



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Van Kleek Senior Citizens Manor v St-Amour, 2026 ONLTB 47568

Date: 2026-06-30

File Number: LTB-L-005132-26

In the matter of: 101, 73 DERBY AVE
VANKLEEK HILL ON K0B1R0

Between: Van Kleek Senior Citizens Manor Landlord

And

Michèle St-Amour Tenant

Van Kleek Senior Citizens Manor (the 'Landlord') applied for an order to terminate the tenancy and evict Michèle St-Amour (the 'Tenant') because:

- 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

Van Kleek Senior Citizens Manor (the 'Landlord') also applied for an order requiring Michèle St-Amour (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 June 15, 2026.

The Landlord's Agent, Robin McRae, the Tenant, and the Tenant's Legal Representative, Samuel Gauthier, attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the damage claim in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Preliminary Issue:

3. The Tenant's Legal Representative requested the application be dismissed because of an invalid N5 Notice of Termination ('N5 Notice'). The Tenant's Legal Representative indicates that the Landlord signed the N5 Notice with an invalid date of July 7, 2026, which would be a date in the future and that it was confusing to the Tenant. The Tenant's Legal Representative relies on the Board's Procedural Issues Regarding Eviction Applications, Interpretation Guideline 10, regarding the adequacy of a Notice of Termination.
4. The Tenant testified that because of the date the Landlord signed the N5 Notice in the future, that it was confusing, but did not explain why, or how this was prejudicial to her.
5. The Landlord's Agent testified that she reversed the day and month, so she should have wrote January 7, 2026, instead of July 7, 2026, and that this was an honest mistake.
6. In the Board's Procedural Issues Regarding Eviction Applications, Interpretation Guideline 10, it says in part:

"If the Notice of Termination is confusing to the degree that a reasonable person could not understand precisely what it means, a Member would find it defective"

7. I do not find by the Landlord indicating the wrong signature date in the N5 Notice to be reason to dismiss the N5 Notice. The Tenant did not indicate a valid reason why she thought it was confusing and how that would prejudice her to proceed with the hearing. As such, the Landlord's request to dismiss the application was denied.

N5 Notice

8. On January 8, 2026, the Landlord gave the Tenant an N5 Notice in person with a date of termination of January 31, 2026. The notice of termination is brought under section 62(1) of the Act which states that a landlord may give a tenant a notice of termination of the tenancy if the tenant willfully or negligently causes undue damage to the rental unit. The N5 Notice contains the following allegations and as summarized below:
 1. On January 25, 2025, the bedroom radiator froze and ruptured because the window was left open and one of the valves was closed. This was the second incident that occurred. The first incident occurred on February 26, 2024. The Landlord is requesting \$2,847.04 in the costs associated for the replacement of the radiator for the most recent incident.
9. As this was a first N5 Notice, the Tenant had 7 days to pay for the replacement of the radiator and void the notice which ran from January 9, 2026 to January 15, 2026. The Tenant did not pay the Landlord therefore the Tenant did not void the N5 Notice in accordance with section 62(3) of the Act.
10. At the hearing, the Landlord did not request termination of the tenancy, the Landlord requested damages as listed in the application in the amount of \$2,847.04 in accordance with section 89 of the Act.

Damage Claim Under s. 89 of the Act

11. The residential complex is a non-profit seniors retirement home. The Tenant has lived in the rental unit since November of 2023. The residential complex is heated by radiators. The radiator in question is located in the master bedroom with a window above it.
12. The Landlord's Agent says that on January 25, 2026, the Tenant advised her that there was a water leak in her rental unit. The Landlord's Agent sent over a plumber to investigate the leak. The Landlord's Agent claims that the leak was caused because a pipe froze, and the Tenant is directly responsible for the pipe freezing because she left the window open.
13. The Landlord's Agent testified that this also happened on February 26, 2024. The Tenant notified the Landlord that there was a water leak in her rental unit and that the radiator ruptured and had to be replaced. The Landlord's Agent testified that the day after the first rupture, the Tenant told the Landlord that she left the window open and she feels because of that, that was the reason the pipe froze and the radiator ruptured.
14. It was not until cross examination that the Landlord's Agent said that the day after the second rupture, the Tenant also told the Landlord's Agent that she left the bedroom window open.
15. The Landlord presented into evidence a repair bill from Bertrand Plumbing & Heating in the amount of \$2,847.04 for the replacement of the rad and for labour. The invoice says, "Leak in unit 101 rad, we already replace rad from frozen pipe".
16. The Tenant acknowledges there was a water leak in her rental unit on January 25, 2026, and that she did notify the Landlord's Agent immediately about it. The Tenant says that on that date she did turn off the valve when the water leak was occurring because if she would not have, the water leak would have been substantial. The Tenant denies telling the Landlord's Agent that she left a window open. The Tenant says that she opens the window from time to time to air out the rental unit but never when the temperature is freezing cold out. The Tenant says that when the second leak occurred, her husband was very sick and that she would not have opened the window in the middle of winter in the cold temperature like that.
17. The Tenant testified that she notified the Landlord "early January 2026" because there was water leaking from her radiator and that the radiator was extremely hot. The Landlord's Agent acknowledged that the Tenant did notify her about an issue with the radiator and confirmed that date to be on January 23, 2026. The Landlord's Agent said that she and the plumber attended on January 24, 2026 to investigate the leak and if there was an issue with the thermostat. The Landlord's Agent says that upon leaving the rental unit that day, the plumber remedied the issue.

Analysis

18. In order for an application for compensation for damages made pursuant to section 89(1) of the Act to succeed, the Landlord must establish the following:
 - a) There was property damage to the rental unit or residential complex;

b) The damage is “undue” meaning that it is not normal wear and tear and it is not insignificant; and

c) The damage was a result of wilful or negligent conduct by the Tenant, occupant or guest.

19. If all of these factors are met, then the Board can award the Landlord the reasonable cost to repair, or the replacement costs if it is not reasonable to do so.

20. There is no dispute that there was damage to the rental unit and that the plumber attended on January 31, 2026 to replace the radiator.

21. The issue at hand is whether the Tenant caused the damage to the radiator, willfully or negligently, and is therefore responsible for the cost of the repairs.

22. The standard of proof in proceedings before this Board is “proof on a balance of probabilities.” By that standard, the party bearing the burden of proof must show with evidence that, “more likely than not”, their assertions are true. In this case, it is the Landlord who must prove it is more likely than not that the Tenant, willfully or negligently caused damage to the radiator.

23. The Landlord says that the damage to the radiator was because the pipe froze, and that the pipe froze because the Tenant told the Landlord she left her bedroom window open. The Tenant denies she said this. Here, I am left with competing versions of events. With respect to this claim, the Landlord has the burden of proving that their version of the events (i.e. the material facts) are more likely than not to be true. Absent some corroborating evidence that might tip the scales in favor of the Landlord, where the evidence does not satisfy the standard of balance probabilities, it must fail. I do not have an expert witness, such as the plumber, to testify that the leak occurred because of the pipe freezing as a direct result of the Tenant leaving the window open. The day before the leak occurred, the Tenant reported a maintenance issue to the Landlord about the radiator. Although the Landlord says the issue with the radiator was remedied that day, the radiator ruptured the following day. I have no witnesses to testify that on the date in question, it was observed that the Tenant left their window open. All I have is one word against the other regarding whether the Tenant opened the window. As such, I am not satisfied that the Landlord has met their evidentiary burden of proof and the application must be dismissed.

24. While this order does not refer to each piece of evidence individually, I have reviewed all the evidence and submissions and considered it in rendering my decision.

25. This order contains all of my reasons. No further reasons shall be issued.

It is ordered that:

1. The Landlord’s application is dismissed.

June 30, 2026
Date Issued

Paula West Oreskovich
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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