

Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

Section 79 of the *Residential Tenancies Act, 2006* (the "RTA") states:

If a landlord believes that a tenant has abandoned a rental unit, the landlord may apply to the Board for an order terminating the tenancy.

Although section 79 explains how the landlord may receive an order terminating the tenancy in cases where the tenant has abandoned the unit, it is not mandatory for this type of order to be issued for the landlord to treat the unit as abandoned. However, there is a substantial risk in re-renting the unit without such an order unless it is clear that the tenant has vacated and does not intend to continue the tenancy.

This Guideline is intended to provide guidance in determining if the unit has been abandoned.

When May the Unit be Considered to be Abandoned?

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.

Evidence of Abandonment

If there is rent due, there must still be substantial evidence of abandonment before the landlord can re-rent the unit or deal with the tenant's property that is remaining in the unit. There are circumstances where the evidence is clear. For example, the tenant may tell the landlord or the superintendent that they are moving out. The tenant may be seen in the process of moving out of the building, and later the door of the unit is found open, showing that all furniture and personal effects were removed. Provided there is no evidence to the contrary, this evidence would support a finding that the tenant has abandoned the rental unit.

The evidence may also be cumulative; there may be several indications that the tenant has left the unit. For example, a neighbour has reported that they saw the tenant moving and the tenant advised the landlord that they intended to leave, or the tenant was known to have accepted a job in another city and the mail has not been collected for a number of weeks. In such circumstances, the landlord may be justified in considering the unit to be abandoned.

The landlord should make reasonable efforts to contact the tenant to determine if they have left the unit (for example, by writing the tenant or calling them at different times each day). The landlord should give the tenant a reason to reply to a letter and should keep notes of the times and dates that they telephoned. The failure of the tenant to respond to the letters and telephone calls should be consistent with the abandonment of a unit and not with a tenant who is on vacation or out of town on business.

If the unit has been abandoned, in accordance with subsection 42(1), the landlord may dispose of any of the tenant's property found in the unit provided that one of the following conditions is met:

1. The landlord applied to the Board and obtained an order terminating the tenancy based on the abandonment of the rental unit.

OR

2. The landlord gave a notice to the tenant and to the Board stating that the landlord intends to dispose of the property if the tenant does not claim the property within 30 days of the notice being given.

If either of these conditions has been met, the landlord may immediately dispose of anything unsafe or unhygienic and, after 30 days following the issuance of the order or the

giving of the notice, may dispose of any other tenant belongings. If a tenant does claim the belongings within the 30 day period, they must pay the landlord any arrears of rent and any reasonable costs of moving, storing and securing the property.

If the landlord sells the property, the tenant has 6 months - from the date of the order or from the date the landlord gave notice of their intention to dispose of the property - to claim the proceeds of the sale. The landlord is allowed to deduct from the proceeds of the sale any arrears of rent and any reasonable costs incurred in the moving, storing, securing or selling of the property.

Application to Determine if the Tenant has Abandoned the Unit

If the landlord applies to the Board under section 79, the application must be served on the tenant in accordance with section 191.