



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause. It is apparent from information in the Application for Dispute Resolution that the Tenant is actually seeking to set aside a mutual agreement to end the tenancy, and the Application for Dispute Resolution has been amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether a mutual agreement to end this tenancy should be set aside.

Background and Evidence

The Landlord and the Tenant agree that the tenancy in this particular rental unit began on March 01, 2000 and that the Tenant is currently required to pay monthly rent of \$22.00.

The male Agent for the Landlord stated that he advised the Tenant that she would be served with a One Month Notice to End Tenancy following an incident involving the Tenant's child. He stated that she expressed concern about moving and he told her that in the past people have been permitted to extend their tenancy if they enter into a mutual agreement to end the tenancy, but that he did not have authority to enter into an agreement of that nature with the Tenant.

The Tenant stated that the male Agent for the Landlord told her that the Landlord was planning on evicting her with one month's notice; that she told the male Agent for the Landlord that she would have to "go to arbitration"; and that he told her he would talk to the female Agent for the Landlord about the possibility of the parties entering into a mutual agreement to end her tenancy. She stated that she did not believe that the

Landlord had cause to end her tenancy but she signed the mutual agreement to end the tenancy because she did not believe she would have time to find a new home if she was evicted with one month's notice. She stated that sometime in June of 2010 she went to the office and agreed to sign a mutual agreement to end the tenancy.

The female Agent for the Landlord stated that the Tenant came to her and asked to enter into a mutual agreement to end tenancy rather than being served with a One Month Notice to End Tenancy for Cause because she wanted more time to find alternate rental accommodations. She stated that the parties signed a mutual agreement on June 28, 2010.

The Tenant submitted a copy of a Mutual Agreement to End Tenancy, which is signed by the Tenant and the female Agent for the Landlord, which indicates that the tenancy will end on August 31, 2010.

The Tenant contends that she signed the mutual agreement to end tenancy under duress, as she understood that she would be served with a One Month Notice to End Tenancy for Cause if she did not mutually agree to end the tenancy. The Tenant contends that she suffers from an anxiety disorder which makes it difficult for her to make decisions.

The Tenant submitted a note from a physician who stated that the Tenant has a history of anxiety; that she would need time to make a decision regarding moving; and that pressure to sign an agreement would place her under an "unfair amount of stress".

The Tenant stated that she did not understand that she had the right to dispute a Notice to End Tenancy for Cause and that she had not consulted with an advocate or the Residential Tenancy Branch before signing the mutual agreement to end the tenancy.

The Tenant contends that she is a valuable member of this residential community, that a move would be detrimental to her children, and that she does not have the financial resources to move.

Analysis

Section 44(1)(c) of the Act stipulates that a tenancy ends when the landlord and the tenant agree in writing to end the tenancy. The undisputed evidence is that the Tenant and the Landlord mutually agreed, in writing, to end this tenancy on August 31, 2010. I find that this mutual agreement to end tenancy is binding on both parties.

I cannot conclude that the Tenant signed this agreement under duress. Black's Law Dictionary defines "duress" as an unlawful threat or coercion to act (or refrain from acting) in a manner he or she otherwise would not (or would). In these circumstances, the mutual agreement to end the tenancy arose after the Landlord advised the Tenant of its intent to serve the Tenant with a One Month Notice to End Tenancy for Cause.

A landlord has the right to serve a One Month Notice to End Tenancy, pursuant to section 47 of the *Act*. Once served with a One Month to End Tenancy for Cause, a tenant has the right to file an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy, pursuant to section 47(4) of the *Act*.

In these circumstances the Tenant elected to enter into a mutual agreement to end the tenancy, which afforded her the benefit of having more time to find new accommodations in the event that an attempt to dispute the Notice to End Tenancy for Cause was unsuccessful. The mutual agreement to end the tenancy was beneficial to the Tenant and I find that she entered into that agreement of her own free will, albeit she entered into it because she understood that the Landlord was planning on serving her with a Notice to End Tenancy.

I have no reason to conclude that the Landlord was serving the Notice to End Tenancy for the purposes of enticing the Tenant into signing a mutual agreement. Rather, I find that the Landlord believes the tenancy should end and they were attempting to end the tenancy congenially, by giving the Tenant more time to find a new home and by avoiding the .

While I accept that the Tenant suffers from an anxiety disorder, I find there is insufficient evidence to cause me to conclude that the disorder renders her incapable of entering into a legal contract. I find that she had time to consider her decision to enter into the agreement between the time the male Agent for the Landlord advised her that she was to be served a Notice to End Tenancy and the time she approached the female Agent for the Landlord and told her she wanted to enter into a mutual agreement to end the tenancy. Given that she had time to consider her decision and to seek advice, I cannot conclude that the Landlord was pressuring or coercing her to sign the mutual agreement or that she was under an “unfair amount of stress”.

In determining this matter I placed no weight on the Tenant’s testimony that she did not understand that she had the right to dispute a Notice to End Tenancy for Cause. Ignorance of the law cannot be relied upon as a defense. The Residential Tenancy Branch offers free advice, both online and by telephone, and the Tenant had time to seek advice before signing the mutual agreement. At any rate, I am not entirely convinced that the Tenant did not understand her right to dispute a Notice to End Tenancy, as she testified that she told the male Agent for the Landlord that she would have to “go to arbitration” when he told her of the Landlord’s intent to end the tenancy.

In determining this matter I have placed no weight on the contribution the Tenant has made to this residential community, the impact a move will have on her children, or the Tenant’s finances, as those issues do not relate to the validity of the agreement to end the tenancy.

Conclusion

As I have determined that the Landlord and the Tenant entered into a binding mutual agreement to end this tenancy, I am dismissing the Tenant's application to set aside the mutual agreement and I will grant the Landlord an Order of Possession, as requested at the hearing, that will be effective on October 31, 2010.

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: September 28, 2010.

Dispute Resolution Officer