



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNL, MNDC, OLC, ERP, FF

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 June 2, 2014 purporting to be effective August 2, 2014. The tenant is also seeking a retroactive rent abatement and reimbursement for costs that arose during the tenancy.

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

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances?
- Should the landlord be ordered to make repairs and comply with the Act?
- Is the tenant entitled to monetary compensation under the Act?

Background and Evidence

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord Use dated June 2, 2014. The second page indicated that the tenancy was being terminated by this landlord for the following reasons listed below:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse, and
- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own all the voting shares, and
- All the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit, and
- The landlord has all the 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, and
- The landlord has all the necessary permits and approvals required by law to convert the rental unit to non-residential use, and
- The tenant no longer qualifies for the subsidized rental unit.

The tenant testified that the Two Month Notice to End Tenancy for Landlord's Use was not issued in good faith and the tenant feels that the Notice should be cancelled.

The tenant testified that the landlord had entered the suite without the tenant's knowledge and engaged in conduct that compromised the tenant's quiet enjoyment of the suite. The tenant stated that they confirmed that someone was entering the suite by setting up snares on the hinges of the door. The tenant testified that it was necessary to change the locks for this reason.

According to the tenant the landlord acted in an overbearing and threatening manner that impacted the value of the tenancy. In addition, the tenant testified that there was a problem with the heat and other issues in the unit that caused the tenant discomfort. The tenant seeks compensation of \$1,800.00.

The landlord denied the allegations and stated that he did not enter the unit, nor did he threaten the tenant in any way.

Analysis

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use is supported by the Act and issued in good faith.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit for landlord's use and the approved form features a list of the reasons, one of which must be indicated by landlord as the reason for terminating the tenancy.

However, I find that this landlord indicated numerous conflicting reasons for terminating this tenancy. Therefore, I find that the Two Month Notice to End Tenancy for Landlord's Use is not enforceable and must therefore be cancelled as requested by the tenant.

In regard to the tenant's request for a rent abatement, I find that an Applicant's right to claim damages from another party is dealt with under section 7 of the Act. This section states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

Based on the testimony of the tenant and the evidence before me, I find that the tenant has established that the tenancy was devalued and the tenant is therefore entitled \$152.00, comprised of \$102.00 abatement and reimbursement for the \$50.00 cost of the application.

I hereby order that the tenant reduce the next rent owed to the landlord by \$152.00 as a one-time rent abatement.

I hereby order that the Two Month Notice to End Tenancy for Landlord's Use is cancelled and of no force nor effect.

Conclusion

The tenant is successful in the application and the Two Month Notice to End Tenancy for Landlord's Use is cancelled and the tenant is entitled to some compensation for loss of quiet enjoyment.

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: August 25, 2014

Residential Tenancy Branch

