



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLEARBROOK RENTAL PROPERTIES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55.

The landlord's two agents, "landlord MD" and "landlord RJ," the tenant, and the tenant's two advocates, "tenant WC" and "tenant LM," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 36 minutes.

Landlord RJ confirmed that he was the owner and landlord MD confirmed that she was the property manager, both employed by the landlord company named in this application. Landlord RJ stated that he and landlord MD had permission to represent the landlord company at this hearing. He said that the landlord company owns the rental unit. The tenant confirmed that both of his advocates had permission to represent him at this hearing. He stated that tenant WC is his psychiatric nurse.

At the outset of this hearing, I informed both parties that Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. The landlord's two agents, the tenant, and the tenant's two advocates all affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. He said that he lost the application and did not tell his two advocates that he lost it. The tenant's two advocates stated that they contacted the RTB and obtained the access code to call into this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Landlord MD confirmed receipt of the tenant's evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's evidence.

Issue to be Decided

Is the landlord entitled to an Order of Possession based on a mutual agreement to end tenancy?

Background and Evidence

Landlord MD and tenant WC agreed to the following facts. This tenancy began on July 31, 2013. Monthly rent in the amount of \$675.00 is payable on the first day of each month. A security deposit of \$315.50 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement, a copy of which was provided for this hearing. The tenant continues to reside in the rental unit. Landlord RJ and the tenant signed a mutual agreement to end tenancy for the tenant to vacate the rental unit by 11:00 a.m. on April 1, 2021 ("mutual agreement").

The landlord seeks an order of possession based on the mutual agreement. The tenant disputes the landlord's application.

Landlord MD testified regarding the following facts. She spoke to the tenant on March 17, 2021, regarding the fires in the rental unit and they discussed options. She and landlord RJ met the tenant on March 19, 2021, to present the tenant with the mutual agreement. They asked the tenant to read it and if he agreed, to sign it, so the tenant signed it. Landlord RJ signed it on behalf of the landlord. She and landlord RJ witnessed the tenant read and sign the mutual agreement. They had a lengthy conversation with the tenant before and after signing the mutual agreement. The tenant understood the mutual agreement, and there was no pressure by the landlord's agents. The landlord agreed that the tenant would not owe any money for damages to the rental unit. The tenant caused a small kitchen fire in his rental unit. The landlord was not aware that the tenant changed his mind, until he filed a dispute and a previous RTB hearing occurred. The Arbitrator at the previous hearing said there was nothing to

decide and the tenant's application was dismissed. The landlord provided the file number for this previous RTB hearing and it appears on the front page of this decision.

Landlord RJ testified regarding the following facts. He witnessed the tenant sign the mutual agreement in front of him and landlord MD. The tenant caused damages of \$15,000.00 to \$20,000.00 in the rental unit. The tenant's advocates say that the tenant was targeted and made accusations against the landlord. However, the tenant's advocates have not looked after the tenant.

Tenant WC testified regarding the following facts. The tenant did not understand the consequence of signing the mutual agreement. He did not understand that he had to leave the unit. The landlord did not provide any written concerns to the tenant to "tidy up" his place. Prior to the covid-19 pandemic, the tenant's advocates would go into his rental unit every two weeks. The tenant is sorry for causing the fire. The tenant has a mental illness. The landlord came with the letter and told the tenant he needed to sign it. The tenant thought it was an agreement to rent because new owners took over the rental unit. The tenant had just paid rent two days before he signed the mutual agreement. The tenant paid rent on March 30, 2021. The tenant has not been provided with an itemized list of the damages to his rental unit, which the landlord claims is \$15,000.00 to \$20,000.00 so that his advocates can help him with it.

The tenant testified regarding the following facts. He signed the mutual agreement under "duress." He knows what duress is because he "read the law." The landlord's agents offered him money to leave the rental unit and it is a "renoviction." The tenant did not cause any damage to the rental unit. He did not read the form before he signed it. The landlord's agents did not force him or use duress, but they "requested" he sign the form and "pressured" him. The landlord is evicting all tenants with mental illness. The landlord's agents are being "obnoxious."

Landlord MD stated the following facts in response to the tenant's and tenant WC's testimony. The tenant signed the mutual agreement on March 19, 2021. The tenant's rent was paid on April 1, 2021. The tenant had not just paid rent when he signed the agreement. She talked to the tenant on March 17, 2021 and then again on March 19, 2021, when he looked at and read the form before he signed the mutual agreement.

Analysis

Section 44(1)(c) of the *Act* states the following with respect to ending a tenancy:

*44 (1) A tenancy ends only if one or more of the following applies:
(c) the landlord and tenant agree in writing to end the tenancy.*

Both parties agreed that the landlord and tenant signed a mutual agreement to end the tenancy at 11:00 a.m. on April 1, 2021. A copy of the mutual agreement was provided for this hearing. It is on an approved RTB form. It is signed by both parties, landlord RJ and the tenant. It states that the tenancy is ending at 11:00 a.m. on April 1, 2021. The tenant was required to vacate by the above date and time but failed to do so.

I find that the tenant voluntarily signed the mutual agreement and it is effective. Whether he read it or not, is up to the tenant. The landlord is not obligated to explain the form to the tenant or to advise him about it. I find that the tenant was not forced or pressured to sign the mutual agreement and he was not under duress. The tenant brought two advocates to this hearing and the previous RTB hearing, and he could have had these advocates or any other agents assist him, read the mutual agreement, discuss it with him, and determine whether to sign it. The tenant stated that tenant WC is his psychiatric nurse, so she has knowledge of his mental illness, and she is able to assist him and she did at this hearing and the previous RTB hearing. She was also listed as the tenant's emergency contact on the parties' written tenancy agreement, signed on July 31, 2013, more than eight years prior to this hearing date on August 10, 2021. The tenant could have called the RTB, using the contact information provided on the mutual agreement, to ask questions or to determine his rights and responsibilities, as specifically stated on the form itself. However, if the tenant chose to sign the form without discussing it with his advocates, any other agents, or the RTB, that is his choice.

I find that tenant WC's explanation is not reasonable, that the tenant thought he was signing an agreement to rent with the new owners. The tenant did not state this explanation when he testified. He said that he was offered money by the landlord to leave the rental unit and the landlord was evicting all tenants with a mental illness. I find that the tenant was aware that the landlord wanted him to move out of the rental unit. Further, the tenant signed a written tenancy agreement on July 31, 2013, and did not sign any other tenancy agreements after this date. The tenant agreed at the previous RTB hearing that he was being issued rent receipts for "use and occupancy only" by the landlord.

The parties' mutual agreement does not state the required terms for a tenancy agreement, including the date the tenancy starts, the period of tenancy, the amount of rent, the amount of the security deposit, or the services or facilities included in rent. The required terms, as per section 13 of the Act, are the following:

Requirements for tenancy agreements

13(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi) which services and facilities are included in the rent;

(vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

The previous RTB hearing occurred on July 8, 2021, after which a decision, dated July 14, 2021, was issued by a different Arbitrator. That decision dismissed the tenant's application, which was filed on March 23, 2021, to cancel a notice to end tenancy and an order to comply. Neither party disputed this fact or that they received a copy of the previous RTB decision. The tenant's online application stated that the tenant signed a mutual agreement to end tenancy.

The Arbitrator noted at page 2 of the previous decision (my emphasis added):

Preliminary Matter—Relief Sought on Application

The parties confirmed the Landlord did not issue a 1 Month Notice to End Tenancy for Cause, such that the Tenant's application for an Order canceling such a notice was not required.

*Similarly, the **Advocate confirmed the nature of the balance of the Tenant's claim** related to his concerns over the changing of his locks and the **Landlord's refusal to accept rent payments**. The Tenant confirmed that while the lock was changed, he was provided a key, such that he did not require an Order in this respect. Similarly, **the Tenant confirmed that the Landlord was accepting his monthly payments, but issuing receipts for "use and occupancy only" as it was the Landlord's position the tenancy ended pursuant to a Mutual Agreement to End Tenancy.***

The validity of the Mutual Agreement to End Tenancy is the subject matter of a hearing before the Branch on August 10, 2021. The file number for that matter is included in the unpublished cover page of this my Decision.

Consequently, the relief sought by the Tenant in the Application before me was moot, or no longer relevant. I therefore dismiss the Tenant's claim.

I find that tenant WC's explanation is not reasonable, that the tenant had just paid rent two days before signing the mutual agreement, so it was part of an agreement to rent with the new owners. The tenant did not state this explanation when he testified. I accept landlord MD's affirmed testimony that the mutual agreement was signed on March 19, 2021, and the tenant paid rent on April 1, 2021. Tenant WC stated that the tenant paid rent on March 30, 2021. Regardless of whether the tenant paid rent on March 30 or April 1, this is more than two days from the tenant signing the mutual agreement on March 19, 2021. The tenant filed his previous RTB application, disputing the mutual agreement on March 23, 2021, before he paid rent on March 30 or April 1.

I accept landlord MD and landlord RJ's affirmed testimony that they had a discussion with the tenant prior to signing the mutual agreement on March 17, 2021, as well as before and after the signing of the mutual agreement on March 19, 2021. I accept their affirmed testimony that they both saw the tenant read the form and sign it in front of them on March 19, 2021.

At the top of the form, the parties' mutual agreement clearly states that it is an agreement by both parties to end the tenancy. It specifically states that neither party is under any obligation to sign the form and that if any party has questions, to contact the RTB, before signing the form. The contact information for the RTB is on the bottom of the form. It states that the agreement is in accordance with the *Act*, which says that both the landlord and tenant agree in writing to end the tenancy.

The parties' mutual agreement states the following at the top of the form in large black font (my emphasis added):

Mutual Agreement to End a Tenancy
#RTB-8

*NOTE: This form is NOT a Notice to End Tenancy. **Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s).** If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. **If you have questions about tenant or landlord rights and responsibilities** under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, **contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.***

The mutual agreement states the following at the bottom of the form under the landlord's and tenant's signature lines (my emphasis added):

The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: "The landlord and tenant agree in writing to end the tenancy."

FOR MORE INFORMATION:

www.gov.bc.ca/landlordtenant

Phone: 1-800-665-8779 (toll-free) Greater Vancouver: 604-660-1020 Victoria: 250-387-1602

On a balance of probabilities and for the reasons stated above, the landlord's application is granted. I find that the landlord is entitled to an order of possession against the tenant, effective two (2) days after service on the tenant, pursuant to section 55 of the *Act*. I find that the tenant did not vacate the rental unit as required by the mutual agreement. Since the April 1, 2021 effective date in the mutual agreement has long passed, I find that the landlord is entitled to an immediate order of possession.

Conclusion

The landlord's application is granted.

I grant an Order of Possession to the landlord effective **two (2) days** after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 10, 2021

Residential Tenancy Branch