



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- a \$25,000.00 monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Preliminary Matters

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The Respondent testified that she handed the Applicant the 2 Month Notice on November 26, 2011. The Applicant entered both oral and written evidence that she received the 2 Month Notice on November 24, 2011. In either case, I am satisfied that the Applicant was served with the 2 Month Notice and did submit her application for dispute resolution within the 15 day time period for doing so set out in the *Act*. The Respondent confirmed that she received the Applicant's dispute resolution hearing package sent by registered mail on December 6, 2011. I am satisfied that the Applicant served this package in accordance with the *Act*.

Near the beginning of the hearing, the Respondent's agent asked for an adjournment of the hearing to enable the Respondent and her agent to attend a face-to-face hearing accompanied by the Respondent's lawyer. I deferred making a decision on this request until I had more information from both parties about this application for dispute resolution and the 2 Month Notice issued by the Respondent. For the reasons outlined below, I find that it was not necessary to reconvene this matter to a face-to-face hearing as fundamental flaws in the Respondent's 2 Month Notice and the application for a monetary award could not be corrected through a face-to-face hearing.

Issues(s) to be Decided

Was the Respondent's 2 Month Notice completed in accordance with the requirements of the *Act*? If not, can the Respondent's 2 Month Notice be amended or corrected in this hearing? Should the Applicant's application to cancel the 2 Month Notice be allowed? Is the Applicant entitled to a monetary award against the Respondent?

Background and Evidence

In her application for dispute resolution and during the course of the hearing, the Applicant referred to a previous decision of a Dispute Resolution Officer (DRO) which the Applicant cited as partial grounds for her claim for a monetary Order. Although the only written evidence before me was a one-page November 1, 2011 letter from the Respondent to the Applicant and the Respondent's 2 Month Notice of November 26, 2011, I delayed proceeding with this hearing until I had accessed and reviewed the previous DRO's decision of October 18, 2011.

After reading this October 18th decision, I asked the Applicant to explain why the person cited as the Landlord/Respondent in that application differed from the Respondent in the current application. The Applicant said that she actually rented her premises from OC, the person identified as her landlord on that previous application. The Respondent in this case said that Ms. C was in fact the Respondent's tenant. She said that she had no tenancy agreement with the Applicant and thought that the Applicant was perhaps a sub-tenant of Ms. C.

Analysis – Application to Cancel the 2 Month Notice

Based on the oral testimony at the hearing and the October 18, 2011 decision, it would appear that owner of the property, the Respondent, rented these premises to Ms. C who in turn sub-let the premises to the Applicant as of April 1, 2011.

Midway through the hearing, the Respondent and her agent testified that there is no contractual relationship between the Respondent and the Applicant. This testimony was at odds with the Respondent's identification of the Applicant as her tenant in the 2 Month Notice. The Respondent also said that she served a 2 Month Notice to Ms. C with a requested effective date of January 31, 2012, the same date identified in the 2 Month Notice handed to the Applicant in this case. If there is no tenancy agreement between the Respondent and the Applicant, the Respondent was in no position to issue the 2 Month Notice to the Applicant as her tenant.

Of similar importance to the current application is the failure of the Respondent as the issuer of the 2 Month Notice to properly complete that Notice and identify the grounds on which the landlord was seeking an end to this tenancy. The Respondent did not place an "x" in any of the boxes on page 2 of the Notice to advise the person receiving the Notice of the reason the Notice was being issued. The only mark on page 2 of this Notice was a circle around "father, mother". I would accept that it was the intent of the landlord to require the rental unit for her father or mother if this information were consistent with the other information provided to the tenant shortly before this 2 Month Notice was served to her. However, the Respondent's November 1, 2011 letter asked

the Applicant to vacate her rental suite within 30 days because “Major repairs have to be done on the basement suite for the above-mentioned premises effective November 1, 2011.” Later in that letter, she asked the Applicant “to advise your sub-tenant to find a new place and vacate the premises and remove all their possessions by December 31, 2011.” This “Notice to Vacate” is of no legal consequence because it did not provide correct information regarding the tenancy, the nature of their relationship, nor was it on the correct Residential Tenancy Branch form. However, since the 2 Month Notice was incomplete, I would expect there to be consistency between the two notices issued by the Respondent.

When I asked the Respondent and her agent to clarify why these two notices cited different reasons for seeking possession of the rental unit, the Respondent advised that she wished to renovate the premises before her parents moved into the rental unit. She had no building permits in place to conduct any such renovations and did not have her parents available to provide any information about their intentions to occupy the current rental unit. The Applicant said that she was very confused by the different information provided on the various letters and notices sent to her to try to obtain an end to her tenancy.

Based on the evidence provided by the parties, including the sworn testimony of the Respondent and/or her agent, I find that the Respondent has no residential tenancy agreement with the Applicant and was in no position to issue the 2 Month Notice to the Applicant. In addition, I find that the Respondent did not comply with the requirement under section 52 of the *Act* by failing to complete page 2 of the 2 Month Notice and provide a clear reason as to why she was seeking an end to this tenancy. This failure combined with conflicting information in both the November 1, 2011 letter and in oral testimony convinces me that the 2 Month Notice should be cancelled.

Analysis- Monetary Award

The Applicant provided insufficient evidence to support her application for a monetary award against the Respondent, admitting that she did not even have a tenancy agreement with the Respondent. Part of her application for a monetary award was directed at the stress that she and her daughter have experienced as a result of having to dispute an attempt by her actual landlord, the Respondent’s tenant, to evict her for non-payment of rent adjudicated on October 18, 2011, followed by the Respondent’s current attempt to end this tenancy. Since these were different applications from different people regarding different issues, I see no basis whatsoever for granting the Applicant’s completely unsubstantiated application for a \$25,000.00 monetary award against the Respondent. I dismiss the Applicant’s application for a monetary award without leave to reapply.

Conclusion

I allow the application to cancel the 2 Month Notice to end this tenancy issued to the Applicant. Whatever occupancy or tenancy rights that the Applicant had under the *Act* prior to the issuance of the 2 Month Notice to her remain in effect. However, in making this decision, I emphasize that this decision has no bearing on any other 2 Month Notice the Respondent may have issued as landlord to her own tenant for these rental premises.

I dismiss the Applicant's application for a monetary award against the Respondent without leave to reapply.

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: December 16, 2011

Residential Tenancy Branch