. Dyck experienced discrimination;
- c) failing to properly market the RGI program such that Ms. Dyck’s overcharged rent occurred via a deficient process of rent monies collection, which resulted in deprivation of the security of the person, to Ms. Dyck;
- d) failing to accurately, candidly, promptly and truthfully disclose the defective nature of the RGI program;
- e) failing to disclose to and/or to warn Ms. Dyck that the way it had been collecting rent monies was defective when knowledge of the defects became known to it;
- f) failing to establish any kind of procedure to inform other renters of this defect;
- g) failing to change its implementation of the RGI program; and
- h) continuing to fail in fulfilling its ongoing obligations.

The Tort of Fraud by Concealment

21. The tort of fraud by concealment can be made out as:

- a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to Ms. Dyck;
 - b) Barrie Housing made many representations that were untrue, inaccurate and / or misleading;
 - (c) Barrie Housing acted negligently in making the representations;
 - (d) The representations were relied upon by Ms. Dyck; and
 - (e) Ms. Dyck has sustained damages as a result of her reliance.
22. Barrie Housing made material omissions as well as affirmative misrepresentations regarding Ms. Dyck's RGI rental calculations and rent charges.
 23. Barrie Housing represented to Ms. Dyck that she was being charged rent in the proper and agreed upon amount—this representation was untrue.
 24. Barrie Housing knew that the representations were false at the time that they were made.
 25. Barrie Housing concealed and suppressed material facts concerning Ms. Dyck's rental charges.
 26. Barrie Housing made the representation with the intention of overcharging Ms. Dyck and to continue overcharging Ms. Dyck.
 27. Barrie Housing had a duty to disclose to Ms. Dyck that she had been double-paying her rent at all material times, and only disclosed to Ms. Dyck that she had been overpaying her rent after Ms. Dyck threatened to tell news outlets.
 28. Barrie Housing has a duty to disclose these omitted material facts because they were known and / or accessible only to Barrie Housing who has superior knowledge and access to the facts and it knew they were not known to or reasonably discoverable by Ms. Dyck. These omitted facts were material because they directly impacted Ms. Dyck's rental charges.

29. Ms. Dyck was unaware of these omitted material facts and would not have paid her rent twice each for 16 non-consecutive months between 2017 and 2022 if she had known of the concealed and / or suppressed facts. Ms. Dyck's actions were reasonable and justified. Barrie Housing was in exclusive control of the material facts concerning Ms. Dyck's RGI calculations and such facts were not known to the public or to Ms. Dyck.
30. In addition, Ms. Dyck relied on Barrie Housing's representation in relation to her RGI rental calculations. Said reliance was reasonable. Ms. Dyck was without the ability to determine the truth on her own and could only rely on Barrie Housing's statement and representations.
31. As a result of the concealment and / or suppression of facts, Ms. Dyck has sustained and will continue to sustain damages arising from the difference between the price that was paid for her rental unit and the actual value she received from her rental unit.
32. Barrie Housing used unlawful means which resulted in loss and damage to Ms. Dyck. The unlawful means was misleading to Ms. Dyck, in contravention of s. 52 of the *Competition Act*, regarding the excessive and unconscionably high overcharge, which had been accumulating over the course of at least seven years; between 2015 and 2022.
33. Barrie Housing has charged Ms. Dyck rent for her rental unit in an amount that is greater than the lawful rent permitted under s. 111(1) of the *Residential Tenancies Act*.
34. Barrie Housing has collected additional monies from Ms. Dyck in which those monies are not refundable because Barrie Housing refuses to return to Ms. Dyck all of her overcharged rent monies, in contravention of s. 134(a) and (c) and pursuant to s. 234 of the *Residential Tenancies Act*.
35. Pursuant to s. 111(1) of the *Residential Tenancies Act*, no landlord shall charge rent for a rental unit in an amount that is greater than the lawful rent permitted under this Part. Barrie Housing has contravened s. 111(1) of the *Residential Tenancies Act*.
36. Pursuant to s. 134(1)(a) of the *Residential Tenancies Act*, no landlord shall, directly or indirectly, with respect to any rental unit, collect or require or attempt to collect or require

from a tenant of the rental unit a fee, premium, commission, bonus, penalty, key deposit or other like amount of money whether or not the money is refundable. Barrie Housing has contravened s. 134(1)(a) of the *Residential Tenancies Act*.

37. Pursuant to s. 134(1)(c) of the *Residential Tenancies Act*, no landlord shall, directly or indirectly, with respect to any rental unit, rent any portion of the rental unit for a rent which, together with all other rents payable for all other portions of the rental unit, in a sum that is greater than the rent the landlord may lawfully charge for the rental unit. Barrie Housing has contravened s. 134(1)(c) of the *Residential Tenancies Act*.
38. Pursuant to s. 234 of the *Residential Tenancies Act*, a person is guilty of an offence if the person, (l) charges or collects amounts from a tenant in contravention of section 134.
39. Pursuant to s. 234 of the *Residential Tenancies Act*, a person is guilty of an offence if the person, (v) furnishes false or misleading information in any material filed in any proceeding under the *Residential Tenancies Act*. Barrie Housing has contravened s. 234 of the *Residential Tenancies Act*.
40. Pursuant to s. 234 of the *Residential Tenancies Act*, a person is guilty of an offence if the person, (x) charges rent in an amount greater than permitted under the *Residential Tenancies Act*.
41. Barrie Housing made fraudulent misrepresentations regarding the true amount of the plaintiff's overcharge and did not return all of Ms. Dyck's overcharge to her.
42. It was the reasonable expectation of Ms. Dyck that when Barrie Housing was acting as the delegated service manager, it would not overcharge Ms. Dyck, who is in receipt of disability income supplements, whose income supplement provider is paying her rent directly, for Barrie Housing's own benefits and at Ms. Dyck's expense. To the extent that Barrie Housing overcharged Ms. Dyck when acting as the delegated service manager, Barrie Housing breached its contract with Ms. Dyck and Ms. Dyck has suffered damages as a result.

Harassment

43. Barrie Housing has harassed Ms. Dyck for years, by both threatening to sue Ms. Dyck for defamation (October 2022), as well as actually attempting to sue Ms. Dyck for defamation (September 2024 to present), in contravention of s. 2, 8 and 9 the *Ontario Human Rights Code*.
44. Barrie Housing has substantially interfered with the reasonable enjoyment of Ms. Dyck's rental unit and residential complex as a result of Barrie Housing's harassment and retaliation against Ms. Dyck. Mary-Anne Denny-Lusk is Ms. Dyck's landlord and she has harassed Ms. Dyck, coerced other tenants into falsifying concerns about Ms. Dyck, and threatened Ms. Dyck, and has thereby interfered with Ms. Dyck's enjoyment of her rental unit, in contravention of s. 233(a)(i) of the *Residential Tenancies Act*.
45. Pursuant to s. 235(1) of the *Residential Tenancies Act*, any landlord or superintendent, agent or employee of the landlord who knowingly harasses a tenant or interferes with a tenant's reasonable enjoyment of a rental unit or the residential complex in which it is located is guilty of an offence.
46. Pursuant to s. 237 of the *Residential Tenancies Act*, **every director or officer of a corporation who knowingly concurs in an offence** under this Act is guilty of an offence.
47. Pursuant to s. 238(1) of the *Residential Tenancies Act*, **a person**, other than a corporation, who is guilty of an offence under this Act **is liable on conviction to a fine** of not more than \$50,000.00.
48. Pursuant to s. 238(2) of the *Residential Tenancies Act*, **a corporation** that is guilty of an offence under this Act **is liable on conviction to a fine** of not more than \$250,000.00.
49. Pursuant to s. 83(3)(b) of *the Act*, Barrie Housing has brought the application to evict Ms. Dyck because Ms. Dyck submitted complaints to the HRTTO and to the MMAH. Ms. Dyck has submitted the *Correspondence with the MAG* and the *Endorsements* documents as evidence to the LTB.

50. Pursuant to s. 83(3)(c) of *the Act*, Barrie Housing has brought the application to evict Ms. Dyck because Ms. Dyck attempted to secure or enforce her legal rights with the HRTO. Ms. Dyck has submitted the *Withdraw Correspondence with the HRTO* document as evidence to the LTB.