



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Kim v Sommerville, 2026 ONLTB 24927

Date: 2026-03-26

File Number: LTB-L-103347-25

In the matter of: #1, 1916 Queen st east
toronto ON M4L1H5

Between: Moonjin Kim Landlord

And

Michael Sommerville Tenant

Moonjin Kim (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Sommerville (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises

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 March 18, 2026.

The Landlord and the Tenant attended the hearing.

Preliminary issue:

1. At the outset of the hearing, the Tenant raised a preliminary issue regarding the validity of the N5 notice and the Certificate of Service filed by the Landlord with the Board.
2. The Landlord's application is based in part on an N5 notice of termination. The Tenant submitted that the N5 notice filed with the application was not the same notice that had been served on him. The version filed with the Board listed only two events and contained a termination date of August 12, 2025. However, the version served on the Tenant listed

three events and contained a termination date of December 9, 2025. The Tenant also submitted that no certificate of service was filed with the Board when the Landlord filed the L2 application. At the hearing, the Tenant entered into evidence a copy of the version of the N5 notice that had been served on him.

3. The Landlord explained that this was an omission when the L2 application was filed and that the certificate of service was not included. The Landlord further stated that a corrected N5 notice was resubmitted to the Board on March 13, 2026. However, the second page of the N5 notice was still missing and no certificate of service was attached.
4. [Section 53, paragraph 1](#), of [O.Reg 516/06](#) (the “[Regulations](#)”) provides that an application with respect to a notice of termination on any ground must include both a copy of the notice of termination and a certificate of service for the notice of termination if the notice was given by the landlord.
5. [Section 59\(2\)](#) of the [Regulations](#) provides that where an application is filed electronically, the required documents must be received by the LTB within 5 days of the electronic filing of the application
6. Section 185(1) of the *Residential Tenancies Act*, 2006 (the “Act”) provides that an application filed with the LTB shall be accompanied by the documents prescribed in the [Regulations](#).
7. The issue before the Board is whether the N5 notice relied upon in the L2 application, which was filed electronically on December 7, 2025, is valid. It is clear that the N5 uploaded with the application was not the version that was served on the Tenant. No complete corrected version was subsequently uploaded to the Board’s file, and no certificate of service was uploaded within five days after the electronic filing of the application.
8. As a result, the Tenant was not in a position to properly respond to the notice because the version visible in the Board’s system did not match the version actually served. This discrepancy created confusion and procedural unfairness.
9. I also find that, because no certificate of service for the N5 notice of termination was filed within five days after the application was filed, there was no complete application before the Board. In these circumstances, the Landlord cannot cure the defect by filing the certificate of service at a later date.
10. I am satisfied that the N5 portion of the application is defective. Section 53 of *Ontario Regulation 516/06* requires that an application based on a notice of termination be accompanied by both a copy of the notice of termination and a certificate of service. The purpose of that requirement is to ensure that the application proceeds on the same notice that was actually served on the tenant. In this case, the Landlord’s own evidence was that the N5 had been revised after service, and the Tenant’s evidence was that the notice filed with the Board was not the same notice he received. In these circumstances, I am not satisfied that the application was properly grounded on the notice that was served. The N5 portion of the L2 application is therefore dismissed.

Determinations:Compensation for damages

11. The only remaining issue is the Landlord's claim for compensation for damage under section 89 of the Act. Under section 89, the Landlord must prove, on a balance of probabilities, that while the Tenant was in possession of the rental unit, the Tenant, another occupant, or a person permitted in the residential complex by the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex, and that the Landlord incurred or will incur reasonable repair or replacement costs as a result.
12. The Landlord's evidence was that there were flooding incidents affecting the property and that the source of the problem was the plumbing serving the second floor. The Landlord testified that the Tenant rented the front second floor unit, which contained its own bathroom and kitchen and was not shared with other tenants. The Landlord stated that water from the upstairs bathroom area came down into the first-floor area near the front door.
13. However, the Landlord's evidence about when the flooding began was inconsistent. At one point, the Landlord testified that the first flooding incident occurred around December 27, 2025. At another point, the Landlord referred to November 10, 2025, as the date of the flooding and as the date on which photographs were taken and plumbers attended. The Landlord also testified that there had been four or five flooding incidents but was unable to provide a clear chronology of when those incidents occurred, what work was done after each incident, or what portion of the claimed amount related to any particular event.
14. The Landlord also relied on photographs and video showing plumbers working on pipes and showing debris removed from plumbing, including paper towel, hair, bottle caps, cigarette butts, and what the Landlord believed were syringes. The Landlord testified that these materials should not have been in the plumbing system and argued that they must have come from the Tenant's unit.
15. I do not find this evidence sufficient to establish that the Tenant caused the damage claimed. The Landlord did not provide sufficient evidence to establish the cause of the flooding, the precise location of the blockage, or whether the blockage originated from the Tenant's specific unit. The Landlord sought to rely on an unsworn written statement from the plumber but did not summons the plumber as a witness and provided no evidence that the plumber was unavailable to testify. I am therefore not satisfied that the statement was necessary or reliable. The statement is hearsay because it was made outside the hearing room and was not subject to cross examination.
16. Second, the evidence before me does not establish that the affected drainage line served only the Tenant's unit. On cross examination, the Landlord acknowledged that the video evidence showed the pipes were connected to the second floor, but not specifically to the Tenant's front unit. The Tenant's evidence was that there were two units on the second floor, a front unit and a back unit. I find that the Landlord did not prove that the blockage originated from the Tenant's unit alone, rather than from a shared portion of the plumbing serving more than one area.

17. Third, the Tenant gave evidence of longstanding plumbing and bathroom issues at the property. The Tenant testified that there had been prior leaks, prior drainage problems, and previous maintenance requests. The Tenant also testified that there were no drain stoppers or effective catch mechanisms in at least some of the bathroom fixtures, and that the Landlords had previously been notified of plumbing concerns. Although I make no finding on any separate maintenance dispute, this evidence raises a reasonable alternative explanation for the flooding and blockage and undermines the Landlord's assertion that the damage must have been caused by the Tenant's misuse alone.
18. Fourth, there was no direct evidence that the Tenant placed the materials found in the plumbing into the system. The Landlord's case on causation was based largely on inference. In the circumstances of this case, where the plumbing served more than one area and there was evidence of prior plumbing issues, that inference is not sufficient to meet the Landlord's burden of proof.
19. I therefore find that the Landlord has not established, on a balance of probabilities, that the Tenant, another occupant, or a person permitted by the Tenant wilfully or negligently caused the damage claimed.
20. For these reasons, the Landlord's claim for compensation under section 89 of the Act is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

March 26, 2026
Date Issued

Joy Xiao
Member, Landlord and Tenant Board

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