



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O FF

Introduction:

Both parties attended the hearing and the landlord agreed he personally received the tenant's Application for Dispute Resolution. I find it was served legally pursuant to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To order the changes to their lease agreement that were made under unreasonable pressure be voided and the lease revert to the original term; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Should the expiry date of the tenant's lease be changed back to the original agreement?
Are they entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. They both agreed that they entered into a tenancy agreement on January 6, 2016 with a fixed term lease expiring February 1, 2018 and reverting to month to month thereafter. Rent was \$1700 plus 2/3 of the hydro and gas and a security deposit and pet damage deposit, each in the amount of \$850 were paid. The tenant said that 10 days after they moved in, they got a text from the landlord requesting that they meet. The mother met him and he presented a Mutual Agreement to End Tenancy to be signed and told them that he had problems with a medical emergency, he had to go overseas and he had financial difficulty. They refused to sign the Mutual Agreement. On February 11, 2016, he began to send emails pressuring them to end their tenancy.

The tenants said the landlord then gave them a handwritten letter to end their tenancy on April 30, 2016 citing personal issues on mortgages and leaving the country. The mother said she was crying and he said if he defaulted on the mortgage, the bank would

evict them anyway. The tenant said she was going to the tenancy branch on the matter and he offered them money to leave. She said the amount that might have compensated them was about 7 months rent for ending the tenancy before the term. However, they did not want money but want to stay. It is stressful and difficult for them to move and very stressful to be pressured to leave.

In June, the tenant said, the landlord gave a 24 hour Notice to Enter for repair. When he came, he said there were prospective new owners and they wanted the lease in their names and only for one year. The tenants resisted and told him the lease travelled with the home on a sale. He threatened the mother and said he would end the tenancy. On June 6, 2016, two agents came and argued with and pressured the tenants telling them the landlord had financial problems, he needed to sell the house and they had to change the dates on the lease and sign it. The agents were professionals (man and wife) and they exerted a lot of pressure on the tenants. They changed the dates on the lease and pressured them to sign it. The tenants finally yielded and initialled the change in the expiry date of the lease to June 30, 2017. They said the two agents took it late in the evening to the landlord and he signed it too. They stressed how emotionally upset they were in the whole process and how they immediately applied for arbitration the next day.

The landlord said he had no intention of selling the property in January 2016 so he signed a two year lease with the tenants. Then he had a problem with a family situation so he made offers to the tenants to encourage them to vacate. The tenancy branch told him he could not end a fixed term tenancy. The new agent emailed they were not cooperating to show the home. He talked to them and told them he was selling it as an investment property, not to evict the tenants. An offer was received and the prospective purchaser would only agree to a one year fixed term lease. The property is still not sold. He thought the tenants agreed because they understood his situation as illustrated by his email to them. The tenant referred to the emails on February 28, 2016 where the landlord made offers and they declined.

In evidence is the lease agreement with the changes and a number of emails. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Section 28 of the Act provides for the tenant's right to quiet enjoyment of the property. Residential Policy Guideline #6 addresses the Right to Quiet Enjoyment and notes what might constitute a breach of such enjoyment. It states in part:

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *persecution and intimidation;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights*
-

I find the weight of the evidence is that the landlord engaged in a course of conduct which caused the tenants to feel persecuted and intimidated. I find after signing a two year fixed term tenancy agreement, he commenced within a month to try to get the tenants to end the tenancy by bringing to them a Mutual Agreement to End Tenancy, then sending a letter stating he was going to end the tenancy and then telling them the bank would evict them if he defaulted on his mortgage. I find the weight of the evidence is that this behavior caused significant stress to the tenants and reduced the mother to tears. I find the tenants' credibility is supported by the fact that the landlord did not deny his actions in the hearing but excused them by saying he thought he maintained good relations with the tenants and they understood his circumstances of needing to sell the house. I find this pressure culminated in him sending at least one professional realtor with her husband to the tenants' home where they argued and cajoled the tenants into initially a changed expiry date on the lease to have it expire on June 30, 2017 instead of February 1, 2018 as initially agreed.

Residential Policy Guideline #8 states in part,

Unconscionable Terms

Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable¹. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party

I find the changed expiry date is unconscionable as it was oppressive and unfairly surprised the tenants. I find it is prejudicial to them. Therefore, I find the changed expiry date is not enforceable and nullified.

The tenancy agreement signed January 6, 2016 by the parties reverts to its original terms.

Conclusion:

I HEREBY set aside the changed expiry date of June 30, 2017 in clause 2 of the lease as I find it was unconscionable.

I HEREBY ORDER that the lease signed January 6, 2016 by the parties is a fixed term lease with expiry date of February 1, 2018. **I HEREBY ORDER THAT** the tenants may recover their filing fee by deducting \$100 of their rent.

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: July 13, 2016

Residential Tenancy Branch