



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a Mutual Agreement to End Tenancy, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. At the beginning of the hearing the landlord advised that the rent was paid to date and there were no monetary issues between the parties other than his request for reimbursement of the fee he paid to file this application.

The tenants acknowledged receipt of the Application for Dispute Resolution and landlord's evidence.

The landlord acknowledged receipt of two evidence packages from the tenants. The second package was served late but the landlord was prepared to proceed on the evidence, with one exception. Included in the tenants' evidence was a letter from his ex-wife's cousin. The landlord explained that he is in the middle of a difficult divorce. He argued that most of the contents related to other issues and were highly inflammatory and on that basis he asked that the letter be excluded from the evidence. I reserved my decision on the request. I have read the letter but the contents are not particularly relevant to the legal issues before me so I have not considered it in the preparation of this decision.

The tenants were represented by an advocate. At the end of his submission I asked the advocate to address the application of *Policy Guideline 13: Rights and Responsibilities of Co-Tenants* to this situation. The advocate was taken by surprise and said he was not aware of the existence of the *Policy Guidelines*. He asked for leave to do some research on the guideline and to file a written submission on that point. He said he would submit it within a day. I agreed to his request. The advocate did file his submission as promised. I have read it and have considered it in the preparation of this decision.

Included with the advocate's submission were a copy of the tenancy agreement and a notice of rent increase, neither of which had been filed by either party in advance of the hearing. It is only because the landlord's and the tenants' oral testimony about the critical terms of the tenancy agreement were the same as each other's and the same as the document itself that I accept it into evidence. I do not accept the notice of rent increase. There is no compelling reason for it not to have been served and filed in advance of the hearing.

Immediately after the hearing the landlord faxed a letter to the Residential Tenancy Branch in which he indicated he would be prepared to accept a possession date of November 30, 2015. He also stated that he would be providing a copy of his letter to the tenants.

Issue(s) to be Decided

- Is the Mutual Agreement to End Tenancy valid?
- If so, on what terms should the order of possession be made?

Background and Evidence

The month-to-month tenancy commenced October 1, 2012. At the start of the tenancy the monthly rent was \$800.00. The rent has been increased once since then. There is a written tenancy agreement. Both tenants are named on the agreement although only the male tenant signed it.

The tenants rent the main level of a house. There is a suite in the lower level. The landlord has lived in the suite in the past. It was damaged in a flood and he is currently living elsewhere while he repairs the lower unit. He testified that he is at the house every day.

The landlord testified that he is in the middle of a very difficult divorce and custody dispute. He explained that in order to accommodate his children he either has to sell this house so he can buy something else, or he has to move into the upstairs unit.

The parties all testified that in June the landlord approached the tenants about moving into the lower unit. They said they were not interested and that was the end of it.

The female tenant testified that on July 21, just as they returned home from the hospital with their new born baby, the landlord approached them. The two men had a conversation outside. Afterwards the male tenant told her the landlord would like them to find another place to live and that they had talked about the tenants buying the place.

The male tenant testified that on July 21 the landlord showed up at the door and asked him to sign a document. When he asked the landlord what it was about the landlord replied that he needed them to move out. He told the landlord he could not talk right now and the landlord left. Later in the day the landlord apologized and asked the tenant to make an offer on the house. The tenant said he needed more time and that was the end of the conversation.

On August 8 the landlord sent the tenants a text saying he would like to talk to them.

The male tenant testified that on August 12, after he returned home from work he went downstairs to see what the landlord wanted. He came upstairs shortly after and told the female tenant he had signed a Mutual Agreement to End Tenancy. The female tenant was very upset with him for signing the document and although she was asked to sign it as well, she has refused.

The male tenant testified that April to November is a very busy time at his work. He works twelve plus hour shifts, seven days a week. He described his work as being very responsible. The tenants argue that the male tenant was tired and stressed, both from his heavy workload and the demands of a young child and new baby, when he signed the Mutual Agreement to End Tenancy and that he cannot be considered to have signed it voluntarily.

Since August 23 the tenants have been disputing the validity of the Mutual Agreement to End Tenancy. The landlord filed this application for an order of possession on August 27.

As stated earlier, the rent has been paid to the end of October.

Analysis

Section 44(1)(d) of the *Residential Tenancy Act* provides that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Section 55(2)(d) allows a landlord to file an application for dispute resolution asking for an order of possession when the landlord and tenant have agreed in writing that the tenancy is ended. Subsection (3) allows an arbitrator to grant an order of possession before or after the date when a tenant is required to vacate a rental unit and the order takes effect on the date specified in the order.

The first issue is the applicability of *Policy Guideline 13: Rights and Responsibilities of Co-Tenants* to this dispute.

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. They are written for lay people so they do not reference the specific cases or lines of cases upon which the legal principles described in the guidelines are based, but they do reflect the applicable common law. Although they are called guidelines there is nothing discretionary about them; arbitrators are required to apply the common law as articulated in the guidelines to the disputes they are deciding.

The next issue is whether the tenants are co-tenants as defined in *Guideline 13*. The *Guideline* explains that at law all renters are either co-tenants, tenants in common, or occupants; and the rights and responsibilities of renters depend on their legal status.

Co-tenants are defined as two or more tenants who rent the same property under the same tenancy agreement, whereas tenants in common are two or more tenants living in the same unit under separate tenancy agreements, each paying a separate rent. There is no evidence that there are two separate tenancy agreements in this situation.

The advocate stressed the fact that at least the last month's rent had been paid from the female tenant's sole bank account and that this established her status as a tenant. The source of rent payments is irrelevant to the question of who is or is not a tenant. For example, many people have their rent paid directly from the Ministry to the landlord. These payments do not make the Ministry the tenant under the tenancy agreement. Similarly, a parent who is not named on the tenancy agreement but who pays their adult child's rent is not the tenant.

The landlord and the tenants all testified that the female tenant was a co-tenant and they conducted themselves throughout this tenancy. If the female tenant is not a co-tenant she is only an occupant with no rights or obligations under the tenancy agreement.

For the purposes of this decision I find that the female tenant was a co-tenant with the male tenant, and not an occupant.

Guideline 13 explains that the basic principle of law is that co-tenants are responsible for each other's actions. The *Guideline* specifically refers to some common situations: one tenant moves out before the end of a fixed term tenancy; one tenant damages the rental unit; one tenant fails to pay his or her share of the rent; one tenant gives proper written notice to end the tenancy. In each situation the co-tenants(s) must pay the rent, pay for the damage or move out in accordance with their co-tenant's actions. The examples set out in the *Guideline* are not exhaustive; only illustrations of the general principle. Accordingly, if one co-tenant signs a valid Mutual Agreement to End Tenancy all the other co-tenants are bound by the agreement.

The advocate did make an argument based upon the fact that section 44(1)(d) refers to "tenant" in the singular but in doing so he failed to consider section 28(3) of the *Interpretation Act* which provides that: "In an enactment words in the singular include the plural, and words in the plural include the singular."

A legal agreement may be set aside if one or more of the following apply:

- The party, by reason of physical or mental disability, did not understand the document or the nature of the agreement.
- The party was induced into entering into the agreement by fraud.
- The party entered into the agreement under duress.

Deciding after the fact that it was a poor decision or regretting a choice made is not grounds for overturning a contract.

It cannot be argued that the tenant did not have the capacity to understand the document which he signed. His own evidence is that his work is responsible. The document is a standard Residential Tenancy Branch document and has been drafted with the understanding that it will be read and signed by lay people. It is only one page long and the most important part of it is only two sentences: "The tenant(s) hereby agrees to vacate the above named premises at 12 am, on the 30th day of October, 2015. The parties recognize that the tenancy agreement between them will legally terminate and come to an end at that time."

There is no evidence that the landlord misrepresented the nature of the document or its' effect in any way.

Duress is commonly defined as "compulsion by threat, violence, or imprisonment". Duress of a less violent nature – such as ongoing or persistent pressure by someone in a position of authority or threats of violence – may be sufficient to overturn an agreement. In this case, the pressure consisted of two brief conversations a few weeks apart. On the first occasion, when the male tenant said he needed some time, the landlord left. On the second occasion, the male tenant was in control of the situation. He chose to go see the landlord after work when he knew he was tired; he went to the landlord's unit the landlord did not come to the rental unit; he could have left at anytime; and he did not have to sign anything. There is no evidence of threats or any other force being applied to the tenants by the landlord. I find that the male tenant was not forced into signing the document and that it is a valid agreement.

One final point. The document is dated July 22. The fact that it is dated before the day on which the parties actually signed it does not affect its' validity.

As I have found that the Mutual Agreement to End Tenancy is valid the landlord is entitled to an order of possession for any date after the end of the tenancy.

Based upon the tenants' representations in the hearing and the landlord's written agreement to a later date I exercise my authority pursuant to section 55(3) and I order that the landlord is entitled to an order of possession effective 1:00 pm, November 30, 2015.

As the landlord was successful on his application he is entitled to reimbursement from the tenants of the \$50.00 fee he paid to file it. Pursuant to section 72(2)(b) that amount may be deducted from the security deposit paid by the tenants.

Conclusion

An order of possession effective **1:00 pm, November 30, 2015**, has been granted to the landlord. The order must be served on the tenants as soon as possible. If necessary, the order may be filed in the Supreme Court and enforced as an order of that court.

The tenants must pay the November rent. If they do not, the landlord may serve them with a 10 Day Notice to End Tenancy for Non-Payment of Rent.

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: October 28, 2015

Residential Tenancy Branch

