



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Corrected Decision

Dispute Codes: CNL, MNDC, OLC

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated April 30, 2013, and purporting to be effective June 30, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use be cancelled?

Background and Evidence

The tenancy began as a fixed term on April 12, 2012 expiring on March 31, 2013. The rent is \$950.00 per month.

Submitted into evidence was a copy of a copy of a Two-Month Notice to End Tenancy for Landlord Use dated April 30, 2013. The landlord had indicated on the form that:

"The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the rental property".

The tenant raised the issue of bad faith on the part of the landlord and gave testimony that the landlord had initially used inappropriate measures to convince the tenant to vacate. According to the tenant, this included harassment tactics and unsubstantiated notices or warnings.

The tenant felt that that landlord's action in extending the tenancy beyond the fixed term created another four-month fixed term and the landlord is held to that term under the

Act, which would invalidate the Two Month Notice to End Tenancy for Landlord's Use. The tenant seeks to have the Notice cancelled.

The landlord acknowledged that he did permit the tenant to stay in the unit after March 31, 2013 when the fixed term expired as the tenant needed more time to relocate. The landlord testified that the tenant was offered another fixed-term tenancy agreement at that time, but the tenant declined. A copy of this draft agreement is in evidence. The landlord's position is that the tenancy reverted to a month-to-month tenancy.

In regard to the issue of good faith, the landlord testified that he is the current manager and caretaker of this 3-unit complex and is responsible for every aspect of its operation, including rent collection. The landlord testified that there is a genuine need to supply the caretaker with a larger unit than the one now reserved for the caretaker.

Analysis

After a mediated discussion on the subject of ending the tenancy relationship, the parties came to a mutually agreeable resolution the terms of which are as follows:

- The tenant agrees to vacate the unit on or before July 31, 2013 and the landlord will be issued an enforceable Order of Possession effective that date.
- The tenant will still be entitled to the one month compensation under section 51 of the Act which requires the landlord to pay, on or before the effective ending date of tenancy, an amount equivalent to one month's rent payable under the tenancy agreement.
- If the tenant manages to find a suitable place to relocate prior to the July 31, 2013 deadline,, under section 50 of the Act, the tenant is at liberty to end the tenancy earlier by
 - Giving the landlord at least 10 days' written notice to end the tenancy, and paying the landlord, on the date the tenant's notice is given, only the proportion of the rent due pro-rated to the effective date of the tenant's departure date.
 - However, if the tenant had already paid that month's rent before giving the 10 day notice to vacate, on receiving the tenant's notice the landlord must refund any rent paid for a period that falls after the effective moving date on the tenant's notice.
 - The tenant's choice to move earlier will not affect the tenant's right to also receive the equivalent of an additional one month compensation under section 51 *above*.

The landlord also agrees to comply with the Act by giving proper written notice prior to showing up at the rental unit and agrees not to engage in any conduct that interferes with or bothers the tenant.

Based on the agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective Wednesday, March 31, 2010 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the mutual agreement reached by the parties during these proceedings I hereby order that the tenant is still entitled under section 51 of the Act to receive from the landlord, an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Based on the agreement reached by the parties during these proceedings I hereby order that, regardless of the above, the tenant may also end the tenancy earlier by giving the landlord at least 10 days' written notice to end the tenancy and will only owe a proportion of rent for the number of days of the month that fall prior to the tenant vacating, which is a right under section 50 of the Act. Leaving earlier will not affect the tenant's entitlement to receive compensation equivalent of one month's rent payable under the tenancy agreement.

The tenant is entitled to be reimbursed the \$50.00 cost of this application. I hereby **grant the tenant a monetary** order ~~that the tenant is at liberty to deduct for~~ \$50.00. ~~from the next rent payment owed to the landlord.~~ **This order must be served on the landlord and may be enforced through Small Claims Court if unpaid.**

Conclusion

The parties have reached a mutual agreement and an Order of Possession is issued to the landlord on consent.

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: June 04, 2013, **Corrected July 8, 2013**

Residential Tenancy Branch

