



**Order under Section 79
Residential Tenancies Act, 2006**

Citation: Fernandes v Moore, 2023 ONLTB 42859

Date: 2023-06-08

File Number: LTB-L-025838-22

In the matter of: Basement, 1095 WOODBINE AVE EAST
YORK ON M4C4C6

Between: Ryan Fernandes Landlord

And

Brian Moore Tenant

Ryan Fernandes (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Moore (the 'Tenant') because:

- the Landlord believes that the Tenant abandoned the unit.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 23, 2023.

Only the Landlord and the Landlord's representative Kate Sinipostolova attended the hearing.

As of 10:15 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. This application was filed seeking that the Board determine that the Tenant has abandoned the rental unit and issue an order terminating the tenancy on that basis.
2. The Board's Interpretation Guideline 4 - Abandonment of a Rental Unit explains the concept of abandonment as follows:

Abandonment is a 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. If the landlord is not sure whether or not a rental unit has been abandoned, they may file an application for determination of this issue with the Board; however, it should be noted the Board has no jurisdiction to issue an order for rent or

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compensation if a tenant is no longer in possession of the rental unit (see section 87). In this case, the landlord may seek a remedy by applying to Court.

3. Section 2(3) of the RTA provides that a rental unit is not considered abandoned where the tenant is not in arrears of rent. 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.
4. In this case, the Tenant is in arrears and has not paid any rent as of March 2022. The Landlord testified that the Tenant failed to respond email messages sent on March 24, 27 and 29, 2022. On March 27, 2022, the Landlord and property manager sent the Tenant a message informing the Tenant that they would be attending at the rental unit on March 28, 2022.
5. The Landlord testified that once at the rental unit it was discovered that the lock to the entry door was damaged. The Landlord in an effort to secure the Tenants belongings changed the locks on March 31, 2022. A notice was sent to the Tenant by email and a notice was affixed to the Tenant's door informing him to contact the Landlord for access, the replacement key was being kept safely in the lock box for which a code would be provided.
6. The Landlord testified that the Tenant's unit appeared to have been unoccupied for an extended period. While there were some furnishings left, it appeared as though someone had left in a hurry. The food in the kitchen and fridge was rotten or expired.
7. The Landlord testified that he and the property manager sent the Tenant a text and a letter by email on May 17, 2022 advising him that his personal property would be removed and disposed of and asked that he contact them in this regard pursuant to s. 42(1)(b) of the Residential Tenancies Act (2006).
8. The Landlord finally disposed of the Tenants belongings on June 20, 2022 and re-rented the property sometime in October or November 2022.
9. The Landlord testified that as of the date of the hearing he has not heard from the Tenant.

10. The Landlord made reasonable efforts to contact and locate the Tenant for a couple of months. All of the cumulative evidence, and the untouched state of the Tenant's remaining possessions supports that the Tenant has abandoned the rental unit as alleged by the Landlord.
11. Based on the uncontested testimony from the Landlord as well as the evidence provided, I am satisfied on the balance of probabilities that the Tenant has abandoned the unit.

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It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of June 20, 2022.
2. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
3. If the Tenant does not pay the Landlord the full amount owing on or before June 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 20, 2023 at 6.00% annually on the balance outstanding.

June 8, 2023

Date Issued

Alicia Johnson

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.

