

**TORONTO**  
Small Claims Court  
**47 SHEPPARD AVENUE E., 3<sup>RD</sup> FLOOR**  
**TORONTO, ON**  
**M2N 5N1**

**SC-00012345-0000**  
Claim No.

Address  
**(416) 326-3554**  
Phone number

**Plaintiff No. 1**

Additional plaintiff(s) listed on attached Form 1A.  Under 18 years of age.

Last name, or name of company <b>SMITH</b>		
First name <b>JOHN</b>	Second name	Also known as
Address (street number, apt., unit) <b>123 MAIN STREET</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555 5555</b>
Postal code <b>M1A 1A1</b>	Email address <b>JOHNANDMARY@SMITHS.CA</b>	
Representative <b>JUSTIN CASE</b>	Law Society of Ontario no. <b>P01234</b>	
Address (street number, apt., unit) <b>100 BAY STREET, SUITE 100</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-1000</b>
Postal code <b>M9Z 9Z9</b>	Email address <b>JUSTIN@CASE.LAW</b>	

**Defendant No. 1**

Additional defendant(s) listed on attached Form 1A.  Under 18 years of age.

Last name, or name of company <b>ROOFING EXPERTS INC.</b>		
First name	Second name	Also known as
Address (street number, apt., unit) <b>987 TROUBLE LANE</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-6666</b>
Postal code <b>M1Z 1Z1</b>	Email address <b>NEWROOF@NEWROOF.CA</b>	
Representative <b>GITAR DUNN</b>	Law Society of Ontario no. <b>P09876</b>	
Address (street number, apt., unit) <b>111 BAY STREET, SUITE 111</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-9999</b>
Postal code <b>M2Y Y2Y</b>	Email address <b>GITAR@DUNN.LEGAL</b>	

Les formules des tribunaux sont affichées en anglais et en français sur le site [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca). Visitez ce site pour des renseignements sur des formats accessibles.

**SC-00012345-0000**

Claim No.

**Plaintiff No. TWO (2)**

**Defendant No.**

Last name, or name of company <b>SMITH</b>		
First name <b>MARY</b>	Second name	Also known as
Address (street number, apt., unit) <b>123 MAIN STREET</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-5555</b>
Postal code <b>M1A 1A1</b>	Email address <b>JOHNANDMARY@SMITHS.CA</b>	
Representative <b>JUSTIN CASE</b>	Law Society of Ontario no. <b>P012345</b>	
Address (street number, apt., unit) <b>100 BAY STREET, SUITE 100</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-1000</b>
Postal code <b>M9Z 9Z9</b>	Email address <b>JUSTIN@CASE.LAW</b>	

**Plaintiff No.**

**Defendant No. TWO (2)**

Last name, or name of company <b>JONES</b>		
First name <b>BRUCE</b>	Second name	Also known as
Address (street number, apt., unit) <b>987 TROUBLE LANE</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-6666</b>
Postal code <b>M1Z 1Z1</b>	Email address <b>BRUCE@NEWROOF.CA</b>	
Representative <b>GITAR DUNN</b>	Law Society of Ontario no. <b>P09876</b>	
Address (street number, apt., unit) <b>111 BAY STREET, SUITE 111</b>		
City/Town <b>TORONTO</b>	Province <b>ON</b>	Phone no. <b>(416) 555-9999</b>
Postal code <b>M2Y Y2Y</b>	Email address <b>GITAR@DUNN.LEGAL</b>	

**Plaintiff No.**

**Defendant No.**

Last name, or name of company		
First name	Second name	Also known as
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code	Email address	
Representative	Law Society of Ontario no.	
Address (street number, apt., unit)		
City/Town	Province	Phone no.
Postal code	Email address	

THIS DEFENCE IS BEING FILED ON BEHALF OF: (Name(s) of defendant(s))

ROOFING EXPERTS INC. and BRUCE JONES

and I/we: (Check as many as apply)

Dispute the claim made against me/us.

Admit the full claim and propose the following terms of payment:

\$ \_\_\_\_\_ per \_\_\_\_\_ commencing \_\_\_\_\_, 20\_\_\_\_.

(Amount)

(Week/month)

Admit part of the claim in the amount of \$ \_\_\_\_\_ and propose the following terms of payment:

(Amount)

\$ \_\_\_\_\_ per \_\_\_\_\_ commencing \_\_\_\_\_, 20\_\_\_\_.

(Amount)

(Week/month)

REASONS FOR DISPUTING THE CLAIM AND DETAILS:

Explain what happened, including where and when. Explain why you do not agree with the claim made against you.

If you are relying on any documents, you **MUST** attach copies to the Defence. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

What happened? **AS PER ATTACHED SCHEDULE 'A'**

Where?

When?

Why I/we disagree **AS PER ATTACHED SCHEDULE 'A'**  
with all or part of  
the claim:

**ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.**

Prepared on: **NOVEMBER 15** , 20 **20**

(Signature of defendant or representative)

**NOTE:** Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.

**CAUTION TO PLAINTIFF(S):** If this Defence contains a proposal of terms of payment, you are deemed to have accepted the terms **unless** you file with the clerk and serve on the defendant(s) a Request to Clerk (Form 9B) for a terms of payment hearing **WITHIN TWENTY (20) CALENDAR DAYS** of service of this Defence [R. 9.03(3)].

## **SCHEDULE 'A'**

### **Denials**

1. Except as may otherwise be expressly hereinafter admitted, the Defendants, Roofing Experts Inc. ("Roofing Experts") and Bruce Jones ("Bruce"), deny each and every allegation and put the Plaintiffs to strict proof thereof and the Defendants further deny that the Plaintiffs are entitled to the relief as claimed within the Plaintiff's Claim; or alternatively, that the Plaintiffs are entitled to the relief as claimed from the Defendants.

### **Admissions**

2. The Defendants admit or accept the allegations or statements contained within paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 21, 23, 24, 43, 44, and 45, of the Plaintiff's Claim.

### **Incomplete Knowledge**

3. The Defendants are without knowledge or without complete knowledge or without direct knowledge with respect to the allegations or statements contained in paragraph 15, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30, 31, and 32, of the Plaintiff's Claim.

### **Additional Statements (including legal defences)**

#### ***Faulty Workmanship Denial***

4. The Defendants state that any and all workmanship performed by the Defendants was proper and usual to the standards of the roofing trade.

***Damage as Caused by Plaintiff***

5. The residential dwelling ("House") located upon the subject Premises, is a two storey with a one-and-a-half storey attached garage ("Garage").
6. The attached garage is attached to the west side of the House.
7. The Defendant, Roofing Experts, was hired to perform work only upon the House.
8. Roofing Experts provided an offer to install asphalt shingles upon the Garage.
9. The Plaintiffs declined the offer to install asphalt shingles upon the Garage.
10. The Plaintiff's Claim allegations of interior water damage to ceilings and walls of the House, if any, was caused by water ingress along roof beams and joists from the Garage.
11. Accordingly, the Plaintiffs failure to choose roofing services for the Garage portion of the House caused, or contributed, to the loss, if any, as suffered by the Plaintiffs.

***Alternate Causation***

12. Furthermore, and alternatively, any and all damage to the House was caused by water ingress through flaws within the soffit and fascia.
13. Persons unknown installed the soffit and fascia prior to the work of the Defendants.
14. Prior to entering to the contract with the Plaintiffs, the Plaintiffs were advised that the soffit and fascia needed prompt replacement.

15. The Plaintiffs were provided such advisement by Bruce.
16. Roofing Experts provided a quote to replace the soffit and fascia to the Plaintiffs.
17. The Plaintiffs declined the quote to replace of the soffit and fascia.

***Force Majeure***

18. Furthermore, and alternatively, the Plaintiff's Claim allegations of a thunderstorm with high winds was a tornado event.
19. The tornado was rated EF4 on the Enhanced Fujita Scale by Environment Canada.
20. The tornado funnel passed within 200 yards of the House.
21. Any and all damage to the House was caused by the tornado event, as a *force majeure*, rather than by defective workmanship.

***Failure to Mitigate***

22. Furthermore, and alternatively, the Plaintiffs paid for excessively priced restoration services as provided by Complete Restoration Services Inc. ("Complete").
23. The Plaintiffs failed to exercise due diligence when seeking restoration services and thereby failed to obtain more conservatively priced and available restoration services.

**Pleadings & Reliances**

24. This Defendants plead and rely upon;
  - (a) The *Courts of Justice Act*, R.S.O. 1990, c. C.43; as amended;

- (b) The *Negligence Act, 2002*, R.S.O. 1990, c. N.1; as amended;
- (c) The *Rules of the Small Claims Court*, O. Reg. 258/98; as amended;
- (d) The common law and further statutes and regulations as shall be disclosed prior to trial.

### **Jurisdiction**

25. This Defendants agree and accept that the Toronto Small Claims Court is the proper *forum conveniens* with the jurisdiction to hear this matter.

### **Dismissal**

26. For the aforesaid reasons, the Defendants respectfully plead and state that the Plaintiff's Claim lacks a reasonable cause of action and that the Plaintiff's Claim should be dismissed with full indemnity costs in favour of the Defendants as in accordance with the *Rules of the Small Claims Court* as well as the doctrine in *Propane Levac Propane Inc. v. Macauley*, 2011 ONSC 293 for the improper bringing of unreasonable claims as are unsupportable in fact, law, and equity.