



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEETU BAILLIE LIMITED PARTNERSHIP, CEETU BAILLIE DEVELOPMENT LTD. and BAILLIE 40 STREET VENTURES BT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 15, 2019 (the "Application"). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing with S.R. to assist. E.R. appeared as agent for Respondent 1. J.Y. appeared for Respondent 2. J.A. appeared late for Respondent 3.

I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenant, Respondent 1, Respondent 2 and Respondent 3 submitted evidence prior to the hearing. K.H.N. did not submit evidence. I addressed service of the hearing package and evidence.

E.R. and J.Y. confirmed receipt of the hearing package and Tenant's evidence on behalf of Respondent 1 and Respondent 2. J.A. confirmed receipt of the hearing package and Tenant's evidence on behalf of Respondent 3.

S.R. confirmed receipt of the evidence for Respondent 1, Respondent 2 and Respondent 3.

In relation to K.H.N., S.R. testified that the hearing package and evidence were sent to the address on a Two Month Notice. The Two Month Notice was submitted as evidence. It is addressed to the Tenant and relates to the rental unit. It was issued by K.H.N. as the landlord. It is dated February 06, 2019 with an effective date of April 30, 2019. The address for the landlord is the rental unit address, but not the basement.

The grounds for the Two Month Notice are that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The purchaser is listed as Respondent 2.

S.R. testified that the package was sent by registered mail August 30, 2019. The Tenant had submitted the customer receipts for this. The customer receipt for K.H.N. includes Tracking Number 1. I looked this up on the Canada Post website which does not provide information about the package other than stating "duplicate pin". S.R. testified that the package was returned as unclaimed. S.R. confirmed the Tenant lived in the basement of the rental unit address. S.R. testified that K.H.N. represented that he lived upstairs at the rental unit address during the tenancy. S.R. testified that the Tenant believed K.H.N. was still at the rental unit address when the package was sent.

An issue arose during the hearing about whether Respondent 1, Respondent 2 and Respondent 3 are properly named as respondents in this matter. I have addressed this, as well as service of K.H.N., below.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Which respondents are properly named on the Application?
2. Was K.H.N. properly served?
3. Is the Tenant entitled to compensation for monetary loss or other money owed?
4. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

Item	Description	Amount
1	Registry Search	\$11.50
2	Registry Search	\$11.50
3	Registry Search	\$11.50
4	Land Titles Search	\$9.79

5	Rent \$675.00 x 12	\$8,100.00
6	Filing fee	\$100.00
	TOTAL	\$8,244.29

S.R. advised that item 1 to 4 relate to conducting searches to determine the owner of the rental unit. I advised the Tenant that costs associated with obtaining evidence or information to determine who should be named on the Application are not recoverable. I dismiss the request for compensation for item 1 to 4 without leave to re-apply.

S.R. confirmed item 5 relates to compensation under section 51 of the *Residential Tenancy Act* (the “Act”) for the landlord failing to follow through with the stated purpose of the Two Month Notice.

S.R. testified as follows in relation to the tenancy agreement in this matter. There was a verbal tenancy agreement between the Tenant and K.H.N. in relation to the rental unit. The tenancy started September 01, 2018 and was a month-to-month tenancy. Rent was \$675.00 but lowered to \$645.00 in December of 2018 because the landlord no longer provided internet. Rent was due on the first day of each month.

The Tenant agreed with the above details about the tenancy agreement.

The Tenant testified that she was served with the Two Month Notice February 06, 2019.

S.R. testified that the tenancy ended March 26, 2019. E.R. and J.Y. did not know when the tenancy between the Tenant and K.H.N. ended.

E.R., J.Y. and J.A. provided testimony on the relationship between Respondent 1, Respondent 2 and Respondent 3. All three agents took the position that Respondent 1, Respondent 2 and Respondent 3 should not be named on the Application. All three agents testified that they did not know K.H.N. and that Respondent 1, 2 and 3 did not direct anybody to issue the Two Month Notice to the Tenant.

S.R. testified that Respondent 2 was named on the Application because they are named on the Two Month Notice. S.R. testified that Respondent 1 was named because it is a general partner of Respondent 2. S.R. could not provide a legal basis for naming Respondent 1. S.R. testified that Respondent 3 was named because they are currently listed as the owner of the rental unit.

J.Y. testified that Respondent 1 and Respondent 2 used to own shares in Respondent 3, but this ended November 01, 2018. J.Y. testified that Respondent 1 and Respondent 2 have not been involved with Respondent 3 since.

J.A. testified that the previous owner of the rental unit was someone with the initials W.T.N. J.A. testified that the rental unit was purchased in November of 2018 by another company not named on Application. J.A. testified that the rental unit was rented to W.T.N., the previous owner, for a term ending in June of 2019. J.A. testified that W.T.N. advised the company that he no longer wanted to rent the unit and was moving in June of 2019. J.A. testified that the mother of the owner of the company lives in the rental unit, including the upper and basement suite. J.A. testified that the company never asked for the Two Month Notice to be issued.

S.R. did not point to documentary evidence, other than the Two Month Notice, showing Respondent 1, Respondent 2 or Respondent 3 directed K.H.N. to issue the Two Month Notice to the Tenant. S.R. testified that the Tenant never saw a written notice from a purchaser.

S.R. took the position that the basement suite of the rental unit is not occupied.

A written tenancy agreement between Respondent 2 and W.T.N. was submitted as evidence with a term of June 26, 2018 to June 26, 2019.

Analysis

I accept based on the undisputed testimony of the Tenant, and the Two Month Notice, that the Tenant was served with the Two Month Notice February 06, 2019. The Notice was issued pursuant to section 49(5) of the *Act* which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 of the *Act* states:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I am not satisfied that Respondent 1 should be named on the Application as S.R. did not provide a legal basis for naming Respondent 1 and Respondent 1 is not named on the Two Month Notice. The Application as it relates to Respondent 1 is dismissed without leave to re-apply.

The agents for Respondent 2 and 3 testified that Respondent 2 and 3 do not know K.H.N. and did not instruct K.H.N. to issue the Two Month Notice. S.R. could only point to the Two Month Notice to support the position that Respondent 2 instructed K.H.N. to issue the Two Month Notice. The Tenant has not seen a written notice from a purchaser. It is my understanding that Respondent 3 owned the rental unit in 2018, prior to the Two Month Notice being issued. Respondent 3 submitted a written tenancy agreement showing the rental unit was rented to W.T.N. from June of 2018 to June of 2019, covering the period in which the Two Month Notice was issued. This is the Tenant's application and her onus to prove. In the absence of further evidence, I am not satisfied Respondent 2 or 3 instructed K.H.N. to issue the Two Month Notice. Therefore, I am not satisfied Respondent 2 or 3 is responsible for what happened with

the rental unit once the Tenant vacated or is liable pursuant to section 51 of the *Act* for this. The Application as it relates to Respondent 2 and 3 is dismissed without leave to re-apply.

I do accept that K.H.N. was properly named on the Application as he is named on the Two Month Notice. However, I am not satisfied K.H.N. was properly served with the hearing package for the following reasons.

The hearing package had to be served in accordance with section 89(1) of the *Act* which states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord...
- (d) as ordered by the director under section 71 (1)...

Based on the undisputed testimony of S.R. and the customer receipt submitted, I accept that the hearing package and evidence were sent by registered mail to the rental unit address on August 30, 2019.

Based on the Two Month Notice, I accept that the rental unit address was previously the service address for K.H.N. However, the Two Month Notice was issued in February and had an effective date of April 30, 2019. The Two Month Notice was based on the rental unit being sold. I have evidence before me from J.A., which is supported by the written tenancy agreement submitted, that the previous owner of the rental unit rented it from June of 2018 to June of 2019. J.A. testified that the previous owner vacated in June of 2019 and that the entire rental unit was then occupied by the mother of the owner of company not named on the Application.

In the circumstances, I am not satisfied the rental unit address continued to be K.H.N.'s residence or place of business on August 30, 2019 in the absence of further evidence to

support this. Neither the Tenant nor S.R. pointed to further evidence to support this. I therefore am not satisfied K.H.N. was served in accordance with section 89(1) of the *Act*. K.H.N. did not appear at the hearing or submit evidence for the hearing. Given this, I dismiss the Application against K.H.N. with leave to re-apply. The Tenant can re-apply against K.H.N. but will need to serve K.H.N. in accordance with the *Act*. This decision does not extend any time limits set out in the *Act*.

Given the Tenant was not successful in this application, I decline to award her reimbursement for the filing fee.

Conclusion

The Application as it relates to Respondent 1, Respondent 2 and Respondent 3 is dismissed without leave to re-apply.

The Application as it relates to K.H.N. is dismissed with leave to re-apply. The Tenant can re-apply against K.H.N. but will need to serve K.H.N. in accordance with the *Act*. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 17, 2019

Residential Tenancy Branch