



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNSD

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for Cause and a Monetary Order for damage to the property; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail, at the rental unit address, on February 19, 2018 and the registered mail was unclaimed.

The landlord also stated that the tenant has been in the hospital since February 13 or 14, 2018. The landlord described how the tenant had been showing signs of significant decline in mental ability and on or about February 13 or 14, 2018 the tenant fell down the stairs at the property. The tenant was taken to the hospital by ambulance and he remains there as of this date. The landlord and resident manager testified that there has been a social worker who is working on behalf of the tenant and has been in communication with the landlord. According to the landlord, the tenant's social worker advised the landlord or manager that the tenant is awaiting placement in a care facility and will not be returning to the rental unit.

The landlord testified that rent has not been received for the months of March or April 2018 but the tenant's possessions remain in the unit and the tenant's vehicle remains in the parking lot on the property.

The landlord stated that he merely wishes to regain possession of the rental unit at this time and withdrew the monetary claim, with the right to reapply.

In the circumstances presented to me, I was of the view the rental unit has been abandoned as provided under section 24(1)(b) of the Residential Tenancy Regulations. I read from certain portions of section 24 to the landlord during the hearing. The

landlord was in agreement that the circumstances are consistent with finding abandonment. Below, I have reproduced section 24 of the Regulations.

### **Abandonment of personal property**

**24** (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

[Reproduced as written with my emphasis underlined]

Where a tenant has abandoned a rental unit, the tenancy comes to an end, as provided under section 44(1)(d) of the Act. Section 44(1)(d) provides:

**44** (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit

Further, if the tenant abandons the rental unit and leaves personal possessions on the property, the landlord may remove the tenant's personal possessions from the property, as provided under section 24(3) of the Regulations. Accordingly, an Order of Possession is not required in such cases.

Upon removal of the tenant's personal property, the landlord has a duty of care toward the tenant and his possessions and the landlord is required to handle the tenant's possessions in accordance with the Regulations. I refer the landlord to sections 25 through 30 of the Regulations for further reference.

### Conclusion

The rental unit has been abandoned and an Order of Possession is not required. The landlord may remove the tenant's possessions from the property in accordance with the Residential Tenancy Regulations.

The landlord's monetary claim is dismissed with leave to reapply. The tenant's security deposit remains in trust at this time, to be administered in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 25, 2018

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Residential Tenancy Branch