



Order under Section 79 Residential Tenancies Act, 2006

File Number: LTB-L-079910-25

In the matter of: 2204, 7 MABELLE AVE
ETOBICOKE ON M9A 0C9

Between: Emily Fatima Stuart Landlord

and

Joseph Grey McIntosh Tenant

Emily Fatima Stuart (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Grey McIntosh (the 'Tenant') because the Landlord believes that the Tenant abandoned the unit.

This application was heard by videoconference on April 8, 2026.

Only the Landlord and her support person, Gill Gurdeep, attended the hearing.

As of 10:34 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. 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. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the application is dismissed.

Landlord's evidence and Findings – Abandoned Unit

2. The issue before the Board is whether the Tenant has abandoned the rental unit.
3. The Landlord testified that the Tenant has abandoned the unit for the following reasons:
 - On August 28, 2025, the concierge informed the Landlord that police forced entry into the rental unit and arrested "an individual associated with the unit." The concierge staff reported to the Landlord that they had not observed anyone

attending the unit after the incident. The Landlord believes that the Tenant has been in incarcerated since that incident.

- Rent remains outstanding since August 2025.
 - The Landlord served an N6 notice but the Tenant did not respond to the notice or subsequent communication from the Landlord.
 - The Landlord indicated that the Tenant's belongings remained in the unit. The Landlord also stated that she subsequently placed those belongings into storage.
4. The Board's Interpretation Guideline 4 entitled "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 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.

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."

5. In this case I find that while the Tenant has not paid rent he has not given up possession of the rental unit. The leading case on the meaning of "in possession" is the Court of Appeal's decision in *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA) ('Bakker'). It provides at paragraphs 18 to 22:

"...I think the requirement that the tenant be "in possession of the rental unit" at the time of the application reflects a determination that rent arrears disputes can be resolved efficiently and fairly through the Tribunal where the tenant at the time of the application continues to have some connection with the rental unit and, therefore, some relationship with the landlord. Situations where that connection has been severed and the relationship gone are best resolved through the more formal court processes.

Some further assistance in defining "tenant in possession" is found by an examination of s. 86(2). That subsection provides that a landlord may be compensated for "the use and occupation" of a rental unit after notice of termination of the lease. A landlord can only be compensated, however, if the tenant is "in possession of the rental unit" when the landlord's application is made. This suggests that a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.

Possession is a difficult concept to define. Both in common and legal parlance, it connotes some form of control over the thing said to be possessed: e.g. D. Dukelow, B. Nuse, *The Dictionary of Canadian Law* 2nd ed., (1995) Carswell at p. 916; *The Shorter Oxford English Dictionary*, Vol. II (1973) p. 1635. Clearly, possession in s. 86(1)(b) is not limited to immediate physical control. For example, a tenant who locks up a rental unit and leaves on an extended vacation, continues to exercise sufficient control over that rental unit so as to qualify as a "tenant in possession" for the purposes of s. 86(1)(b). In my view, possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit.

There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of that rental unit.

In this case, there was no connection between Bakker and the rental unit at the time the s. 86 application was commenced. Bakker exercised no control over that unit. He had unequivocally, completely, and permanently vacated the unit more than two years before the application."

6. As can be seen from this quote the question of possession is a factual one to be determined on a case by case basis. The Board is to look at each case and determine what sort of control the individual exercises over the unit at the time the application was filed, whether or not he or she had access to it, used it for any purpose, or otherwise had a connection to it.
7. In this case, the facts suggest that the Landlord had no direct knowledge of the alleged arrest or whether the Tenant intends to return to the rental unit. The Landlord testified that she had never personally met the Tenant and had limited direct communication with him during the tenancy. The Landlord relied on information regarding the arrest obtained from concierge staff. However, the concierge staff with direct knowledge of the incident did not attend the hearing to testify, also the police officers who attended the rental unit were not summoned to testify. As a result, all of the Landlord's evidence about these incidents is hearsay. Even if it is established that the Tenant was arrested and remains incarcerated, that fact alone does not establish abandonment because the Tenant may still intend to return to the rental unit once released.
8. The Landlord also testified regarding a utility account associated with the rental unit which remains in the Tenant's name. The Landlord stated that she had been contacted by the utility company on or about August 12, 2025, concerning an outstanding balance of approximately 1 month period. This evidence does not establish that the Tenant has permanently abandoned the unit or relinquished his tenancy and given up possession of the rental unit. As the Tenant continues to be in possession of the rental unit, the Landlord is entitled under the Act to seek an order for termination of the tenancy due to rent arrears.

9. Given all of the above, I am not satisfied the Tenant has abandoned his tenancy.

It is ordered that:

1. The Landlord's application is dismissed.

June 5, 2026
Date Issued

Adeela Alvez
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.