Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order disputing an additional rent increase
b. An order to cancel the 10 day Notice to End Tenancy dated July 17, 2017
c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on July 17, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on June 14, 2017. I find that the Amended Application for Dispute Resolution was served on the landlord by registered mail on July 22, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order disputing an additional rent increase?
b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated July 17, 2017?
c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 1, 2011. The tenancy agreement provided that the rent was $565 per month payable in advance on the first day of each month. The tenant paid a security deposit of $282.50 at the start of the tenancy.

In 2015 the rent was increased to $585 per month.

On March 20, 2016 the tenant was given a Notice of Rent Increase in the approved form raising the rent from $585 to $601.95 per month starting July 1, 2016.

The tenant gave the following evidence:

- The landlord lives out of town. In late March 2017 the landlord arrived unannounced and he and tenant met in the presence of the building manager. The meeting lasted about 1 ½ hours. The landlord told the tenant he was going to increase the rent from $601 to $760 effective July 1, 2017.
- He was taken off guard and felt pressured to sign his handwritten note as he would not negotiate a lower rent increase. He felt this pressure even though the building manager suggested he should not sign it.
- He testified he felt he had to sign the agreement or the landlord would evict him.
- He testified he did not know his rights and that the landlord was not prepared to negotiate a lower rent with him.

The parties signed a one page handwritten document where it states the tenant agreed to pay $760 per month in rent starting July 1, 2017. They also signed a tenancy agreement where the rent was stated to be $601 but that the tenant agreed to pay $760 starting July 1, 2017.

The landlord testified he talked to an information officer at the Residential Tenancy Branch prior to meeting with the Tenant. The $760 the parties agreed to was less than market value. The landlord produced evidence from a real estate firm indicating the rent for a one bedroom suite in the local area varied from $795 per month to $1000 per month. The landlord denied that he pressured the tenant into agreeing to this.

The Law:

Section 43 provides as follows:

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In summary the Act provides the rent can be increased in either of 3 ways:

- Where the landlord gives a Notice of Rent Increase in the approved form. The tenant cannot dispute such an increase provided the landlord follows the Act but the increase is limited to an amount permitted by Regulations.
- The landlord can apply for an increase in an amount that is greater than the amount calculated under the regulations.
- A rent increase that is agreed to by the tenant in writing.

In this case the tenant has agreed to a rent increase in writing. The tenant submits the agreement is not binding. The tenant testified he was taken off guard and he felt forced to sign the agreement or the landlord would evict him. Further he was not aware of his legal rights. The tenant did not expressly raise a defence recognized by law. However, I have interpreted the tenant's testimony and submission as submitting the written agreement should be set aside because of duress.

The essential elements of duress are stated in *Lei v. Crawford*, 2011 ONSC 349 (CanLII) 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.

The decision of the Judicial Committee of the Privy Council in ***Pao On v. Lau Yiu***, [1979] 3 All E.R. 65 at 78 sets out the elements of economic duress as follows::

> Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. ... [I]n a contractual situation commercial pressure is not enough. There must be present some factor ... which could in law be regarded as a coercion of [the] will [of the person alleging duress] so as to vitiate his [or her] consent... . 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 [or she] was allegedly coerced into making the contract, he [or she] did or did not have an alternative course open to him [or her] such as an adequate legal remedy; whether he [or she] was independently advised; and whether after entering the contract he [or she] took steps to avoid it. All these matters are ... relevant in determining whether [the person alleging duress] acted voluntarily or not.

The Ontario Court of Appeal described the elements of economic duress in a very recent case, *Taber v. Paris Boutique & Bridal Inc. (Paris Boutique),* 2010 ONCA 157 (CanLII) at para 8 and 9:

> There is no doubt that economic duress can serve to make an agreement unenforceable against a party who was compelled by the duress to enter into it. Nor is there any doubt that the party can have the agreement declared void on this basis.
>
> However, not all pressure, economic or otherwise, can constitute duress sufficient to carry these legal consequences. It must have two elements: it must be pressure that the law regards as illegitimate; and it must be applied to such a degree as to amount to “a coercion of the will” of the party relying on the concept. See: *Stott v. Merit Investment Corp.*, 1988 CanLII 192 (ON CA), 63 O.R. (2nd) 545 (Ont. C.A.), at para. 89. In Stott, the court held that in order for economic duress to be found, the party

> whom is being illegitimately pressured must be put in position where he has no "realistic alternative" but to submit.

In the case of Jestadt v. Performing Arts Lodge Vancouver, 2011 BCCA 304 (CanLII), the British Columbia Court of Appeal upheld the Supreme Court of British Columbia's decision Jestadt v. Performing Arts Lodge Vancouver, 2012 BCSC 1337 (CanLII), dismissing the tenant's application to set aside the arbitrator decision to grant an Order of Possession. In that case the tenant told managing director of the landlord that the lease seemed unfair because the landlord could decide whether or not she had to move out after one year. She asked landlord's managing director if there was another type of lease she could sign like the standard form lease provided by the Residential Tenancy Branch, but was told that she had to sign the 2008 Lease as presented if she wanted to continue living there. The tenant then signed a one-year fixed term lease ending on February 28, 2009 (the "2008 Lease"). She also signed below a "vacate clause" which stated that unless both she and the landlord entered into a new agreement she was required to vacate her unit at the end of the 2008 Lease.

On February 27, 2009, the landlord informed the tenant that it would not be entering into a new lease with her, and that she would therefore have to vacate her unit. The arbitrator decided that if there was any inequality between the parties, or if the tenant was in an especially vulnerable position, that caused her to feel that her only option was to sign the 2008 Lease, any such vulnerability resulted from the tenant's own failure to ascertain her rights. Also, since the tenant did not ask for the opportunity to get advice before signing the 2008 Lease, the landlord was under no obligation to offer it to her.

In supplemental written submissions delivered after oral argument on the hearing of this petition, counsel for the tenant argued that in the circumstances the tenant was under economic duress to sign the 2008 Lease and had no practical alternative but to submit to the landlord's pressure in signing the lease. The arbitrator found, however, that the tenant was only "under pressure" to sign the 2008 Lease because of her own failure to ascertain her rights.

After carefully considering all of the evidence I determined there is no basis for setting aside the signed agreement to increase the rent to $760 for the following reasons:

- The parties were in the process of negotiating a rent increase. The tenant failed to produce sufficient evidence the landlord exerted pressure in an unfair, excessive or coercive manner that would vitiate the consent of the tenant.
- The landlord was firm on what he wanted in the way of a rent increase and was not prepared to reduce it from his demands. From the landlord's perspective the proposed rent was already below market value. This does not mean there is duress or unfair pressure.
- While the tenant objected to the proposed rent increase during the meeting and attempted to get the landlord to agree to a lower rent. However, he still agreed to it and writing and failed to raise his objections until June 2017. The agreement was signed in March 2017.
- The tenant may not have been aware of his rights. However, it is worth noting that he had previously received at least on Notice of Rent Increase in the approved form. The Jestadt case is authority for the proposition that the failure of the tenant to ascertain you rights is not grounds to raise a defense of duress.
- The tenant had other alternative remedies that were available. He could have advised the landlord he was not prepared to agree to any rent increase until he had talked to the Residential Tenancy Branch or his lawyer.
- I determined the tenant failed to prove illegitimate pressure was exerted by the landlord or that it was applied to such a degree that it amounted to a coercion of the will.
- The landlord presented evidence that the agreed rent of $760 per month was significantly lower than market value for the area. The tenant did not dispute this evidence or present other evidence to dispute it. As a result I cannot conclude the bargain for the payment of $780 per month was substantially unfair and there is no basis for a finding that the agreement was unconscionable.
- The tenant failed to present sufficient evidence that the landlord made any misrepresentations during this negotiation. .

I determined that the parties agreed in writing to an rent increase to $760 per month commencing July 1, 2017 and there is no basis for setting this rent increase aside. I dismissed the tenant's claim disputing an additional rent increase.

Application to Cancel the 10 day Notice to End Tenancy:
The landlord served a 10 day Notice to End Tenancy on the Tenant dated July 17, 2011 that states the sum of $158.05 was due on July 1, 2017. The tenant has paid the rent of $601.95 for July 2017 and August 2017 which was the original rent prior to the agreed rent increase.

Section 26(1) of the Residential Tenancy Act provides as follows:

> **Rules about payment and non-payment of rent**
>
> **26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not have a legal right to withhold the payment of the rent increase.

Determination and Orders:
After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. The landlord used the approved government form. The Tenant did not have a legal right to withhold the payment of the rent increase. It was open to the tenant to pay the increase under protest and request the arbitrator to apply any over-payment to future rent should he be successful.

As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:
The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective date of the Order of Possession for August 31, 2017 as the Tenant has paid most of the rent for August.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Conclusion:

I dismissed the Tenant's application to set aside an additional rent increase, to cancel the 10 day Notice to End Tenancy and to recover the cost of the filing fee. I granted an Order of Possession on 2 days Notice.

This decision is final and binding on the parties.

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: August 15, 2017

Residential Tenancy Branch