



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAL CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for a Monetary Order for the recovery of the filing fee.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Applicant and an agent for the Respondent, both of whom provided affirmed testimony. The parties both appeared prepared to proceed at the appointed time and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issue(s) to be Decided

Is the Applicant entitled to cancel the Two Month Notice under the *Act*?

If the Applicant is unsuccessful in seeking to cancel the Two Month Notice, is the Respondent entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Two Month Notice in the evidence before me, dated August 14, 2017, does not contain an effective date. The Two Month Notice was also issued naming someone other than the Applicant as the tenant in this matter.

In the hearing the Applicant testified that he is the occupant of the rental unit but there is no tenancy agreement. The Applicant also stated that the surname listed on the Two Month Notice is not now, nor has it ever been, his surname and confirmed that his correct legal name is the one shown on the Application.

In the hearing the Respondent testified that his Mother, who is now deceased, was the original owner of the property where the Applicant resides. The Respondent stated that they believe that the property was originally rented to either the Applicant, or a relative of the Applicant, and that they now need the property for personal use. The Respondent stated that they have little information regarding the tenancy itself, and that they obtained the name listed on the Two Month Notice from their bookkeeper.

No written Tenancy agreement was submitted by either party for consideration.

Analysis

At the conclusion of the hearing I advised the parties that the Two Month Notice did not appear to comply with section 52 of the *Act*, and that as a result, it would be cancelled. I also advised the parties that as the Applicant was successful in having the Two Month Notice cancelled, I would grant the Applicant a Monetary Order in the amount of \$100.00 for the recovery of the filing fee.

After further deliberation, and in consideration of the documentary evidence and testimony before me, I find that I do not have the jurisdiction to decide this matter for the following reasons.

On the Application and in the hearing, the Applicant stated that there is no rental agreement and that the Two Month Notice was not issued in their name. In the hearing the Respondent testified that his Mother, who is now deceased, was the original owner and Landlord of the property and that they know little about the tenancy, should one exist, regarding the above named Applicant as the property may or may not have been originally rented to them. Further to this, no evidence was submitted for my

consideration with regards to whether the Applicant or the Respondent meet the definitions of a tenant or a landlord under the *Act*.

Based on the above, I find that I am unable to determine if a tenancy covered under the *Act* exists between the parties. As a result, I am not satisfied that I have the jurisdiction to decide this matter and the Application is dismissed with leave to reapply.

Conclusion

The Application is dismissed in its entirety, with 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: October 3, 2017

Residential Tenancy Branch