



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPC**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Reimbursement of filing fee pursuant to section 72.

The agent for the landlord attended ("the landlord") and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and the landlord was given an opportunity to ask questions about the process.

The landlord was informed that no recording of the hearing was permitted; he testified he was not recording the hearing.

The landlord testified that the tenant was effectively served with the application on April 27, 2021. After service, the tenant died on June 20, 2021. No one has occupied the unit subsequently and the tenant's personal possessions remain there.

Service by Landlord upon Tenant

As the tenant/representative did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

The landlord testified they sent the Notice of Hearing and evidence package by registered mail to the tenant on May 21, 2021 mailed to the tenant's residence, thereby effecting service under section 90 on May 26, 2021. The landlord provided the tracking number for the mailing and submitted copies of the receipts. The landlord also posted the documents to the door of the unit on May 21, 2021. Following the tenant's death on June 20, 2021, the landlord verbally notified the tenant's son, LS, of the hearing.

Section 15 of *Residential Tenancy Policy Guideline #12. Service Provisions* explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

As the landlord testified to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant on May 26, 2021 in accordance with sections 88 and 89 of the *Act*.

Attendance by Tenant or Representative

Neither the tenant nor a representative attended the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 42 minutes. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord testified that to the best of his knowledge, the tenant had one son, LS, whose full name and known contact information appears on the first page. LS was listed as the emergency contact with the landlord.

LS attended at the unit after the death. The landlord testified that he informed LS of this hearing and asked that they provide the landlord with a letter allowing the landlord to dispose of the contents of the unit. LS has not responded.

Amendment of the Landlord's Claim

The landlord requested an amendment to the landlord's claim to include a request for a ruling that the tenant abandoned the unit as well as the tenant's personal property and that the landlord is authorized to seize and dispose of the tenant's personal property which the landlord believed had no value.

The landlord also requested an amendment to the landlord's claim to include a request for a monetary order for outstanding rent and authorization to apply the security deposit to the award.

Pursuant to my authority under section 64(3)(c) of the *Act*, I accordingly amended the landlord's claim as requested.

Background

The landlord provided the following uncontradicted testimony.

INFORMATION	DETAILS
Type of tenancy currently	monthly
Date of beginning	May 1, 2012
Date of ending	Ongoing (tenant deceased June 20, 2021)
Monthly rent payable on 1 st	\$857.00
Security deposit	\$345.00
Pet deposit	None
Outstanding rent at time of hearing	\$857.00

The landlord submitted a copy of the tenancy agreement.

The landlord testified that the tenant was served with the landlord's One Month Notice ("Notice") by posting to the tenant's door April 24, 2021 thereby effecting service under section 90 on April 27, 2021.

The landlord submitted a copy of the Notice. The Notice is in the standard RTB form and lists multiple grounds for ending the tenancy. The Notice states an effective move-out date of May 31, 2021.

The Notice provided that the tenant may dispute the Notice within ten days of service. The tenant did not file a dispute.

The landlord testified the tenant caused multiple disturbances including violence involving the police. The landlord gave the tenant 4 verbal warnings and 3 warning letters. The landlord submitted supporting documentary evidence and affirmed testimony.

The landlord requested a monetary order for outstanding rent and reimbursement of the filing fee as well as authorization to apply the security deposit to the award, as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$857.00
Filing fee	\$100.00
(less security deposit)	(\$345.00)
TOTAL AWARD REQUESTED	\$612.00

The landlord testified that the tenant's son LS is stated to be the tenant's emergency contact on a form signed by the tenant. The only contact information the landlord has is LS's telephone number which appears on the first page. LS has been unable to obtain a mailing address for LS. The landlord has phoned LS and left messages regarding the death of the deceased and disposal of personal property with no response.

The tenant testified that LS attended at the unit in the company of the police to look for the tenant's wallet.

The landlord testified that in his opinion, the personal possessions left by the tenant have no value. The landlord stated he has not been informed of any executor or administration of the tenant's estate and reasonably believes that one will not be appointed in view of the negligible value of the estate.

The landlord requested an Order that the tenant abandoned the unit and personal possessions, an Order of Possession, and a Monetary Order.

Analysis

Order of Possession

I find the tenant is deemed served with the One Month Notice on April 27, 2021.

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and the tenant did not file an application to dispute the Notice within 10 days.

I find the Notice complied with section 52 in terms of form and content.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. I find this tenancy ended May 31, 2021, the effective date of the Notice.

Abandonment of unit

Pursuant to section 44(1)(d) of the Act, a tenancy ends if the tenant abandons the rental unit. When there is a death of a tenant and no action is taken by an administrator or by the estate of the deceased, and the rent hasn't been paid for at least one month, the landlord may view the unit as abandoned.

I find the tenancy ended May 31, 2021 and the unit was abandoned when the tenant subsequently died June 20, 2021.

Abandonment of Personal Property

Part 5 of the *Residential Tenancy Regulation* outlines the rules for abandonment of personal property. A tenant is considered to have abandoned personal property in the following situations:

- The tenancy has ended, and the tenant has moved out.
- They have not paid rent or lived in the rental unit for at least one continuous month.
- They have removed almost all of their personal property.

Under section 24(1)(a), a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property in the unit that they have vacated after the tenancy agreement has ended.

Under section 24(3), if personal property is abandoned as described above, the landlord may remove the personal property from the unit and on removal must deal with it in accordance with this Part.

Section 24(5) outlines the landlord's obligations to store personal property in a safe place for at least 60 days following the date of removal, keep a written inventory of the property and keep particulars of the disposition of the property for 2 years following the date of disposition. The landlord must inform the tenant's representative who requests information of the storage or disposal of the property.

Despite the above, section 24(2) states that the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that:

- a. The property has a total market value of less than \$500.00

- b. The cost of removing, storing, and selling the property would be more than the proceeds of its sale, or
- c. The storage of the property would be unsanitary or unsafe.

Section 24 states as follows:

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.

I accept the landlord's evidence that he has asked the tenant's son LS, believed to be the nearest relative, to remove the personal possessions or to authorize the landlord to dispose of them. I accept the landlord's testimony that LS said he would not be back. I accept that LS told the landlord to dispose of the balance of the tenant's personal possessions.

I find that the landlord informed the tenant's son LS of the hearing. I find that rent for the month of July 2021 was not paid. I find the personal possessions were abandoned and that under section 24(3), the landlord may remove the personal property from the unit and on removal must deal with it in accordance with the Act.

I am unable to determine the value of the personal possessions based on the evidence before me.

Outstanding rent

I find the landlord has established a claim for outstanding rent for July 2021, is entitled to reimbursement of the filing fee, and may apply the security deposit to the award as claimed. My Monetary Order is set out as follows:

ITEM	AMOUNT
Rent outstanding	\$857.00
Filing fee	\$100.00
(less security deposit)	(\$345.00)
TOTAL AWARD REQUESTED	\$612.00

Summary

I find that the landlord is entitled to an immediate Order of Possession, pursuant to section 55 of the Act.

I find the tenant's personal possessions of undetermined value were abandoned, and the landlord must dispose of them in compliance with the Act.

As the landlord has been successful in this application, I grant the landlord an award for reimbursement of the filing fee.

I find the landlord is entitled to a Monetary Order as requested and I award \$612.00.

Conclusion

I grant an immediate Order of Possession to the landlord.

I grant a Monetary Order to the landlord in the amount of \$612.00.

I find the tenant's personal property in the unit was abandoned June 20, 2021. I make no finding as to the value of the property.

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: July 19, 2021

Residential Tenancy Branch