

DECISION

Dispute Codes OPT, OPB, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant filed his Application requesting an order of possession for the rental unit and has asked in his Application for: "Decision on whether this agreement is valid on basis I have been made both tenant & landlord on the form." [Reproduced as written.]

The Landlord has applied for an order of possession based on a breach of an agreement with the Landlord and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Is the Landlord entitled to the relief sought?

Background and Evidence

This tenancy began on June 1, 2010, with the parties entering into a written, one year term tenancy agreement.

Shortly after the Tenant moved in the Landlord received a call from a bail supervisor for the Tenant. The bail supervisor informed the Landlord that a letter would have to be distributed to other residents in the complex warning about the Tenant's bail conditions.

According to the testimony of both parties, the Tenant has apparently been charged with an offence, which required as one of the bail conditions, that the Tenant not have contact with persons under 18 years of age, excluding his own children.

The Agents for the Landlord approached the Tenant on June 10, 2010, and explained the information they had received from the bail supervisor and that a letter would be going out to the other residents about the Tenant. The Agents for the Landlord offered the Tenant a Mutual Agreement to End Tenancy to sign, to be effective for June 30, 2010 (the "Mutual Agreement").

The Tenant signed the Mutual Agreement on June 10, 2010. The day after signing the Landlord provided the Tenant with a copy of the Mutual Agreement. The parties then noticed that in the portion of Mutual Agreement where the Landlord's name is supposed to be set out, the Landlord has instead inserted the name of the Tenant. The address of the Landlord is correct, as is the other information pertaining to the Tenant and rental unit.

On June 11, 2010, the Tenant filed his Application for Dispute Resolution and in the details of the dispute wrote: "Decision on whether this agreement is valid on basis I have been made both tenant & landlord on the form." [Reproduced as written.]

At the outset of the hearing the Tenant's Advocate explained that the Tenant was disputing the Mutual Agreement on two grounds; he was alleging the Mutual Agreement was void due to the Tenant's name being inserted where the Landlord's name should be, and because he had signed the Mutual Agreement under duress.

The Tenant testified that when he came to his rental unit on June 10, 2010, two Agents for the Landlord were there. He described one of the Agents as being a large man.

The Tenant testified he felt intimidated and he was exhausted from moving in. He explained he suffers from a disability and was on medication, and he felt stressed out. He testified that he felt he had to sign the document. He testified he knew what the document was, though he was unsure of what the bail supervisor had told the Landlord.

When queried, the Tenant testified he was not overtly threatened by the Landlord's Agents, but he felt like he had to sign the Mutual Agreement. He felt like if he did not sign they would not leave his rental unit. He testified he thought this based on the body language of the Agents, however, he testified the Agents did not threaten him or tell him they would not leave unless he signed.

He testified he phoned a lawyer after signing and he was apparently told by the lawyer that he did not have to sign the Mutual Agreement and that it was likely void because of

the Tenant's name being inserted instead of the Landlord's. He testified he phoned the bail supervisor to find out what had been said to the Landlord.

The Tenant testified he asked the Landlord to withdraw the Mutual Agreement and the Landlord refused. He also testified that on June 14, 2010, the Landlord had offered him financial compensation if he moved. The Tenant was allowed to think this offer over, however, on the following day he refused the offer. He testified that he did not want to take the Landlord's offer because he thought it was a bribe. The Tenant also testified that apparently his lawyer had explained to him that he may be able to change the conditions of his bail.

The Advocate for the Tenant submitted that the Tenant was not a sophisticated party and there was an inequality of bargaining power between the Landlord's commercial property manager (the Agents) and the Tenant. The Advocate explained the Tenant was not allowed to seek legal advice prior to signing the Mutual Agreement. I note there was no testimony from the Tenant that he had requested legal advice or time to think over the Mutual Agreement before he signed it.

The Agents for the Landlord submitted that the Tenant was well aware of the contents and effect of the Mutual Agreement when he signed it. They submitted the Tenant signed the Mutual Agreement in good faith, but later changed his mind about moving.

The Agents for the Landlord further submitted that they consider the Tenant to have had the balance of power in these circumstances, as he knew the conditions of his bail prior to entering into the tenancy and moving into the complex. He did not disclose these conditions to the Landlord before he entered into the tenancy. The Agents testified that the 80% of the residents of the complex are composed of young families. They testified that had the warning letters gone out to the other residents, the Tenant would have become, "... a pariah", in the community.

The Landlord has alleged in their Application and testimony and evidence, that the Tenant breached the Mutual Agreement by failing to take steps to move out of the rental unit and by disputing the Mutual Agreement. They requested an order of possession based on the alleged breach.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

Despite the typographical error, I find the Mutual Agreement to End Tenancy is valid to end the tenancy and therefore, the Tenant is required to vacate the rental unit at **1:00 p.m. on June 30, 2010**. I dismiss the Tenant's Application.

There is no evidence before me that the typographical error of inserting the Tenant's name into the box where the Landlord's name was to appear prejudices the Tenant in any manner. The address for the Landlord is correctly set out, as is all other information in the Mutual Agreement pertaining to the rental unit, Tenant and the Landlord. The Tenant was well aware of who his Landlord is in this matter. He has not shown there was any prejudice to him due to this obvious error.

Based on his testimony and all the evidence, I also find the Tenant signed the Mutual Agreement voluntarily and of his own free will. I further find that the Tenant understood that by signing the Mutual Agreement he was agreeing to vacate the rental unit.

I do not find the Tenant was threatened with any unlawful consequences if he refused to sign the Mutual Agreement. The consequences of not signing the Mutual Agreement, that of a warning letter about the Tenant going to other residents of the property, was a result of the conditions of his release on bail. There is no evidence before me that this would have been an unlawful consequence had the Tenant refused to sign.

I also note that the Tenant testified he talked to a lawyer shortly after signing the Mutual Agreement. By his testimony, this conversation occurred before he filed his Application. Again, based on the Tenant's testimony, he used the information he received from the lawyer to complete his Application to question the validity of the Mutual Agreement due to the typographical error. Therefore, I query that had the Tenant believed that he had signed under duress, would it not be more likely he would have discussed duress with the lawyer at that time, rather than just the typographical error? Had he discussed duress, then why did he not allege duress in the Application he filed after talking to this lawyer? This, as well as the above reasons, led me to conclude the Tenant did not sign the Mutual Agreement under duress.

At the end of the hearing following dismissal of the Tenant's claim, the Agents for the Landlord orally requested an order of possession. Under section 55 of the Act, I must grant that request. I grant and issue an order of possession for the rental unit **effective at 1:00 p.m. June 30, 2010**. This order may be enforced in the Supreme Court of British Columbia.

As the Landlord has been successful in this matter, it may recover the filing fee for the Application by keeping **\$50.00** from the Tenant's security deposit.

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: June 29, 2010.

Dispute Resolution Officer