



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 723 FIELD STREET HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNL, CNR

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 December 20, 2013 and effective February 28, 2014. The tenant is also requesting that a Ten Day Notice to End Tenancy for Unpaid Rent be cancelled.

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?

Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled?

Background and Evidence

The tenancy began approximately 20 years ago and the rent is \$481.77. A security deposit of \$198.00 and pet damage deposit of \$100.00 is being held in trust for the tenant by the landlord.

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord's Use which indicated that:

"The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The landlord testified that the rental unit is not fit for habitation and there are extensive plans to renovate the building. The landlord acknowledged that they have not yet obtained the various permits as this process takes a substantial amount of time. However, according to the landlord, they still require the unit to be vacant to do the preparatory work.

The tenant disagrees with the landlord's Notice and does not feel that it is supported by the facts. The tenant believes that the Two Month Notice to End Tenancy for Landlord's Use has no merit and should be cancelled.

With respect to the 10-Day Notice to End Tenancy for Unpaid Rent, the tenant stated that attempts to pay the landlord their rent were not successful because the landlord would not accept the rent.

Analysis

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was warranted and supported under the Act.

The Notice was given under section 49(6)(b) of the *Act*, on the grounds that the landlord has all necessary permits and approvals required by law, and intends in good faith repair the rental unit in a manner that requires the rental unit to be vacant.

I have been designated under Section 61 of the *Residential Tenancy Act* to conduct a hearing regarding this application to decide whether the Notice should be aside and the tenancy to continue, or whether the Notice should be upheld and the tenancy therefore to end on the effective date of the Notice. I find that the tenant's position is clear:

1. The landlord is not proceeding in good faith, a requirement under this section of the Act; and;
2. The landlord has not sufficiently proven that the unit needs to be vacant and that the tenancy needs to end for the landlord to proceed with the renovation work and;
3. The landlord does not actually have permits required by law to complete the renovation, nor has the landlord proven that there is no requirement for permits.

I find that the landlord's testimony and evidence did not suffice to defend against the above allegations. Even if I fully accepted the testimony of the landlord, I find that neglecting to submit supportive evidence to establish the precise nature and extent of the work, including the expected duration, the sequence of projects or the status of the initial preparations, there is no basis for me to conclude that the unit must be vacant under section 49 of the Act.

I also note that nothing was submitted to verify what the municipality's position was on the issue of permits and approvals to confirm that the matter was even discussed with city inspectors. I find that the landlord's testimony was deficient in establishing support for the landlord's position that this project could not proceed without ending the tenancy.

I find that, since the burden of proof was squarely on the landlord to satisfy the criteria under the Act, it was incumbent on the landlord to fill in gaps in the information calling into question the need to end the tenancy. I find that the landlord has not sufficiently met this burden.

Based on the testimony and evidence presented during these proceedings, I find that the criteria under section 49(6) has not been met in the face of the challenge put forth by the respondent.

Accordingly, I find that the tenant's application to have the notice cancelled must be granted. I hereby order that the Two-Month Notice to End Tenancy for Landlord's Use issued on December 20, 2013, is cancelled and of no force nor effect.

I also find that the 10-Day Notice to End Tenancy for Unpaid Rent must be cancelled. In cancelling this Notice, I find that the tenant must pay any rental arrears that still exist, and that the landlord is not entitled to refuse payment.

Conclusion

The tenant is successful in the application and the Two Month Notice to End Tenancy for Landlord's Use and the 10-Day Notice to End Tenancy for Unpaid Rent are both cancelled and of no force nor effect.

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 17, 2014

Residential Tenancy Branch

