



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, O, OPB, OPM, FF

Introduction

In the first application the tenant seeks a repair order and to cancel or not enforce a provision in the tenancy agreement requiring the tenant to vacate the premises at the end of the fixed term tenancy.

At hearing the tenant and her witness confirmed that the repairs, a plugged toilet, have been completed and an order is no longer required in that regard.

In the second application the landlord seeks an order of possession pursuant to the tenancy agreement and pursuant to a Mutual Agreement to End Tenancy and to recover the filing fee.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that this tenancy has ended and that the landlord is entitled to an order of possession?

Background and Evidence

The rental unit is a bachelor apartment in a subsidized housing apartment building.

There is a written tenancy agreement showing that the tenancy started June 6, 2013 for a fixed term ending April 30, 2015. The monthly rent is \$385.00, due on the first of each month, in advance. The landlord holds a \$300.00 security deposit and a \$100.00 pet damage deposit.

The tenancy agreement provides that at the end of the fixed term the tenant must vacate the premises. The landlord and tenant initialed that provision of the agreement.

The landlord posted letters on the tenant's door March 13 and April 13, 2015 reminding the tenant of the end of her tenancy April 30, 2015. The April letter stated that "there will be no consideration of extending" the fixed term lease after April 30th and directing the tenant to her responsibility to see that the premises were clean and free of damage.

The tenant did not vacate the premises by April 30th. She testifies that it came as a surprise to her when the landlord's representatives showed up on April 30th expecting her to be leaving.

Claiming previous wrongful entries by the landlord, the tenant barricaded her door. The police showed up in force, on a tip that the tenant was suicidal. The tenant thinks it was a ploy by the landlord. The landlord's representative denies that any landlord's representative called the police.

On May 1, 2015 the parties signed a "Mutual Agreement to End a Tenancy" in form provided for that purpose by the Residential Tenancy Branch. It indicated that the tenancy would end May 15, 2015 at 12:00 p.m..

The tenant claims that, on reflection, she was forced to sign the mutual agreement because the landlord's representatives had been threatening her that a bailiff would come and remove her belongings and arrest her for trespassing without any further notice if she did not sign.

The tenant's witness, her boyfriend who spends about five nights a week at the rental unit, says he was there when the tenant signed the mutual agreement and that she was under duress.

The landlord's representative denies any duress and notes that the mutual agreement was signed after the police had left and was signed based upon the tenant's assertion that she had found other accommodation commencing May 15th. The landlord filed a note from a new landlord J.C. confirming that the tenant and her boyfriend were moving into that landlord's rental accommodation on May 15th. The note included a deposit receipt dated May 3rd.

Analysis

On the evidence I find that the tenancy agreement makes it is clear that this tenancy was to end April 30, 2015 and that the tenant had to leave by then. The two letters from the landlord dated March 13th and April 13th could leave no doubt about the matter in the tenant's mind.

However, it is apparent from the landlord's position, that this tenancy did not end on April 30, 2015 but that there was an extension of 15 days to permit the tenant to move.

The question therefore is whether or not that mutual agreement was enforceable or whether it was obtained from the tenant under duress and is therefore a voidable agreement.

An often cited statement of the law regarding the defence of duress can be found in the BC Court of Appeal decision in *Byle v. Byle*, (1990 CanLII 313 (BC CA), 65 DLR (4th) 641; 46 BCLR 292; [1990] BCJ No 258 (QL)),

I begin with the law laying down the proper approach to these issues. There is a helpful passage in Lord Scarman's judgment in *Pao On and others v. Lau Yiu* and another at 78:

Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J. in *The Siboen* and *The Sibotre* that in a contractual situation commercial pressure is not enough. There must be present some factor "which could in law be regarded as coercion of his will so as to vitiate his consent". This conception is in line with what was said in this Board's decision in *Barton v Armstrong* by Lord Wilberforce and Lord Simon of Glaisdale, observations with which the majority judgment appears to be in agreement. In determining whether there was a coercion of will such that there was no true consent, it is material to enquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are, as was recognised in *Maskell v Horner*, relevant in determining whether he acted voluntarily or not.

An excellent statement of the law on ratification or affirmation is found in reasons of Vogel J. delivering the judgment of United States Court of Appeals, 8th circuit, in *Diffenderfer v. Heublein Inc.*, 412 F.2d 184, 188 (1969):

This court was presented with a not dissimilar controversy in *Gallon v. Lloyd-Thomas Co.*, 8 Cir., 1959, 264 F.2d 821, 77 A.L.R.2d 417, where Judge Matthes said:

"Did plaintiff ratify the contract as a matter of law? Appellee insists that in view of plaintiff's actions and conduct, and his attitude toward the contract following its execution, the question must be answered in the affirmative. We agree. In resolving this crucial issue, we are mindful of the well-established principle of law that a contract entered into as the result of duress is not void, but merely voidable, and is capable of being ratified after the duress is removed. Ratification results if the party who executed the contract under duress accepts the benefits flowing from it or remains silent or acquiesces in the contract for any considerable length of time after opportunity is afforded to annul or void it. 17A Am.Jur., Duress and Undue Influence, s.26; Restatement of the Law of Contracts, Vol. II, ss.499 and 484; Annotation 35 A.L.R. 866; *Oregon Pac. R. Co. v. Forrest*, 128 N.Y. 83, 28 N.E. 137; *Greenpoint Nat. Bank v. Gilbert*, 237 N.Y. 19, 142 N.E. 338; *Maisel v. Sigman*, 123 Misc. 174, 205 N.Y.S. 807, 814; Application of Minkin, 279 App.Div. 226, 108 N.Y.S.2d 945, 953-954, affirmed 304 N.Y. 617, 107 N.E.2d 94. An essential element in the doctrine of ratification is intention: indeed, it has authoritatively been said that it is " * * * at the foundation of the doctrine of waiver or ratification."

In this case the evidence does not prove that there has been "a coercion of will such that there was no true consent." There is no evidence that the tenant protested over the agreement. It is debatable whether or not the tenant has an alternate remedy available to her on May 1, 2015 when she signed the agreement. Arguably she could have not signed the mutual agreement and not moved out, thus forcing the landlord to exercise other legal remedies involving bailiffs and the physical taking of possession of the premises. The tenant was not independently advised about signing the mutual agreement.

After signing the mutual agreement the tenant took no apparent steps to avoid it. Indeed, she took steps to ratify it. She obtained (or had obtained) the necessary confirmation from her new landlord and had paid deposit money to the new landlord. The tenant stated at hearing that in early May she had a place to move to but it "fell through at the end."

On this evidence I find that the tenant was not under duress when she signed the Mutual Agreement to End a Tenancy. As a result of that mutual agreement, this tenancy ended on May 15, 2015.

The tenant says that the landlord as the operator of subsidized housing, should have helped find a new place to live. Neither the *Residential Tenancy Act* nor any tenancy agreement provision referred to at hearing imposes such a legal obligation on the landlord.

Conclusion

As a result of the Mutual Agreement to End a Tenancy, this tenancy has ended. The tenant no longer has the right to occupy the premises. The landlord is entitled to and I grant an order of possession.

The landlord is entitled to recover the \$50.00 filing fee for this application. I authorize it to retain \$50.00 from the security deposit it holds, in full satisfaction of the fee.

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 25, 2015

Residential Tenancy Branch

