Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM FFL

Introduction

The landlords seek an order of possession pursuant to section 55(2)(d) of the *Residential Tenancy Act* ("Act"). In addition, the landlords seek recovery of the cost of the application filing fee under section 72 of the Act.

The landlords, their legal counsel, the tenant, and the tenant's advocate, attended the hearing on September 20, 2021 at 1:30 PM.

No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. Last, it should be noted that relevant evidence, complying with the *Rules of Procedure* under the Act, was carefully considered in reaching this decision. This includes written submissions from both the landlords and the tenant. However, only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced herein.

Preliminary Issue: Tenant's Noncompliance with Rule 6.10

Rule 6.10 of the *Rules of Procedure* speaks to the conduct of parties in a hearing:

> Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

It should be noted that the tenant was late attending the hearing by five minutes. At the time the tenant dialed into the hearing, I had completed my explanation to the parties as to how the hearing process would progress. I then explained to the tenant that I would be hearing from the landlords about service of evidence.

The tenant immediately commented, “let the lying begin!” During questioning of the landlords about service of evidence, the tenant interrupted me and was asked not to. Despite my repeatedly asking the tenant to not interrupt she continued to do so and to speak over me. At 1:40 PM I made the decision to mute her telephone line. The tenant’s telephone line remained muted until it was her turn to provide direct testimony.

It is noted that the tenant provided lengthy testimony of matters unrelated to the issues of the dispute. At approximately 2:10 PM the tenant was asked to end her testimony. The tenant reacted angrily to this request and protested that she was not being given an opportunity to be heard. It was then explained to the tenant that while she had a right to be heard, it was to be on matters that were relevant to the issues in this dispute.

At the end of the hearing, it was then explained to the parties that the decision would be issued within a week. The tenant exclaimed, “so I’m supposed to sit on death row!?” It was then clarified that the tenant would need to sit and wait for the decision, to which she shouted, “I’m on death row [. . .] you killed me!” The tenant then repeatedly accused me of killing her (or, putting her to death), before exiting the hearing.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in 2013 before the landlords took ownership. Monthly rent is $750.00 due on the first day of the month. The tenant paid a security deposit of $325.00 which the landlords currently hold in trust pending the outcome of this matter. There is no written tenancy agreement in evidence.

On September 14, 2020 the parties signed a *Mutual Agreement to End a Tenancy* (the “Agreement”). One of the landlords’ and the tenant’s signature appear on the Agreement and the Agreement states that the tenancy was to end on May 1, 2021.

The landlords and their counsel provided some background to events leading up to the signing of the Agreement, including the previous issuing of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”). After the tenant received the Two Month Notice she “begged to stay” and the landlords, out of compassion, let the tenant stay longer by way of the Agreement.

A meeting occurred on September 14, 2020, at which time the landlords gave a copy of the Agreement (then unsigned and undated) to the tenant. They left the Agreement with the tenant and came back later that afternoon. The tenant had solicited the assistance of a good friend ("Linda") to help her in reviewing the Agreement. The landlords explained the Agreement to the tenant, and the tenant apparently called the Residential Tenancy Branch to find out what her rights were in relation to signing the Agreement.

On September 14, 2020, the landlord and the tenant – in the presence of her friend Linda – signed and dated the Agreement. A copy of this Agreement is in evidence.

Landlords' counsel submitted that, despite the tenant's claim that the Agreement was signed under duress, the tenant had an opportunity to review the document. She had an opportunity to seek counsel and get help. At no time during the presentation of signing of the Agreement did the tenant dispute the Agreement or any of the terms on the Agreement, and the tenant did not at the time take any issue with the Agreement. The landlords affirmed that counsel's submissions were truthful and accurate.

In direct testimony, the tenant explained that she does not have a great memory and is poor of health. Indeed, her health issues are "pretty bad." The tenant has, until recently, led a "blissful life." She then briefly testified about the landlords' son being a convicted felon who the landlords "planted […] in the yard" and explained that there are dogs barking in the yard and cameras which the landlords used to spy on the tenant.

When the landlords took ownership, the tenant testified, they had promised her that she could live there as long as she liked. And, despite trying "very hard to find a place," the tenant stressed that the landlords simply "gave me a piece of paper" which she "signed reluctantly." The tenant then testified that she asked the landlords what would happen if she did not sign it, to which they allegedly said, "we'd have to go back to the Two Month Notice." At the end of the day, the tenant remarked, the landlords are simply trying to get her out. (Despite, it should be noted, the rental unit being "almost uninhabitable.")

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.

The landlords seek an order of possession pursuant to section 55(2)(d) of the Act which 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.

In this dispute, the landlord and tenant agreed in writing, through the use of a *Mutual Agreement to End a Tenancy,* that the tenancy would end on May 1, 2021.

Turning now to the tenant's claim that she signed the Agreement under duress, I cite *Pao On v. Lau Yiu,* [1979] 3 All ER 65, which at page 12 discusses the criteria under which duress—a coercion of a person's 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, there is no evidence for me to make a finding of fact that the tenant protested at the time she signed the Agreement. A "reluctance" to sign is not, I find, a protest of having to sign something.

Second, there is no evidence before me to find that the tenant did not have an alternative course open to the tenant at the time. Indeed, she had a few hours (if not more) to seek counsel or help, which apparently the tenant did, from her friend Linda. Third, the tenant had an opportunity to seek independent advice. Fourth, there is no evidence before me to find that after signing the Agreement the tenant took steps to avoid it except after the effective end date of tenancy came to pass.

Last, there is no evidence before me that the landlords threatened to "go back to the Two Month Notice" if the tenant refused to sign the Agreement. Indeed, by all accounts, the landlords' compassion led them to agree to letting the tenant reside at the property for seven and a half months. It was only when it came time to meet her end of the contract and vacate the rental unit did the tenant then have an issue with Agreement.

In summary, I am not persuaded by the tenant's argument that she signed the Agreement under duress. Certainly, while the tenant may not have completely liked signing, she did so under circumstances that did not, I find, constitute duress. Rather, it is my finding that the tenant voluntarily signed the Agreement and as such the Agreement is found to be valid.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their application for an order of possession pursuant to section 55(2)(d) of the Act.

An order of possession is issued to the landlords in conjunction with this decision. It is the landlords' responsibility to serve a copy of this order on the tenant.

Last, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, I award them $100.00 in compensation to cover the cost of the filing fee. Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may retain $100.00 of the tenant's security deposit in satisfaction of the above-noted award.

Conclusion

I HEREBY grant the landlords an order of possession, which must be served on the tenant, and which is effective two days from the date of service. If necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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

Dated: September 21, 2021

Residential Tenancy Branch