



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNL, MNDC, OLC

Introduction

This Dispute Resolution hearing was convened to deal with the tenant's application to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated and served on November 29, 2013, purporting to be effective January 31, 2014.

Both parties were present at the hearing. The landlord's agent, who made the application, is another tenant in the complex. However, the owner/landlord also joined the proceedings as well.

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

Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances, or should the Notice be cancelled as requested by the tenant?

Background and Evidence

The tenancy began in August 2013 and the rent is \$650.00. The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord Use.

The tenant is disputing the landlord's notice on the basis that it was issued in bad faith. According to the tenant, the landlord is trying to terminate the tenancy as a reprisal for the tenant's requests for repairs and the tenant objecting to an illegal rent increase that the landlord attempted to impose.

The landlord acknowledged that there were some problems that arose with the tenancy, but stated that her son requires the residence for his use as he is moving back to the area for employment and personal reasons. The landlord testified that they genuinely need the unit for family use.

Analysis

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith. After a detailed discussion on the subject of ending the tenancy relationship, the parties were not able to agree on a date for mutually ending the tenancy.

In weighing the tenant's evidence against the landlord's evidence I find, on a balance of probabilities that the Two Month Notice to End Tenancy for Landlord's Use was not issued in bad faith, although there were some other factors of concern between the tenant and the landlord's agent that had negatively impacted the tenancy.

Accordingly, I find that the Two Month Notice to End Tenancy for Landlord's Use will not be cancelled and the tenancy must therefore end.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

I grant the landlord an Order of Possession based on the following terms:

- The tenant must vacate the unit on or before February 28, 2014 and the landlord will be issued an enforceable Order of Possession effective on that date.
- The tenant's security and pet damage deposit will be refunded in accordance with section 38 of the Act.
- The tenant will be entitled to be credited with 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. These funds can be allocated to the final month rent for February 2014, if the parties agree.

Notwithstanding the Order of Possession terminating the tenancy on February 28, 2014, should the tenant manage to find a suitable place to relocate prior to February 28, 2014, under the Act, the tenant is still at liberty to end the tenancy earlier by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy

- (b) owing to the landlord, on the date the tenant's notice is given, only the proportion of the rent due after being pro-rated to the effective date of the tenant's departure date. This is a statutory right under section 50 of the Act.
- However, if the tenant has already been credited for that month's rent before giving the 10 day notice to vacate, on receiving the tenant's notice to leave earlier, the landlord must then refund any portion rent paid or credited for a period that falls after the effective moving date of the tenant's notice.
- The tenant's choice to move earlier will not affect their right to receive the equivalent of one month compensation under section 51 *above*.

I hereby grant the landlord an Order of Possession effective Friday, February 28, 2014 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.

I further order that the tenant will still be entitled under section 51 of the Act to receive from the landlord, credit for an amount that is the equivalent of one month's rent payable under the tenancy agreement and that any security and pet damage deposits be administered strictly in accordance with the Act.

I hereby order that, regardless of the above, the tenant may also end the tenancy earlier with 10 days' written notice and will only owe the proportion of rent applicable to the number of days of the month that fall prior to the tenant vacating. This does not affect the tenant's entitlement to receive the equivalent of one month's rent payable under section 51 of the Act.

Conclusion

The tenant is not successful in the application, and the tenant's application is dismissed. The landlord is granted an Order of Possession permanently terminating the tenancy effective February 28, 2014.

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: January 23, 2014

Residential Tenancy Branch