

Court File No.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

ANDREA HORWATH

Plaintiff

and

BENIAMINO LEONETTI

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of
court office: 45 Main Street East
Hamilton, Ontario
L8N 2B7

TO: Beniamino Leonetti



CLAIM

1. The Plaintiff claims as against the Defendants:
 - (a) As against the Defendant, Beniamino Leonetti damages in the amount of 300,000.00 for negligence and breach of contract;
 - (b) As against the Defendants the amount of \$1,000,000.00 for punitive, aggravated and exemplary damages;
 - (c) Pre-Judgment and Post-judgment interest on these amounts pursuant to the *Courts of Justice Act*, R.S.O., c. C43, and
 - (d) Costs of this action, together with applicable Goods and Services Tax thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c.E.-15, as amended on a substantial indemnity basis.
 - (e) Such further and other relief at this Honourable Court may deem just.

PARTIES

2. The Plaintiff, Andrea Horwath (“**Plaintiff**”), is an individual residing in the city of Hamilton, in the province of Ontario.
3. The Defendant, Beniamino Leonetti, (hereinafter referred to as “**Defendant**”) is an individual residing in the City of Hamilton, in the Province of Ontario.

OVERVIEW

4. Throughout the tenancy the Plaintiff made numerous and repeated attempts at accessing the property municipally described as 76 West Avenue North, Unit A, Hamilton, Ontario (“Subject Property”).
5. The Plaintiff and the Defendant lived together in a common-law relationship beginning in or about 1986. They were never legally married.
6. The relationship produced one child; [REDACTED], born [REDACTED].
7. The parties separated on or about January 1, 2010 (the “Date of Separation”).
8. On or about October 31, 2010, the parties executed a Separation Agreement (the “Separation Agreement”).
9. Pursuant to the Separation Agreement, the Plaintiff agreed to pay the Defendant spousal support of \$2,500.00 per month, payable on the 1st day of each month thereafter.
10. In consideration of the Separation Agreement, the Defendant was granted exclusive possession and tenancy of a residential rental unit located at the Subject Property at an agreed rental amount of \$350.00 of which was raised to \$450.00 subsequently.

ACCESS TO THE PROPERTY AND VARIOUS COURT PROCEEDINGS

11. In or about October 2018, the Plaintiff attempted to access the Property in her capacity as owner and landlord.

12. The Defendant wrongfully denied access to the Plaintiff. As a result, the Plaintiff commenced a proceeding before the Landlord and Tenant Board ("LTB").
13. On October 15, 2018, the LTB found that the Defendant had substantially interfered with the Plaintiff's lawful right of access to the Property and ordered the Defendant to pay the Plaintiff's filing fee.
14. The Defendant subsequently engaged in a pattern of harassment, resulting in criminal charges being laid against him and the issuance of a no-contact order (to the benefit of the Plaintiff) in November 2018.
15. The Defendant raised jurisdictional objections at the LTB and indicated his intention to assert a claim regarding the Subject Property.
16. On or about October 6, 2022, the Plaintiff commenced an Application in the Unified Family Court in Hamilton due to a material change in circumstances.
17. On December 12, 2023, Justice Kril issued an Order granting the Plaintiff access to the Property.

DISCOVERY OF DAMAGE

18. Following Justice Kril's Order, the Respondent retained a repair cost assessor to inspect the Subject Property.
19. Upon gaining access, the Respondent discovered that the Defendant had caused extensive damage to the Property.
20. The assessor estimated the cost of repair to be in excess of \$300,000.00.

21. The damage was caused during the Defendant's tenancy and occupation of the Property and arose from neglect, intentional conduct, and/or failure to maintain the Property in a reasonable manner.

BREACH OF CONTRACT

22. The Separation Agreement contained express and implied contractual terms that the Defendant was subjected to, including but not limited to the following implied terms:

- (a) take reasonable care of the Property and maintain it in at least as good a condition as at the commencement of his possession (fair wear and tear excepted), acting throughout as a reasonable and prudent occupant would act;
- (b) that the Defendant would, upon reasonable notice, permit the Plaintiff or her agents access to the Property for the purposes of inspection, maintenance, repair, or any other legitimate purpose connected with her ownership;
- (c) that the Defendant would promptly inform the Plaintiff of any damage, defects, maintenance issues, or other problems affecting the Property or its fixtures, fittings, systems, or structure as soon as he became aware of them or ought reasonably to have become aware of them.

23. During the period of his possession, the Defendant breached the aforesaid implied terms by:
- (a) causing or permitting substantial physical damage to the Property;
 - (b) failing to maintain the Property in good condition and allowing it to fall into a state of disrepair;
 - (c) refusing or failing to provide the Plaintiff with reasonable access to the Property when requested; and
 - (d) failing to inform the Plaintiff in a timely manner (or at all) of damage and maintenance issues affecting the Property.
24. As a direct result of the Defendant's breaches of the implied terms of the Separation Agreement, the Plaintiff has suffered loss and damage of which the Defendant is liable for, including but not limited to the cost of repairing the Property to restore it to its prior condition.

DAMAGES

25. The Plaintiff claims damages in the amount of \$300,000.00, being the reasonable cost of remediation and repair of the damage caused or permitted by the Defendant's breaches of contract and negligence, together with interest and costs.

26. As a result of the Defendants acts or omissions particularized herein, the Plaintiff has sustained damages in the amount of \$300,000.00 or as can be provided at trial. But for the acts and omissions of the Defendants, the Plaintiff would not have suffered damages.

PUNITIVE DAMAGES

27. The Plaintiff states that the Defendants conduct was high-handed, outrageous, reckless and wanton, and entitles the Plaintiff to an award of punitive damages.
28. The Plaintiff pleads and relies upon the *Negligence Act*, RSO 1990 c. N. 1.
29. The Plaintiff proposes that this action be tried in Hamilton, Ontario.

JAMES A. BROWN
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Lawyer for the Plaintiff,
Andrea Horwath

-and-

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
HAMILTON

STATEMENT OF CLAIM

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