



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, RPP

Introduction

The tenant applies for a monetary award for the value of his personal belongings removed from the rental unit by the landlord and for return of those goods as well as return of a security deposit.

As a preliminary matter, it was observed that the parties had signed a mutual release agreement some weeks after the end of the tenancy and before this application was made. It is the tenant's position that the release was signed under duress and should not be binding on or enforceable against him.

The tenant's advocate Ms. L. agrees that if the release is a binding document then the tenant's claim has been subsumed by the release and must fail.

This preliminary matter was dealt with first and proved to be determinative.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenant sign the release document dated March 21, 2018 under duress?

Background and Evidence

The rental unit is a two bedroom suite in the upper portion of a house. There is a second rental unit below, rented to others.

There is a written tenancy agreement. The tenancy started in mid March 2017 at a monthly rent of \$1200.00. The landlord says there was no security deposit paid. The tenant's advocate says that a \$600.00 security deposit was paid in cash.

The parties agree the tenancy ended February 28, 2018 as a result of a one month Notice to End Tenancy.

The tenant's advocate says the tenant agreed to move by February 28 but that his mover cancelled, causing him to leave a quantity of personal belongings in the rental unit, along with the key on an interior counter.

The landlord had new tenants moving in March 1. There was some discussion between the parties about removal of the tenant's belongings, however it appears to have been the landlord's unilateral decision to hire a mover to remove and store the tenant's items.

Nevertheless, the landlord was put to the cost of accommodating his new tenants elsewhere for five days and ultimately lost them, causing him a loss of one month's rent.

On or about March 19, the landlord was contacted by a lawyer Ms. DeS., apparently Ms. S., the tenant's mother's lawyer, with a demand letter requiring return of the tenants belongings.

Negotiations ensued. Apparently some of the negotiations occurred between Ms. DeS. and the landlord's lawyer. It was agreed the tenant would pay \$567.00 to the landlord for the cost of moving his items out of the rental unit and each would sign the release. The release document itself was provided by the tenant's mother Ms. S. who had downloaded it from the internet. The tenant signed it and Ms. S. sent it to the landlord on March 21 to sign and return, which he did.

The release included the terms that the parties release and forever discharge the other "...from all manner of actions, caused of action, debts, accounts, bonds, contracts, claims and demands for or by reason of any damage, loss or injury to person and property which has been or may be sustained as a consequence of.." the landlord releasing the tenant's belongings on March 25, 2018.

This application was made May 1, 2018.

The advocate Ms. L. submits that the tenant was forced to sign the release because he could not get his property back otherwise. She says he signed the release without legal advice.

The landlord says there was no duress. The settlement had been negotiated with the lawyer Ms. DeS., though she later stepped back when asked to confirm she was the tenant's lawyer. He says that contrary to indications from the tenant he never demanded \$5000.00 to return the tenant's belongings and, in fact has lost considerable money because of the tenant: money he does not intend to claim for.

In closing, Ms. P. for the tenant poses that the release agreement is an agreement to contract out of the *Residential Tenancy Act* (the "Act").

Analysis

Duress

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. *Lei v. Crawford*, [2011 ONSC 349 \(CanLII\)](#), (approved *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183)

In this case I am unable to find the essential elements necessary to form the defence of duress. It may be that to the tenant the landlord had the superior bargaining position, but he was free to make application to this forum for the return of the property (as he has done in this application) and for damages should it be shown that the landlord acted wrongfully. There was no physical coercion, nor do I find evidence of other unfair or excessive pressure. Indeed, the release cannot be said to be a bargain outside the realm of the reasonable since the landlord was giving up outstanding rent as well as a claim against the tenant for loss caused by the tenant's apparent overholding.

The lawyer Ms. DeS. may not have been representing the tenant in a legal capacity but there is no question the tenant could have obtained legal advice or consulted the information officers available at the Residential Tenancy Branch before choosing the form of release, signing it and having it forwarded to the landlord.

Release Agreement Contrary to the *Act*

Section 5 of the *Act* states:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The release document is the result of negotiation and is intended to settle the claims of both sides to this dispute, past and future, relating to a tenancy that has ended. The settlement of a dispute between a landlord and tenant cannot be said to be contrary to the legislation, which in fact authorizes the director to facilitate settlement of disputes and offer the parties an opportunity to settle a dispute (s. 62).

Conclusion

It follows that the tenant's argument that he signed the release agreement under duress or that it is contrary to the *Act*, must fail.

The application is dismissed. The tenant's claims are subsumed by the release agreement.

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 05, 2018

Residential Tenancy Branch