



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP MNDCT MAE OPB FF

Introduction:

Both parties and counsel for the landlord attended and gave sworn testimony. The landlord agreed they received the tenant's Application for Dispute Resolution dated May 7, 2018. I find that the landlord was sufficiently served with the documents pursuant to section 71(b) for the purposes of this hearing.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel and dispute a Mutual Agreement to End Tenancy signed and served by them on May 1, 2018 pursuant to Sections 44 (1) (c) ;
- b) To order the landlord to repair and maintain the property pursuant to sections 32 and 33; and
- c) For compensation for monetary loss; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the tenant entitled to any relief?

Amendment:

Counsel for the landlord requested that the style of cause state the professional name of the landlord rather than the landlord's representative. The amendment was granted.

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The evidence in this matter is very chaotic. There was apparently a head tenant and others were paying rent to him or to the landlord. The landlord's agent said the house is ultimately slated for demolition and one of the buildings has been demolished. The tenant said the landlord died in February and they paid rent twice in February but later said they paid an S. and a K. who they thought was the landlord's agent on January 25 and 31st in the amount of \$500 each time. They said

they could not find the receipts but they were issued for February and March 2018. They said they were told they could stay although many other tenants were leaving and a lot of old vehicles etc. were being removed from the lot. They said after they paid the rent, the landlord's representative, S.M., who is in the hearing today said they did not need to pay anymore but they thought they could stay.

S.M. said he would have to leave the hearing early but gave his evidence as follows:

1. There were problems with the property, the head tenant died and there were disputes that the various people he had living on the property were actually tenants.
2. There was no Notice to End Tenancy issued to these tenants but with the problems of whether or not they were tenants and other issues, he offered to negotiate.
3. He went to these tenants a few weeks prior to them signing the Mutual Agreement to End Tenancy and discussed the terms and asked them to think about it.
4. Two weeks later he took the Mutual Agreement to them and they both signed.
5. One of them took it and went inside and discussed it with the other before signing. We discussed the fact that the agreement allowed them not to pay rent for a few months and they were okay with that.
6. They showed him two receipts for rent for January 2018 but never mentioned they paid for February, March and April 2018 and he submits they have no proof of payments to other parties such as K. In any case, he submits that has no bearing on whether the Mutual Agreement to End is valid.
7. He asserts there was no pressure and no threats and it seemed they thought the agreement was favourable.

The tenants say:

1. They were confused on May 1, 2018. They thought they could change their mind and pay rent for April, May and June and stay and then the landlord filed an Application on May 11, 2018 to be heard July 9, 2018 asking for an Order of Possession based on the Mutual Agreement to End Tenancy.
2. One of them was sick and hospitalized for a time.
3. They request to be allowed to stay and ask for repairs and ask compensation of \$860 for repairs not done and for intimidation.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find the relevant portions of section 44 (1) (c) of the Act states:

44 (1) A tenancy ends only if one or more of the following applies:

(c) the landlord and tenant agree in writing to end the tenancy;

(g) the tenancy agreement is a sublease agreement.

I find there is insufficient evidence as to whether these tenants had a lease with the landlord. In their discussion, they said they paid rent to a “K” or “S” and then their landlord died. I find the weight of the evidence is that they were possibly subletting from a head tenant who died as this is most consistent with the evidence of the landlord. However, in any case, I find an agent of the landlord decided to negotiate with the persons occupying the home to obtain possession of the home for the landlord as it is due to be demolished.

I find the tenants signed a valid Mutual Agreement to End Tenancy effective May 31, 2018 and received certain benefits such as free rent and moving expenses. I find no other Notice to End Tenancy must be issued in these circumstances pursuant to section 44(c) above. I find insufficient evidence that the tenants were intimidated or coerced in any fashion. They did not deny that the landlord’s agent visited them twice and gave them time to think about it. I find they both signed the Mutual Agreement voluntarily on May 1, 2018. Although the tenants claim they paid more rent than is named in the Agreement, I find insufficient evidence to support this. In any case, it is irrelevant as in the Agreement they are forgiven any rent unpaid from February to May 31, 2018 and allowed \$1000 for moving expenses which appears to be of substantial benefit to them.

I find in the conference today both tenants gave evidence and appeared to be lucid and competent. I find insufficient evidence that they had a medical issue that prevented them from understanding and agreeing with what they signed. I find the Mutual Agreement is a valid agreement signed voluntarily and pursuant to section 44(c) ended the tenancy on May 31, 2018. I dismiss their application to cancel it.

Section 55 (3) provides in these circumstances where the parties agreed to end the tenancy and the tenant’s application to dispute is dismissed, an Order of Possession may be granted to the landlord. I find the landlord entitled to an Order of Possession effective two days from service. Apparently the landlord filed an Application to obtain an Order of Possession which is scheduled to be heard on July 9, 2018. The landlord may find it not necessary to proceed on this second application.

As the tenancy is ended, I find it inappropriate to order repairs to a home that will be demolished. In any case, I find insufficient evidence provided by the tenant that repairs

were not done or that they are owed any compensation. I dismiss this portion of their claim.

Conclusion:

I dismiss the application of the tenant in its entirety without recovery of the filing fee due to lack of success. I find the landlord is entitled to an Order of Possession effective two days from service.

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 28, 2018

Residential Tenancy Branch