



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Code: OPM

Introduction

The landlord seeks an order of possession on a *Mutual Agreement to End a Tenancy* pursuant to section 55(2)(d) of the *Residential Tenancy Act* (the “Act”).

A dispute resolution hearing was convened on June 3, 2022. Attending the hearing were the landlord, her counsel, the tenants, and their counsel.

The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* (“*Rules*”) was explained to the parties.

Preliminary Issue: Amendment to Application

During the landlord’s testimony the landlord and her counsel requested an amendment to the application for compensation. Rule 4.2 of the *Rules* states that

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Based on the limited submissions from landlord’s counsel that the landlord has suffered a monetary loss from the tenants’ refusal to vacate the property (notwithstanding that she has continued to receive rent from the tenants), I am not persuaded that the circumstances warrant an amendment so late in the dispute resolution process. The landlord or her counsel had ample opportunity to file an *Amendment to an Application for Dispute Resolution* form before the hearing and to include documentary evidence supporting such an amendment.

As such, and as explained to the landlord during the hearing, the landlord remains at liberty to make a separate application for dispute resolution seeking compensation from the tenants.

Issue

Is the landlord entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below. This is particularly the case in this dispute, as there was much testimony and submissions regarding whether the rental unit complied with municipal bylaws, whether other tenants were in the property, whether the “new” landlord is a landlord, and whether the new landlord has somehow reinstated the tenancy, and so forth. To reiterate, however, much of this testimony and submissions are not directly relevant to the very narrow issue of whether the landlord is entitled to an order of possession.

The tenancy began April 1, 2020 and monthly rent is \$1,400.00. The rental unit is one of five rental units in a multi-unit residential property.

On Sunday, December 12, 2021, the landlord attended to the rental unit and met with the tenant G.P. The landlord explained to her that the property had been sold and that the purchaser wanted the property to be “empty of contents and empty of tenants.” In the landlord’s words, “I explained to [the tenant] about what was going on.” She also explained that the date of closure of the sale was April 14, 2022. According to the landlord, the purchaser had asked her to have the tenants sign a mutual agreement to end the tenancy.

The landlord placed the *Mutual Agreement to End a Tenancy* (the “Agreement”) on the counter, explained the situation, the tenant apparently said “okay,” and then the tenant signed the Agreement. A copy of the Agreement was submitted into evidence. The landlord testified that she did not ask the other tenant A.K. to sign the Agreement because G.P. had asked the landlord to only deal with her on tenancy matters. The Agreement indicates that the effective end of tenancy date is March 31, 2022.

At this point, it is worth noting that counsel gave submissions in respect of whether the applicant landlord in this dispute is still the current landlord. The new owner of the property is apparently also the landlord, though he never appeared at the hearing, nor was he named as a party to this application.

The tenants continued to pay rent to the landlord J.P. for the months of April, May, and June 2022. (The landlord acknowledged receiving rent for April and May but has not yet, she commented, received June's rent.)

Tenants' counsel submitted that the tenants question the validity of the Agreement. Counsel argued that the tenant or tenants were not provided an opportunity to review the Agreement or given a chance to seek independent legal advice.

Tenant G.P. testified that the landlord came to the rental unit around 7 PM and put the Agreement on the counter, with her hand on top of it, covering the top portion. She asked the tenant to sign the Agreement which she did, "without knowing what it was." The tenant "just believed" the landlord that the Agreement needed to be signed and did not have anything to say in response. She noted that the other tenant A.K. was not in the room at the time of signing, and that he was not given any opportunity to review the Agreement. The tenant A.K. testified that he never saw the Agreement and that he was never asked to sign anything.

Tenants' counsel argued that the landlord's conduct demonstrates a clear intention to manipulate the more vulnerable of the two tenants, and that the signing of the Agreement was not made voluntarily. Counsel argued that there was no meeting of the minds as is required under contract law, that the tenant could not consent, that the tenant was not allowed to read the Agreement, and that there was duress during the signing. It was further argued that the landlord needed the Agreement to be signed in order to sell the property, instead of using a proper notice to end tenancy.

Analysis

A tenancy may be ended by any means enumerated under subsection 44(1) of the Act. Subsection 44(1)(c) states that a tenancy may end if "the landlord and tenant agree in writing to end the tenancy".

In this dispute, the tenant G.P. and the landlord agreed in writing, through the execution of the Agreement on December 12, 2021, that the tenancy would end on March 31, 2022. The tenants are, as co-tenants in the tenancy, jointly and severally liable, and as such only one tenant need agree in writing to end the tenancy for the tenancy to end.

Subsection 55(2)(d) of the Act permits a landlord to request an order of possession of a rental unit in a circumstance where "the landlord and tenant have agreed in writing that the tenancy is ended."

Prima facie, the oral and documentary evidence supports a finding that the landlord is entitled to an order of possession of the rental unit based on the Agreement.

However, tenants' counsel argued that the Agreement was signed by the tenant under duress and thus the Agreement is legally invalid. And it is trite law that contracts cannot be entered into where one party is under duress at the time of signing.

For a party to establish duress, they must prove two things: first, that they were subjected to pressure applied to such an extent that there was no choice but to agree, and second, that the pressure applied was illegitimate. On the first part of the test, a decision maker must consider four factors (see *Kawartha Capital Corp. v. 1723766 Ontario Limited*, 2020 ONCA 763, at para. 11):

1. Did the party protest at the time the contract was entered into?
2. Was there an effective alternative course open to the party alleging coercion?
3. Did the party receive independent legal advice?
4. After entering the contract, did the party take steps to avoid it?

In this dispute, there is no evidence before me to conclude that the tenant protested or otherwise objected when she decided to sign the Agreement. Quite the opposite: the tenant testified that she had no idea what she was really signing but decided to sign it anyway, merely commenting "okay" to the landlord's request.

An effective alternative course open to the tenant alleging coercion would have been asking her co-tenant A.K. to look at the Agreement. Or, asking the landlord to leave the Agreement with her to further review and consider. There is, in short, no suggestion before me to find that the landlord might have refused this request, as neither tenant testified about making any effort to take even a few minutes to review the Agreement.

There is, for a similar reason, no evidence before me to find that the tenant could not have sought independent legal advice. Again, there is no evidence leading me to find that the tenant made any reasonable effort to find out what she was signing. Tenants' counsel argued that the landlord somehow manipulated the circumstances around the signing of the Agreement by taking advantage of the "more vulnerable" of the two tenants. But there is no evidence suggesting that the tenant G.P. is anything less of sound mind or incapable of acting in a reasonable manner as a reasonable adult, fully capable of entering into a contract.

Last, the only steps that the tenants took to avoid the terms of the Agreement was to not vacate the rental unit at the end of March. However, there is no evidence that the tenants took steps to avoid the Agreement before that date, or otherwise dispute the validity of the Agreement after signing it.

Based on the above, it is my conclusion that the tenants have satisfied none of the four factors relevant to the first prong of the test. As such, I need not consider the second part of the test. It is therefore my finding that duress was not present at the time that the landlord asked the tenant to sign the Agreement. Thus, the Agreement is a valid written agreement between the parties whereby the tenancy ended March 31, 2022.

Whether the landlord or the purchaser *ought* to have issued a notice to end the tenancy under sections 49 or 49.2 of the Act is irrelevant in the context—the Agreement is a valid legal instrument for ending a tenancy under the Act.

For these reasons the landlord is entitled to an order of possession. Given that the tenants have paid rent to the landlord for June, the order of possession's effective date shall be June 30, 2022. A copy of the order of possession is issued in conjunction with this decision, to the landlord.

Conclusion

The landlord's application is hereby granted.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 3, 2022

Residential Tenancy Branch