



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

The landlord's agent appeared at the hearing. There was no appearance on part of the tenant despite leaving the teleconference call open approximately 30 minutes.

Since the tenant did not appear, I explored service of hearing materials upon the tenant. The landlord's agent described the following methods of service:

1. Posting the hearing materials to the rental unit door on October 19, 2021. The landlord provided a photograph of the envelope posted to the door and completed a Proof of Service that was also signed by a witness. The landlord's agent stated the hearing materials are still hanging from the door.
2. Registered mail sent to the tenant on October 20, 2021. The landlord provided a Canada Post receipt, including tracking number. A search of the tracking numbers shows that notice cards were left by Canada post and the tenant has not picked up the registered mail.
3. By email, as authorized in a Substituted Service Order, sent on October 26, 2021. The landlord's provided a copy of the email sent to the tenant. The landlord's agent stated there was no reply from the tenant to the email.

Upon consideration of the evidence before me concerning service of hearing materials, I find the tenant was duly served in a manner that complies with the Act, in multiple ways, and I continued to hear from the landlord's agent without the tenant present.

The landlord's agent stated that it appears the tenant has abandoned the rental unit. With respect to abandonment, the landlord's agent submitted that, as of the date of this hearing, the following factors contribute to the landlord's determination of abandonment:

- The tenant has not been at the property since October 6, 2021.
- No rent was paid for October 2021 or November 2021.
- The police entered the unit on October 8, 2021 to perform a wellness check and the police indicated the rental unit looked abandoned.
- The landlord's last communication from the tenant was on October 17, 2021, via text message, where the informed the landlord's agent he would call her the following day but there has been not further contact from the tenant.
- Very few personal possessions were left in the rental unit and that included garbage and beverage containers that were creating a pungent odour and attracting flies. The landlord has removed the garbage to protect the property but the remaining possessions are an older couch and table, a TV, and two garbage bags.
- The tenant did not respond to the Notice of Dispute Resolution Proceeding, or the Substituted Service decision that indicates the tenant may have abandoned the rental unit and/or appear for this hearing to indicate an intention to return to the rental unit.

The landlord's agent appeared familiar with abandoned property rules and stated the landlord shall comply with those rules.

Pursuant to section 44(1)(d) of the Act, where a tenant has abandoned a rental unit, the tenancy is ended. By way of the abandonment the tenant has given up possession of the rental unit and an Order of Possession is not required.

Section 24 of the Residential Tenancy Regulations provides for finding abandonment of a tenant's personal property. It provides, in part:

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 the tenant 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 the tenant has not paid rent, or

(ii) from which the tenant has removed substantially all of the tenant's 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.

In the above describe circumstances, I find the landlord's determination of abandonment to be reasonable. As such, I find it unnecessary to give further consideration to the landlord's request for an order to end the tenancy early due to an immediate and severe risk and an Order of Possession is not required. Therefore, I make no such determination or provide an Order of Possession.

The landlord is at liberty to remove the tenant's personal possession from the rental unit and must deal with the tenant's personal possessions in accordance with the abandoned property rules provided in the Residential Tenancy Regulations.

Conclusion

The rental unit has been abandoned, bringing the tenancy to an end, and an Order of Possession is no longer required. The landlord is to deal with the tenant's abandoned property in accordance with the Residential Tenancy Regulations.

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: November 09, 2021

Residential Tenancy Branch