



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OPM

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 03, 2020 (the "Application"). The Landlord applied for an Order of Possession based on a Mutual Agreement to End a Tenancy.

The Agent for the Landlord appeared at the hearing. The Tenant appeared at the hearing with the Advocate. I explained the hearing process to the parties who did not have questions when asked. The Agent and Tenant provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence. The Tenant confirmed receipt of these.

While addressing service, the Tenant said she was not prepared for the hearing. The Tenant confirmed she was seeking an adjournment. The Tenant testified that she has a disability and needs support in this matter. The Tenant said she required an adjournment to get an advocate to assist her. The Tenant asked for an adjournment so she could gather evidence.

I asked the Tenant why the Advocate, who was at the hearing, could not assist her. The Advocate said the Tenant came into their office 10 minutes before the hearing and she has not had time to go over the details of the case.

I asked the Tenant when she received the Landlord's materials. The Tenant testified that she received them 30 days prior to the hearing. I asked the Tenant what steps she took to get assistance between receiving the materials and the hearing date. The

Tenant testified that she went to a legal clinic March 01, 2020 but nobody could assist her and they referred her to the Advocate's office.

The Agent did not agree to an adjournment. The Agent testified that she looked up when the Tenant received the Landlord's materials and that she received them January 13, 2020. The Agent provided the tracking number for the package. The Agent submitted that the Tenant has not done her due diligence to prepare for the hearing.

I asked the Tenant if she agrees she received the Landlord's materials January 13, 2020. The Tenant did agree with this.

I considered rule 7.9 of the Rules of Procedure which states:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

I denied the adjournment for the following reasons.

The Tenant did not submit further evidence to support her verbal testimony regarding the need for an adjournment.

The Tenant testified that she received the Landlord's materials 30 days prior to the hearing, which would have been around February 05, 2020. It was not until the Agent provided evidence that the Tenant in fact received the materials January 13, 2020, and the Tenant was questioned about this, that the Tenant acknowledged receiving the materials January 13, 2020. I find the difference between the two dates substantial and find the evidence on this point calls into question the reliability or credibility of the Tenant.

Even accepting that the Tenant sought assistance March 01, 2020, this was more than a month and two weeks after the Tenant received the Landlord's materials and only four days before the hearing. This is not sufficient. The Tenant should have sought assistance on January 13, 2020, when she received the Landlord's materials.

Further, if the Tenant was told the legal clinic could not assist and was referred to the Advocate's office, the Tenant should have attended the Advocate's office March 01 or March 02, 2020. The Tenant should not have waited until 10 minutes before the hearing to attend the Advocate's office.

Further, this is a straightforward matter. There is one issue before me. The issue is straightforward. The Landlord submitted a total of 12 pages of evidence, three of which are relevant to the issue before me. I was not satisfied, in the absence of further evidence, that the Tenant was unable to proceed with this matter without assistance.

Further, this matter is about whether this tenancy is going to continue, or end, based on a Mutual Agreement to End a Tenancy signed by the Tenant with an effective date in December of 2019. There is some urgency to this matter. The Landlord had already waited two months for the hearing.

Given the above, I found the following. The need for an adjournment did arise out of the neglect of the Tenant to seek assistance January 13, 2020. An adjournment is not required to provide a fair opportunity to the Tenant to be heard. An adjournment would prejudice the Landlord.

At the hearing, I told the parties my decision and the main reasons for it. The Tenant attempted to make further submissions about the adjournment. I did not hear further submissions on this as the Tenant was given an opportunity to make submissions and I had decided the matter. I told the parties the matter would not be adjourned and that further reasons would be provided in my written reasons. I continued with the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on a mutual agreement?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It names a different landlord. The Agent advised that the Landlord was retained to act as agent for the landlord on the written tenancy agreement two years ago. The Tenant agreed that the Landlord is her landlord. The tenancy started November 01, 2015 and is a month-to-month tenancy. The parties agreed rent is currently \$1,079.00 per month.

The Landlord submitted a Mutual Agreement to End a Tenancy. It is on the RTB form. It names the Landlord. It names the Tenant. It refers to the rental unit address. It is signed by someone for the Landlord and the Tenant. It was signed November 07, 2019. It states:

The tenant(s) hereby agrees to vacate the above-named premises/site at:
1:00 p.m. on the 15 day of Dec, 2019

The form originally said the Tenant would vacate November 30, 2019, but this was crossed out. Both parties initialled the change to December 15, 2019.

The Agent testified as follows. The Landlord sent two letters to the Tenant about having a pet on the premises which was not allowed. The Tenant still has a pet on the premises. The Landlord did an inspection of the rental unit and gave the Tenant a period of time to clean the rental unit. The Tenant did not clean the rental unit. The Landlord opted to do a Mutual Agreement to End a Tenancy rather than issue the Tenant a One Month Notice for Cause. The Tenant signed the Mutual Agreement to End a Tenancy. The Landlord then heard nothing from the Tenant.

The Agent testified that the Tenant signed the Mutual Agreement to End a Tenancy twice extending the date to December 31, 2020. The Landlord had not submitted this. The Agent submitted that the Tenant had a long period of time to familiarize herself with the form.

The Agent testified that the Property Manager signed the Mutual Agreement to End a Tenancy for the Landlord.

The Tenant testified as follows. The Landlord took advantage of her disability in getting her to sign the Mutual Agreement to End a Tenancy. She never wanted to sign it. The Property Manager would not leave without getting her to sign the form. The Property

Manager put her on the spot. The Property Manager bullied her into signing the Mutual Agreement to End a Tenancy. She has “manic depression” and “anxiety disorder”. She is on medication for these. She did not really read the Mutual Agreement to End a Tenancy, she just signed it so the Property Manager would leave.

The Tenant testified that she recalled signing the Mutual Agreement to End a Tenancy with the December 15, 2019 end date but not a second Mutual Agreement to End a Tenancy with a December 31, 2019 end date.

In reply, the Agent testified that the Tenant never questioned the Mutual Agreement to End a Tenancy after signing it. The Agent submitted that the Mutual Agreement to End a Tenancy is not difficult to understand and that the Tenant’s position about the Mutual Agreement to End a Tenancy is not true.

Analysis

Section 44 of the *Residential Tenancy Act* (the “Act”) states that a tenancy ends when a landlord and tenant agree in writing to end the tenancy.

Pursuant to section 55(2)(d) of the *Act*, a landlord can apply for an order of possession for a rental unit where the landlord and tenant have agreed in writing that the tenancy is ended.

I am satisfied the Tenant signed the Mutual Agreement to End a Tenancy with an effective date of December 15, 2019 as her signature is on it. Further, the Tenant acknowledged signing it.

I am not satisfied the Tenant signed a further Mutual Agreement to End a Tenancy as I do not have a copy of this before me and the Tenant did not agree that she did.

The Tenant provided a number of reasons that I should not uphold the Mutual Agreement to End a Tenancy with an effective date of December 15, 2019.

The Tenant not wanting to sign the Mutual Agreement to End a Tenancy is not a valid basis to decline to uphold the Mutual Agreement to End a Tenancy. If the Tenant did not want to sign it, she should not have signed it.

The fact that the Tenant did not fully read the Mutual Agreement to End a Tenancy does not invalidate it. Parties are expected to read the forms they sign in relation to their tenancy.

The Tenant has not provided further evidence to support her testimony that she has a disability that was taken advantage of or otherwise affected the signing of the Mutual Agreement to End a Tenancy and I am not satisfied this position invalidates the Mutual Agreement to End a Tenancy.

The Tenant has not provided further evidence to support her testimony that the Property Manager took advantage of her circumstances, would not leave until she signed the Mutual Agreement to End a Tenancy or bullied her. In the absence of further evidence showing these things occurred, I am not satisfied they did and do not find the Mutual Agreement to End a Tenancy invalid.

Given the above, I am satisfied the Tenant signed the Mutual Agreement to End a Tenancy. I am not satisfied the circumstances as alleged by the Tenant existed or that they affected the signing of the Mutual Agreement to End a Tenancy. I am not satisfied the Mutual Agreement to End a Tenancy is invalid for the reasons set out by the Tenant.

I find the Mutual Agreement to End a Tenancy valid. The Tenant agreed this tenancy would end December 15, 2019. The Tenant was required to vacate by December 15, 2019. The Landlord is entitled to an Order of Possession.

I issue the Landlord an Order of Possession pursuant to section 55 of the *Act*. The Agent asked that the Order of Possession be effective March 15, 2020 if issued. I issue the Landlord an Order of Possession effective at 1:00 p.m. on March 15, 2020.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on March 15, 2020. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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 05, 2020

Residential Tenancy Branch