



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SAH PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPM

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for an order of possession on the basis of a mutual end to tenancy pursuant to section 55.

The tenant appeared. The landlord's agent (the agent) appeared. Both were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The tenant confirmed that he had received the landlord's dispute resolution package, including all evidence before me. The tenant confirmed that he had reviewed the landlord's evidence.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the mutual end to tenancy?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began in 2004. Current monthly rent is \$1,550.00.

At 1551 on 22 April 2015 the landlord's agent, SM, and the tenant signed a Mutual Agreement to End a Tenancy (the Agreement). The Agreement was recorded on the 2014 version of Form #RTB-8. The Agreement set out that the tenant agreed to vacate the rental unit at 1300 on 1 July 2015.

The tenant testified that, on 22 April 2015, a man in a bailiff uniform attended at the rental unit. The agent confirmed that this individual was SM. The tenant testified that SM provided him with a form. The tenant testified that SM told the tenant that by signing the form he would get to stay in the rental unit an extra two months. The tenant testified that he did not read the form. The tenant testified that he felt like he was put under pressure to sign and that he did not have his reading glasses with him at the time.

The tenant submits that the Agreement amounts to a "renoviction" by the landlord. The tenant testified to health related issues and personal circumstances that the tenant submits have caused him to be under mental duress. The tenant did not provide evidence that he suffered from any mental disability other than concussions, which have caused issues with the tenant's short-term memory.

### Analysis

In accordance with section 44 of the Act, a periodic tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree in writing; or
- the tenant abandons the rental unit.

The tenant and landlord agreed in writing that the tenancy would end on 1 July 2015.

The tenant has submitted that his "duress" releases him from the Agreement. The Supreme Court of British Columbia provides an instructive description of the defence of duress in *Jestadt v Performing Arts Lodge Vancouver*, 2012 BCSC 1337 (aff'd 2013 BCCA 183):

[54] The essential elements of duress were succinctly stated in *Lei v. Crawford*, 2011 ONSC 349 (CanLII) at para. 7, as follows:

Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner.

Duress can be either physical or economic. Physical duress involves threats against a person or property. Economic duress arises where a person has no practical alternative but to sign the agreement.

The tenant has not provided any evidence of any threat being made. The tenant has not provided any evidence that he had no alternative but to sign the Agreement. The tenant testified that SM attended at the rental unit in a bailiff uniform. I was not provided with any evidence that SM is not entitled to wear such a uniform. I understand that this may appear intimidating, but the tenant has not provided evidence that the landlord or its agents applied coercion of the tenant's will in a manner that is unfair, excessive or coercive such that the tenant's decision to sign the Agreement was not voluntary.

There is no statutory basis in the Act for a tenant to rescind a mutual agreement to end a tenancy once made. The tenant has not provided any contractual basis for rescission. The tenant testified that SM told the tenant that the Agreement would allow him to continue to reside in the rental unit for two more months. That is precisely what the Agreement permitted. There is no evidence provided by the tenant of any misrepresentation by SM. The tenant is not entitled to rescind the Agreement.

Pursuant to paragraph 55(2)(d) of the Act a landlord may make a request for an order of possession where "the landlord and tenant have agreed in writing that the tenancy is ended". The landlord is entitled to possession of the rental unit on the effective date set out in the Agreement, 1 July 2015.

### Conclusion

The landlord is provided with a formal copy of an order of possession effective 1300 on 1 July 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 10, 2015

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Residential Tenancy Branch

