



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with a tenant's request to set aside a Mutual Agreement to End Tenancy. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

After hearing from both parties with respect to the enforceability of the signed Mutual Agreement to End Tenancy and providing my findings orally, the parties reached mutual agreement that I have recorded by way of this decision and the Orders that accompany it.

Issue(s) to be Decided

1. Is there a basis to set aside the Mutual Agreement to End Tenancy?
2. What are the terms of the mutual agreement reached during the hearing?

Background and Evidence

The tenancy commenced in 1996 and the tenant is currently required to pay subsidized rent of \$320.00 on the 1st day of every month. The landlord is a society that has an operating agreement with BC Housing.

On May 7, 2013 both the tenant and an agent for the landlord signed a Mutual Agreement to End Tenancy (the Mutual Agreement). The Mutual Agreement indicates the tenancy shall end at 2:00 p.m. on June 30, 2013.

The tenant's counsel submitted that the Mutual Agreement should be set aside because it was presented to the tenant by the landlord in bad faith and the tenant felt forced to sign the document. In particular, landlord's agent told the tenant that:

- If he did not sign the Mutual Agreement he would be served with a 1 Month Notice to End Tenancy for Cause; and,
- Receiving an eviction notice would interfere with his ability to secure a subsidized rental unit in the future.

Further, the landlord has not proven the tenant acted in such a way as to warrant receiving a 1 Month Notice to End Tenancy for Cause.

The operations manager and health services liaison acknowledged that on May 7, 2013 they communicated to the tenant that the landlord wanted to end his tenancy. The operations manager discussed with the tenant the option of signing a Mutual Agreement to End Tenancy or receiving a 1 Month Notice to End Tenancy for Cause. The tenant signed the Mutual Agreement to End Tenancy.

The landlord confirmed that negative interactions with tenants must be recorded in the BC Housing database and that a 1 Month Notice may make the tenant's ability to obtain future housing with BC Housing more difficult. The landlord acknowledged informing the tenant of this in their discussions with the tenant.

After informing the parties that I was satisfied the Mutual Agreement was not signed under duress and that the Mutual Agreement would stand I was able to help the parties reach a mutual agreement that I have recorded as follows:

1. The tenant shall be provided occupancy of the rental unit until July 31, 2013;
2. The tenant shall pay rent for the month of July 2013; and,
3. The tenant shall have no further contact, direct or indirect, with the tenant occupying the rental unit above the tenant's unit.

Analysis

As this dispute involved a Mutual Agreement and not a Notice to end Tenancy for Cause, the landlord does not bear the burden to prove the tenancy should end for cause. Rather, the issue to determine is whether the tenant signed the Mutual Agreement under duress.

Duress is where a person does something they would not otherwise do as a result of violence, confinement or threat by another person. Where it is shown that a document was signed under duress the document is no longer enforceable.

In this case, the landlord determined that it wanted to end the tenancy and the landlord presented the tenant with the available options under the Act, including: ending the tenancy by way of a mutual agreement or proceed with an eviction process.

I find it to be reasonably likely that an eviction notice on the tenant's BC Housing record would have a negative impact on the tenant's ability to rent another unit from BC Housing in the future. Thus, I accept that providing this information to the tenant is not a threat, but instead, is important information for the tenant to consider. I am satisfied the tenant made a reasonable choice at the time at the time of signing the Mutual Agreement, on his own free will to as to preserve the possibility of obtaining housing with BC Housing in the future. Changing one's mind or discovering other options may have existed after a document is signed is not a basis to set aside the document.

For the reasons set out above, I find no basis to conclude the Mutual Agreement is invalid or unenforceable. Therefore, I dismiss the tenant's request to have the Mutual Agreement set aside.

With respect to the mutual agreement reached by the parties during the hearing, section 63 of the Act provides me the authority to assist parties in reaching a settlement agreement during a hearing and to record a settlement agreement in the form of a decision or order.

I have recorded and accepted the mutual agreement reached by the parties during this hearing and make the terms an Order to be binding upon both parties. In recognition of the mutual agreement I provide to the landlord with this decision an Order of Possession effective July 31, 2013.

Conclusion

The tenant's request to cancel the Mutual Agreement to end Tenancy is dismissed. The parties have reached a mutual agreement that I have recorded in this decision. In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective July 31, 2013.

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 19, 2013

Residential Tenancy Branch

