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Abandonment of a Rental unit

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There may be many occasions where a landlord believes a tenant has abandoned a rental unit. This is especially common when tenants take out of town vacations. It is for this reason it is imperative that you be certain your tenant has abandoned, and it is almost always recommended you apply to the Board under the *Residential Tenancies Act*¹.

While it is not mandatory that a landlord apply to the Board for an Order determining the unit has been abandoned, the risks associated with a wrong assumption are grave. Abandonment and the best practice procedure is well defined in *SWL-14748 (Re)*² where, at para 10, it is stated:

“Abandonment” is the unilateral act by the tenant to relinquish their tenancy and give up possession of the rental unit without properly giving notice of the termination to the landlord. See the Board’s *Interpretation Guideline No. 4 on the “Abandonment of a Rental Unit”*, published January 31, 2007 (the ‘*Guideline on Abandonment*’). The *Act* does not require a landlord to obtain an order of the Board before lawfully treating the rental unit as abandoned, recovering possession of the unit and re-renting it to other tenants. However, treating a unit as abandoned without an order of the Board may expose landlords to substantial risks of liability if they are wrong. If there is uncertainty whether the unit has been abandoned, the landlord may apply to the Board for an order determining the issue. When a landlord applies for an order terminating the tenancy because the rental unit has been abandoned, if the application succeeds, the Board must determine the date on which the abandonment occurred. Of necessity, the date the unit was abandoned will be the date the tenancy terminates in the order that follows.

¹ *Residential Tenancies Act*, 2006, S.O. 2006, c. 17

² *SWL-14748 (Re)*, 2008 CanLII 82445 (ON LTB)

Before applying to the Board, you should make note of s.2(3) which will assist you in determining if the unit is in fact abandoned:

Interpretation, abandoned

For the purposes of this Act, a tenant has not abandoned a rental unit if the tenant is not in arrears of rent. 2006, c. 17, s. 2 (3).

The aforementioned section of the *Act* is further explained by Interpretation Guideline 4:³

Even if there is evidence of abandonment, such as the furniture being removed, the landlord cannot treat the unit as abandoned before the end of the rental period if the rent is fully paid.

So, let's pretend the tenant is in arrears, it is well known that you may apply to the Board for an Order which can later be garnished through the Small Claims Court. This is likely what you are intending to do, so you might as well file it in conjunction with your abandonment application. Right? Wrong! What you are proposing may be completely contradictory. Interpretation Guideline 4 explains why:

... the Board has no jurisdiction to issue an order for rent or compensation if a tenant is no longer in possession of the rental unit (see section 87).

If you expect the Board will determine the tenant abandoned the unit prior to the date you filed your application for rent arrears, you will be presenting an argument that the tenant is no longer in possession of the rental unit, while at the same time maintaining that the tenant was in possession at the time of filing. You may be better proceeding through the Small Claims Court for those arrears.

Let's fast-forward. The Board has ruled in your favour, and it has been determined that the tenant has in fact abandoned the unit. You want to get rid of the belongings the tenant left behind. What do you do?

If there are unhygienic items in the residential unit, you should feel free to dispose of them immediately. Keep in mind, that although your Order allows you to keep, sell, or dispose of the tenant's items 30 days later, if you chose to skip the Board, and relied on only notice to the tenant of your intentions you could be facing liability for up to six months if the tenant returns.⁴

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call a paralegal at Cochrane Moore LLP in Oshawa for a free consultation.

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³ Abandonment of a Rental Unit

⁴ *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 s.41(1&2) & s.42(1-8)