



**Order under Section 21.2 of the
Statutory Powers Procedure Act and the
Residential Tenancies Act, 2006**

Citation: HARRIS v PROCTOR, 2026 ONLTB 1334

Date: 2026-01-08

File Number: LTB-L-069497-24-RV

In the matter of: B, 1126 KING ST E
CAMBRIDGE ON N3H3P6

Between: MARK HARRIS Landlord

And

SARA PROCTOR Tenant

Review Order

MARK HARRIS (the 'Landlord') applied for an order to terminate the tenancy and evict SARA PROCTOR (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has willfully or negligently caused damage to the premises.

The Landlord claimed compensation for each day the Tenant remained in the unit after the termination date. 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.

The application was initially resolved by order LTB-L-069497-24 issued on March 13, 2025 (the 'Order') following a hearing on February 12, 2025. Only the Landlord's representative, C. Williams, attended the hearing. The Board granted the Landlord's application, terminating the tenancy and ordering that the Tenant pay \$2,091.63 in costs to the Landlord.

On March 19, 2025 the Tenant requested that the Order be reviewed and that the Order be stayed until the Tenant's request to review the Order was resolved. By order LTB-L-069497-24-RV-IN dated March 20, 2025 the Board stayed the Order and directed the request to hearing.

The review request originally came on for hearing by videoconference on May 7, 2025. Due to the involvement of the representatives for both parties in other hearings, the matter did not come on for hearing until minutes before the end of the morning block. Only a few minutes into the hearing the Tenant's representative ceased to respond. Rather than proceed with only the preliminary question of request for review, the Board adjourned the matter.

The hearing of the review request commenced on June 11, 2025. The Tenant, the Tenant's representative, C. Iheanacho, the Landlord and the Landlord's representative, C. Williams, attended the hearing. L. Jones ('LJ') signed into the hearing as a witness for the Tenant and was assigned to a breakout room. As set out in this order, I granted the Tenant's request for review and proceeded with the de novo hearing of the Landlord's application. There was insufficient time to complete the hearing and it was adjourned.

The hearing of the application continued to completion by videoconference on December 23, 2025. The Landlord, the Landlord's representative, C. Williams, the Tenant and the Tenant's representative, C. Iheanacho, attended the hearing. LJ attended a portion of the hearing as a witness for the Tenant.

Determinations:

Request for Review Granted

1. The Tenant did not deny receiving the Board's notice of hearing for the February 12, 2025 appearance but testified that she had gotten the date of the appearance mixed up with the date of another court appearance pertaining to a family law matter.
2. The Tenant testified that she had been in and out of court over the past two years with respect to a custody dispute. On January 15, 2025 she received notice from her lawyer that her next court hearing on that matter had been adjourned (Refer Exhibit 1, being a text at page 2 of the Tenant's Brief at TOP Doc-5531382). The Tenant had mistakenly understood that the February 12th date – being the date for this Board hearing – pertained to the family law matter and that the date which was adjourned to April was the date for the hearing of this application.
3. She did not realized her error until she received the Order in the mail. On receipt of the Order she promptly sought legal advice, which resulted in the filing of the present request for review.
4. She fully intended to attend the Board hearing, as she felt strongly that the leak which was the subject of the Landlord's application was not attributable to any wrongdoing on her part and she had the evidence to establish her position.
5. As I indicated in the June 11, 2025 hearing, I found that the Tenant had established that her non-attendance at the hearing was attributable to confusion on her part about dates of legal proceedings. I found that the confusion was understandable in the circumstances and that the Tenant was not, as a result, reasonably able to attend. I granted the request for review and proceeded to hear the application.

Merits Hearing

6. The Landlord claimed compensation for the costs to repair damage from a leak, which he attributed to the Tenant having allowed her children to fill water balloons in the bathroom of the Tenant's unit and/or the children having water balloon fights inside the unit, and allowing the water to spill onto the floor.

7. The Tenant did not contest the Landlord's allegation that there had been water damage attributable to water coming from the bathroom of her unit, but denied that water balloon spillage had anything to do with it. On the contrary, the damage was attributable to a faulty faucet which leaked when any pressure was put on it.
8. The following facts were undisputed:
 - a) The residential complex contains two units. The Tenant's unit was the upper of the two units. The Tenant's bathroom was above a bedroom in the lower unit;
 - b) On December 9, 2023 the Landlord received a complaint from the lower tenant of a leak from the bedroom ceiling. The Landlord was unable to get access that day to the Tenant's unit, but the Landlord did not know the reason for lack of access;
 - c) On December 12, 2023, further to an entry notice to the Tenant, the Landlord's contractor found that there was a puddling under the duct work in the crawl space between the floor of the Tenant's bathroom and the ceiling of the room below;
 - d) There were no further complaints until January 1 or 2, 2024. The leak was worse this time. The Landlord's contractor spoke at that time to the Tenant about the source of the water. The contents of that conversation are in dispute, as set out below; and
 - e) Repair work was done to address the water damage and there have been no water damage problems since.
9. It became apparent during the hearing that three theories have been put forward for the cause of the water damage. Only one of those three theories grounds the Landlord's claim against the Tenant and, as set out below, I find one of the other theories significantly more consistent with the facts established during the hearing. The three theories are:
 - a) The leakage to the lower unit was attributable to the Tenant's children filling water balloons in the bathroom for water fights inside the unit. Either or both of the filling or fighting resulted in water leaking from the bathroom down, through the crawlspace below the bathroom, to the unit below;
 - b) The leakage to the lower unit was attributable to moisture from sweating ductwork in the crawlspace accumulating on the floor of the crawlspace and permeating down into the lower unit; and
 - c) The water leaked from spraying under the sink, into the cabinet under the sink and directly from that location into the crawlspace. The spraying occurred when, and only when, the faucet was subjected to minor pressure, such as the pressure exerted when a water balloon

was secured over the end of the faucet. Replacement of the faucet eliminated future similar occurrences.

Theory 1 Evidence - Spillage from Water Balloons

10. The Landlord's evidence with respect to his assertion that the leakage was attributable to water balloon spillage was as follows:

- a) The property management company which investigated the source of the leak told the Landlord that they had found a puddle on the floor of the crawlspace below the Tenant's bathroom, which they attributed to water from a spill in the bathroom having flowed through a vent in the floor of the bathroom into the crawlspace;
- b) The property manager told the Landlord that the property manager told the Tenant that the leak below came from the Tenant's bathroom and that she should stop doing whatever it was she was doing. He told the Landlord that the Tenant had responded by saying 'OK';
- c) An invoice from Four leaf clover renovations dated February 1, 2024 (Refer Exhibit 4 at page 12 of the N5 notice) included the following description of work performed at the complex, "Find water leak from upper unit into lower unit. Upper unit tenants are the cause for leak by have water balloon fights". The Landlord understood, from the contractor, that the Tenant had told the contractor that the leak was from water being splashed from water balloon fights. The Landlord understood that the floor of the bathroom had been flooded from this activity; and
- d) The Landlord's sole source of information about the alleged water balloon spillage was derived from the information his contractor reported to him about what the Tenant was alleged to have said.

11. The Tenant's evidence with respect to the water balloon allegations was as follows:

- a) There was only one occasion where her children played with water balloons but there was no spillage of any kind on that occasion. Balloons were affixed to the bathroom faucet and partially filled with water. She filled them herself and tied the balloons off before they were taken outside. There was no 'water balloon fight' inside the unit and no water was spilled during the filling of the balloons. There was no 'splashing' and no water on the floor. She acknowledged speaking with the contractor about water. She may have mentioned the balloons but never indicated to the contractor or the property manager that there had been spillage; and
- b) Subsequent to the December incident she discovered that there was some water on the floor of the cabinet under the bathroom sink. As set

out below she believed that the water came from a faulty faucet, spraying under the sink when the balloons were being filled;

- c) The vent in the floor of the bathroom is 2 to 3 feet away from the sink. The vent cover is sealed with silicon so that even if water were present on the floor, which it was not, it could not have flowed down the vent into the crawlspace area.

Theory 2 – Sweating Ductwork

12. The evidence with respect to the theory of sweating ductwork was as follows:

- a) An invoice from the Landlord' property manager, KWP, reported on events at the residential complex on December 12, 2023 (Refer Exhibit 2 at page 10 of the N5 Notice). It stated that they first inspected the Tenant's unit for obvious leaks but did not find any. They found no leaks in any of the fixtures but found a small puddle of water underneath the ductwork in the crawlspace below the Tenant's bathroom. They noted that the ductwork was rusty and appeared to be leaking when pipes were sweating. A tarp was found underneath the ductwork area, which they concluded had been placed there because of a past leak. They recommended contacting an HVAC technician to address the hot air supply ductwork. The Landlord did not follow up on this recommendation; and
- b) LJ, a friend of the Tenant, is a construction and landscape contractor with 15 years experience. He did not investigate the crawlspace but attributed the reported puddle of water on the floor of the crawlspace to sweating from the ductwork. There were likely hot and cold areas in that location and the changes in temperature would contribute to ductwork sweating; and
- c) No explanation was offered as to why, if the water leak was attributable to sweating ductwork, the problem did not re-occur.

Theory 3 – Faulty Faucet

13. The evidence with respect to the faulty faucet, provided by the Tenant and LJ was as follows:

- a) The Tenant had noticed, prior to the December 2023 leak incident, that there was a small amount of water on the floor of the cabinet under the sink in the bathroom. She mentioned the issue to one of the Landlord's contractors when he was working outside the complex. On his verbal recommendation she put a margarine container under the sink to catch drips. She did not put in a work order or communicate directly with the Landlord or property manager at the time, as she understood the contractor was going to report the issue for her;

- b) The margarine container had remained dry when she checked it until December 2023, when the property manager came into the unit to investigate the leak to the lower unit. She found, at that time, that the margarine container was full of water;
- c) LJ arranged for a friend of his, who is a home inspector, to come to the unit and check the faucet. When the home inspector attended, he and LJ placed a rag around the mouth of the faucet and found that the faucet started to spray under the cabinet. LJ observed the spray came from the cold water line going to the faucet;
- d) LJ indicated that water pipes came to the sink up through holes in the floor of the cabinet under the sink, so that any water inside the cabinet would flow through those holes into the ductwork crawlspace below;
- e) The Tenant arranged to have a plumber check the faucet. She could not afford to do so until August 2024. As set out in the invoice for that plumber's investigation the faucet leaked when there was some pressure on it, such as pressure which might be exerted from a balloon being placed over the mouth of the faucet. To test the idea, the plumber put a balloon over the mouth of the faucet and confirmed that the line to the faucet sprayed. The plumber stated that this should not occur and that it pointed to a potential defect with the faucet . (Refer Exhibit 5 at page 2 of the Tenant Brief, being a plumber's invoice); and
- f) The faucet has since been replaced and the problem has not recurred.

14. I find that the Landlord has failed to establish that the evidence supports the theory of the leak on which the application is based. The only evidence of water spillage from the balloons themselves was second-hand hearsay evidence to the effect that the Tenant had told the Landlord's property manager that this was the cause. I give little weight to that evidence and prefer the direct testimony of the Tenant - both to the effect that she had told the property manager no such thing and to the effect that the spillage from water balloons simply did not take place.

15. In addition to preferring the Tenant's evidence with respect to the water balloons over that of the Landlord, the explanation offered by way of another theory, Theory 3, is most consistent with the weight of evidence. The sweating ductwork theory, Theory 2, does not stand up against the fact that the leak problem has not, since, recurred despite the fact that no steps were taken by the Landlord to investigate or address a sweating pipe problem. The leaky faucet theory is fully consistent with the facts. I find as facts, on the basis of the uncontroverted evidence of the Tenant and LJ, that the line to the faucet sprayed when minor pressure was applied to the mouth of the faucet, that water from this spray could migrate to the unit below through the holes in the floor of the sink cabinet to and through the crawlspace below, that the spraying constituted a defect in the faucet and that the subsequent repair of the faucet has rectified the problem.

16. I find that the Landlord has failed to establish that the water damage on which the application is based was attributable to wilful or negligent behaviour on the part of the Tenant.

It is ordered that:

1. The request to review order LTB-L-069497-24 issued on March 13, 2025 has been granted.
2. Order LTB-L-069497-24 issued on March 13, 2025 is cancelled and replaced with paragraph 3 of this order.
3. The Landlord's application is dismissed.

February 26, 2026
Date Issued

Lynn Mitchell
Member, Landlord and Tenant Board

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