



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, O

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act"):

The Tenant applied for:

1. Other.

The Landlord applied for:

1. An Order of Possession - Section 55.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed that "Other" is in relation to the Tenant seeking to set aside a mutual agreement to end tenancy.

Issue(s) to be Decided

Should the mutual agreement to end the tenancy be set aside?

Is the Landlord entitled to an order of possession?

Relevant Background and Evidence

The tenancy started on August 1, 2012. Rent of \$195.00 is payable monthly on the first day of each month. On March 16, 2015 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the "Notice"). The Notice indicates that it was issued for repeated late payment of rent and carries an effective move-out date of April 17, 2015. The Landlord later became aware that this move-out date was incorrect and should have read April 30, 2015. After service of the Notice and on the same day the Parties entered into a mutual agreement to end tenancy (the "Agreement") on June 30, 2015.

The Tenant states that she signed the Agreement under duress and asks that it be set aside.

The Tenant states that the discussion between the Parties at the time of signing the agreement

held no negativity or threatening tone. The Tenant states that she was in shock at the time and that a later date was negotiated as she needed more time to find another rental. The Tenant states that after being told by the Landlord that a dispute of the Notice would fail and that she would then be put on a "bad renters list" the Tenant signed the Agreement. The Tenant states that she had never heard the term "bad renters list" before but that this scared her as she believed that finding new housing would become impossible.

The Landlord states that the Tenant requested the mutual agreement as the Tenant required more time due to the schooling needs of the Tenant's children. The Landlord states that she did not use the phrase "bad renters list" but that this phrase is commonly used term by other people. The Landlord states that she told the Tenant that the subsidy agency would be informed of how the tenancy ends. The Landlord states that this information was suggested to the Tenant as a detriment but that it was stated to the Tenant after the mutual agreement was signed. The Landlord states that it must supply reasons for the end of subsidized tenancies to BC Housing but does not know how this agency uses the information.

The Tenant states that based on what the Landlord said and the fact that there was so little time the Tenant felt that she had no choice and had to sign immediately. The Tenant agrees that she told the Landlord prior to signing that she was comfortable with signing the Agreement and states that saying otherwise would not have made a difference. The Tenant states that because her children attend school in the area she needs nearby housing. The Tenant states that the high rents will also provide a significant challenge to finding alternative housing.

The Landlord states that they have tried to work with the Tenant over the length of the tenancy to get the Tenant to pay her rent on time. The Landlord requests an order of possession and is agreeable to extending the move-out date to the end of August 2015.

Analysis

Based on the undisputed evidence that the Parties entered into an agreement to end the tenancy after the provision of the Notice, I find that the Notice was replaced and is therefore no longer effective or valid.

Duress occurs where a wrongful act or conduct of a person coerces or induces another person into doing something that otherwise would not have been done. Although I accept that the Tenant was under pressure when the Notice was served, I find the Landlord's evidence of trying to help the Tenant over the length of the tenancy to be credible. I also accept the Landlord's equally credible evidence of the circumstances surrounding the signing of the agreement. Considering as well the Tenant's evidence that there was no threatening and that the Tenant informed the Landlord at the time of signing the agreement that she was comfortable, I find that the Tenant has not substantiated that she was either coerced or under duress when signing the agreement. As such I dismiss the Tenant's claim to set aside the mutual agreement and I provide an order of possession to the Landlord effective August 31, 2015.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on August 31, 2015.

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 10, 2015

Residential Tenancy Branch

