



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code: OPM

### Introduction

In this dispute, the landlord seeks an order of possession under section 55(2)(d) of the *Residential Tenancy Act* (the “Act”).

The landlord filed an application for dispute resolution on July 22, 2020 and an arbitration hearing occurred on August 27, 2020. Three agents for the not-for-profit society landlord attended the hearing, along with two agents for the tenant. However, the tenant was “not feeling well” and was unable to attend the hearing. The parties were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue of this application.

### Issue to be Decided

Is the landlord entitled to an order of possession under section 55(2)(d) of the Act?

### Background and Evidence

Briefly by way of background, the tenancy, which is a month-to-month tenancy, started on May 14, 2018. Monthly rent is \$375.00. A copy of the written tenancy agreement was submitted into evidence.

On April 6, 2020, the tenant and the landlord’s agent signed a Mutual Agreement to End a Tenancy (the “Agreement”). The Agreement states that the tenancy will end on, and the tenant must vacate the rental unit by, 12:00 PM on July 1, 2020. A copy of the Agreement was submitted into evidence.

On June 23, 2020, seven days before the Agreement – and hence the end of tenancy – were to go into effect, the tenant wrote a letter to the landlord's agent in which they stated that they wished to rescind the Agreement. A copy of the letter was submitted into evidence.

The tenant, according to her agents, and as stated in a letter that the tenant had given to the landlord, claimed that the Agreement was signed under duress and coercion. Her agents submitted that the tenant was not given an adequate opportunity to consider her options when she signed the Agreement. Moreover, they contend that the tenant had to either accept an immediate eviction or sign the Agreement.

I asked the agents why the tenant waited until June 23, 2020 to rescind the Agreement. One of the agents responded that it was not until "quite some time after" the tenant signed the Agreement that it was brought to their attention, who then reviewed it.

In support of the tenant were letters from various healthcare professionals, who spoke of the importance of housing for the tenant. The tenant, who is an Indigenous woman, has suffered greatly in her life. One of the tenant's agents spoke passionately about the 150 years of colonization inflicted upon First Nations peoples and that the tenant has, as an Indigenous person, been a part of that suffering.

He added that a lack of adequate housing will have a detrimental effect on the tenant and will have negative repercussions on her health and well-being.

The landlord's agents testified that they in fact had a meeting with the tenant prior to the parties signing the Agreement. There were issues that the landlord was trying to deal with, with the tenant. They offered a few options, one of which was if the tenant signed the Agreement that the landlord would provide ongoing assistance in finding alternative housing. The tenant apparently refused this assistance.

The parties then met with the tenant's agent (N.D.) and offered to extend the Agreement, which they "effectively did."

At the end, the agents expressed gratitude for the support that the tenant's agents have provided her but added that "the issues have continued." And, that the circumstances of what brought about the idea of the Agreement have not changed and that they "are in the same boat as before."

### 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.

Section 55(2)(d) of the Act, under which the landlord seeks an order of possession, states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [ . . . ] the landlord and tenant have agreed in writing that the tenancy is ended.

Here, I find that the facts are clear: the landlord and the tenant agreed in writing on April 6, 2020 that the tenancy would end on July 1, 2020. However, the tenant raised the argument that the Agreement was entered into under duress. Hence, her later rescission of the Agreement. In her letter, the tenant explained as follows:

I signed the Mutual Agreement to End a Tenancy under duress; viewing it as the only option that would give me enough time to process the jarring news that my housing was now immediately at-risk.

When entering into an agreement or contract, if consent is given by error, under physical or moral duress, or as a result of fraudulent practises, the contract may be declared null and void at the request of the aggrieved party. In certain types of contractual relationship, the law demands that the consent of the party be both free and informed.

In this case, the tenant's agents argued that the landlord presented the tenant with two options: face immediate eviction or sign the Agreement. As the tenant's agent correctly pointed out, there is no such thing as an immediate eviction under the Act. (Indeed, the closest such thing is an application for an order under section 56 of the Act, which still requires an administrative law process of going to a hearing before an arbitrator.)

It is worth noting that, while the landlord's agents explained that they had a meeting with the tenant prior to the Agreement being executed, they did not at any point in the hearing dispute or deny that the first "option" of an immediate eviction was actually presented to the tenant. I find that this option was, in fact, a fraudulent practise, and the tenant was, I further find, under moral duress to sign the Agreement.

That having been said, I do not find that the landlord was acting out of malice (the agents appeared to me to be understanding individuals who know all too well the socioeconomic issues facing the tenant, and others like her). However, the options presented to the tenant were such that I find it reasonable to accept that the tenant felt coerced into signing the Agreement.

For these reasons, I find the Agreement to be null and void. Therefore, given that the Agreement is null and void, the landlord is not entitled to an order of possession under section 55(1)(d) of the Act.

### Conclusion

I dismiss the landlord's application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 27, 2020

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Residential Tenancy Branch