Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Morning Sun Ventures Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, OLC, FFT

Introduction

This decision is in respect of the tenants' applications for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants, whose applications were joined for this dispute, seek the following remedies:

1. orders that the landlord comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreements, pursuant to section 62 of the Act;
2. orders in respect of rent increases, pursuant to section 41 of the Act; and,
3. orders for compensation for the filing fees, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on March 8, 2019, and one of the tenants (who acted as agent for the other tenant), two legal counsel for the landlord, and a witness for the landlord attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties raised no issues with respect to the service of documentary evidence.

I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* and to which I was referred, but only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Are the tenants entitled to orders that the landlord comply with the Act, the *Residential Tenancy Regulation,* or the tenancy agreements?
2. Are the tenants entitled to orders in respect of a disputed rent increase?
3. Are the tenants entitled to orders for compensation for the filing fees?

Background and Evidence

The tenants each owned a condominium that they sold to a buyer. The buyer—a property developer—had purchased several condominiums in the building with plans to eventually develop the entire complex. The tenants each sold their condomium (the rental units) with a “rent back option” as part of the contract of purchase and sale with the buyer.

On November 29 and December 15, 2017, the tenants each signed a written tenancy agreement for tenancies commencing January 24, 2018. The tenancies were one-year fixed term tenancies with monthly rent of $981.00 on one of the rental units. The tenants paid a security deposit of $491.00. At the time one tenant executed his tenancy agreement, the Act permitted fixed term tenancies with no limitation on the purpose for ending the tenancy other than it was a fixed term. However, effective December 11, 2017, the Act no longer permitted fixed term tenancies except when the landlord (or a close family member) intended to occupy the rental unit. On December 15, 2017, the other tenant signed her tenancy agreement.

On January 23, 2018—the closing date on the sale of the condominiums was January 24, 2018—the tenants each signed a Mutual Agreement to End Tenancy, which indicated that the tenancies would end on January 24, 2019.

The closing date came and went, and the tenants then rented from their new landlord, the purchaser. As January 24, 2019 approached, the landlord approached the tenants and offered them the opportunity to continue renting beyond January 24 for a new fixed term ending June 30, 2019. However, the continuation of the tenancy would require a new tenancy where monthly rent would be $1,240.00. The tenants did not sign the new tenancy agreements and filed for dispute resolution.

The tenant argued that the landlord attempted to circumvent the legislation by creating a tenancy agreement within the contract of purchase and sale.

He also submitted that the landlord approached him the day before closing and needed the tenants to sign the Mutual Agreement to End Tenancy right away. He argued that the mutual agreement was an attempt by the landlord to “skirt the tenancy clause” that, after the change in legislation, would have prevented a fixed term tenancy. The tenant testified that he had “no time to wrap our heads around what we’re signing” and that it was all a rather “high pressure last minute situation.”

Finally, he pointed out that the new tenancy agreement stated that the landlord would be undertaking “development” as the reason the tenancy would be ending in June 2019. (A reason, I note, that is not permitted under the Act for ending a fixed term tenancy.)

Counsel argued, and provided written submissions, that the mutual agreements to end the tenancies are enforceable, and that there is nothing in the Act to preclude the parties from making such agreements. He argued that the tenants had an opportunity to seek legal advice prior to signing the mutual agreements to end the tenancies, and that there was “no gun held to their head.” In respect of the duress position advanced by the tenant, counsel submitted that “all the landlord did was ask the vendors to sign the mutual agreement to end the tenancy.” And, absent duress, the mutual agreement is in effect. He further noted that there was, and is, no evidence from the other tenant that she was under duress to sign the mutual agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant argued that the Mutual Agreement to End a Tenancy was a tool that the landlord was trying to use to bypass the legislation. And, that he (and presumably the other tenant, though no evidence was presented regarding her experience) was under duress to sign the agreement, such that the mutual agreement is essentially void.

Section 44(1)(c) of the Act states that “A tenancy ends only if one or more of the following applies: [. . .] the landlord and tenant agree in writing to end the tenancy.”

In this case, the tenants and the landlord agreed in writing to end the tenancy on January 24, 2019.

At the outset, I am not persuaded by the tenant’s argument that the landlord used the agreement to circumvent the Act. A mutual agreement to end a tenancy is one option among many available under the Act to end a tenancy. It requires the consent of both the landlord and the tenant. As such, a tenant cannot sign a mutual agreement to end a tenancy and then assert that such an agreement circumvents the Act.

As for the argument that the mutual agreement was signed under a situation of duress, I do not find that this was the case.

Landlord's counsel cited *Pao On v. Lau Yiu,* [1979] 3 All ER 65, which at page 12 discusses the criteria under which duress—a coercion of will such that there was no true consent, which is required in the formation of a contract—might be found to exist:

> In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are, as was recognised in *Maskell v. Horner* [1915] 3 K.B. 106, relevant in determining whether he acted voluntarily or not.

In this case, the tenant (the one from whom we heard) did not protest at the time the mutual agreement was given to him, he had an alternative course of action (he could have consulted with legal counsel, or refused to sign, or, delayed signing, if even by a few hours—while the closing date and time were fast approaching, given the magnitude of the developer's plans, I find it unlikely that the landlord purchaser would not have provided some flexibility as to when the mutual agreement might have been signed,) he had the opportunity seek legal advice, and most importantly, he took no further steps after signing the mutual agreement to avoid the terms of the agreement. (Except, of course, filing for dispute resolution almost a year later.)

I have no evidence before me regarding what, if any, circumstances may have existed at the time the other tenant signed her mutual agreement. As such, I do not find that duress existed when she entered into this agreement.

Considering the entirety of circumstances with the signing of the mutual agreements to end tenancy and applying the test of duress as stated in *Pao On,* I do not find that there existed duress. As such, I find that the tenants' Mutual Agreements to End Tenancy are valid, written agreements between the parties under section 44(1) of the Act. The tenancies, therefore, ended on January 24, 2019.

Having found that the Mutual Agreements to End Tenancy are valid, in effect, and enforceable, and having found that the tenancies ended on January 24, 2019, I need not consider whether there was a rent increase in breach of the Act. Further, there is no additional evidence for me to find that the tenants are entitled to orders for the landlord to comply with the Act, the regulations, or the tenancy agreements.

Conclusion

I dismiss the tenants' applications without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 11, 2019

Residential Tenancy Branch