



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPT

Introduction

This hearing dealt with an application by the tenant for an order of possession of the rental unit.

I accept the evidence of the tenant that the landlord was served with notice of this application and hearing on September 12, 2018 by registered mail. The tenant provided a tracking number. Despite having been served the notice of hearing and evidence package, the landlord did not attend the hearing. The tenant attended the hearing with her advocate and was given full opportunity to present evidence and make submissions.

Issue to be Decided

Is the tenant entitled to an order of possession?

Background and Evidence

The tenant testified that the tenancy started approximately 32 years ago. The monthly rent at that time was \$300 payable on the first of each month. The tenant is 77 years old, has vision in one eye only, suffers from cerebral palsy and has an ongoing support worker who assists her with paper work and other matters.

The tenant's advocate testified that on April 20, 2018, the tenant was asked to sign a new tenancy agreement at a higher rent of \$587.77. The tenant could not recall what her rent was just prior to entering into the new tenancy agreement.

On June 22, 2018, the tenant was asked to sign a mutual end to tenancy agreement effective September 30, 2018. The tenant testified that her support worker was away on vacation and was not present to explain the terms of the document. The tenant stated

that she felt pressured to sign and accordingly signed without fully understanding what she was signing.

On September 07, the tenant made this application for an order of possession because she wanted to cancel the mutual end to tenancy agreement and continue to reside at the rental unit.

Analysis

Based on the tenant's testimony and in the absence of contradictory evidence, I accept the tenant's claim that she signed the agreement in the absence of her support worker and therefore did not fully understand the implications of signing the document at the time of signing. In a written submission by the tenant's support worker, dated September 04, 2018, the support worker states that there has been no communication from the landlord since June 22, 2018, when the mutual end to tenancy was signed.

In addition the end date of the tenancy was supposed to be September 30, 2018 and as of this date – October 23, 2018, the tenant is residing in the rental unit and is up to date on rent. Based on the above, I find that without support, the tenant's medical condition did not allow her to fully understand the terms of the mutual end to tenancy document at the time she signed it. Since the landlord has not taken action to enforce the agreement and the end date of the tenancy as per the agreement is now passed, I find that the mutual end to tenancy agreement dated June 22, 2018, is of no force or effect. Since the tenant is already in possession of the rental unit, an order of possession is not required.

Conclusion

The tenancy will continue as per the terms of the tenancy 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: October 23, 2018

Residential Tenancy Branch