



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES. LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: CNL

Introduction

This Dispute Resolution hearing was convened to deal with the tenant's application for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated December 23, 2013, purporting to be effective February 28, 2014.

The tenant and an agent for the owner 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 in May 2007, and the rent is \$970.00. A security deposit of \$437.50 was paid. The tenant submitted into evidence a copy of the Two-Month Notice..

The tenant took issue with the fact that, although the landlord was ending the tenancy because, "*The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property*", the landlord had several opportunities to utilize other existing or recently vacant units for this purpose, rather than evicting the tenant. The tenant testified that, after being a good tenant since 2007, she was suddenly served during the Christmas holidays with the Notice.

The tenant testified that she has been tormented by this development because she is a senior on a fixed income which presents a challenge in finding another affordable apartment. According to the tenant, the manager of the complex has been overheard

stating that they do not want to have older renters living in the building and the tenant strongly feels that she has been subjected to “age discrimination”.

The tenant testified that some units are not occupied or were left completely vacant until recently. The tenant testified that she was not allowed to move into another vacant unit despite the fact that she was willing to pay the higher rent, and this confirms that the landlord is not acting in good faith.

The landlord’s agent pointed out that the owner needs the unit to house a live-in caretaker to manage the rentals as he intends to retire. The agent testified that a person has already been found to do the job.

The agent could not provide information as to whether or not any of the recently vacant units were shown to the new caretaker and admitted that one of the recently vacant units now has “a waiting list” of interested tenants. The agent failed to explain why the tenant was not offered another unit in the building. With respect to 2 vacant units on the main level, the agent stated that they were being used as storage and workshops.

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.

The parties were advised that I was prepared to cancel the landlord’s Two Month Notice to End Tenancy for Landlord’s Use as I found that the landlord did not successfully meet the burden of proof to establish that the landlord is acting in good faith.

However, the parties entered into a mediated discussion on the subject of ending the tenancy relationship, and, because the tenant has already felt forced to find another place, they came to a mutually agreeable resolution, the terms of which are as follows:

- The tenant agrees to vacate the unit on or around February 26, 2014. The landlord will receive an enforceable Order of Possession effective March 1, 2014,
- The landlord will assist the tenant in as much as possible in facilitating her move,
- The tenant is not required to clean the unit prior to vacating, and
- The security deposit and interest will be refunded **in the amount of \$448.53.**

In addition to the above, I find that, pursuant to section 50(1) of the Act, once a landlord gives a tenant notice to end the tenancy under section 49 [*landlord’s use of property*] the tenant may end the tenancy even earlier than the effective date on the Notice.

On receiving the tenant's notice, the landlord must refund any rent paid for a period left in the month after the effective date of the tenant's notice. The Act provides that a notice under this section does not affect the tenant's right to one-month compensation under section 51 *[tenant's compensation: section 49 notice]*.

I find that the tenant intends to vacate on February 26, 2014 and has duly notified the landlord of this earlier departure. Accordingly, in addition to the one-month free rent, and the refund of the security deposit, I find that **the tenant is entitled to receive further monetary compensation in the amount of \$64.00** for the two days vacancy left in February 2014, prior to the effective date of the Notice.

Based on the Act and the agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective Saturday March 1, 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.

Based on the Act and the agreement reached by the parties during these proceedings I hereby grant the tenant a monetary order for \$512.53, consisting of a refund of the tenant's security deposit and interest totaling \$448.53 and a prorated rent abatement equal 2 days in the amount of \$64.00 for the tenant's earlier departure. This Order must be served on the landlord and may be enforced through Small claims court if necessary.

Conclusion

The parties have successfully reached a mutual agreement with respect to the tenant's application to cancel the Two Month Notice to End Tenancy. The tenant is granted monetary compensation for departing earlier than the effective date of the Notice and a refund of the security deposit. The landlord is granted an Order of Possession.

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: February 13, 2014

Residential Tenancy Branch

