

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2022-12-15

### Munroe Construction Corp v. Goode

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"Munroe Construction Corp v. Goode" (2022). *All Decisions*. 750.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/750](https://ir.lawnet.fordham.edu/housing_court_all/750)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART G

---

MUNROE CONSTRUCTION CORP,

Petitioner-Landlord,

L&T Index No.: 313626/22

-against-

DECISION/ORDER

BRIONA GOODE

Respondent-Tenant,

Address: 177 HERZL STREET  
SECOND FLOOR APARTMENT  
BROOKLYN, NEW YORK 11212

---

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent’s Motion to Dismiss

---

PAPERS

NYSEF Documents #6 through 17

---

Upon the foregoing cited papers, the Decision and Order is as follows:

This nonregulated Holdover was predicated upon the service of an alleged “*Ninety (90) Day Notice of Termination*” (“hereinafter “*Notice*”). The requirement for such a notice was mandated by RPL §226-c enacted as Part of the Housing Stability tenant protection Act of 2019 which required that such a notice be ninety days where the respondent has occupied the premises for more than two years. Here respondent entered into occupancy in October 2018 and the Notice (NYSCEF #13) is dated January 31, 2022, expiring on April 30, 2022. According to the Affidavit of the process server (NYSCEF #14) service was personally effectuated upon respondent the same day as the Notice to wit: January 31, 2022, at 3:52 PM. Respondent categorically denies receiving the Notice (Paragraph “4” of NYSCEF #8) claiming the description of the person served does not match her

Respondent moves to dismiss the proceeding based upon the service of an 89 day Notice rather than a 90 day notice (28 days -February, 31 days -March, 30 days April). Alternatively respondent moves for a traverse hearing. In support of the portion of the motion seeking to dismiss the proceeding respondent correctly applies General Construction Law §20, which states:

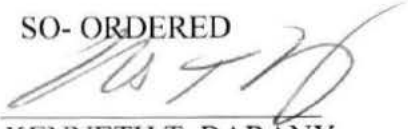
“a number of days specified as a period from a certain day within which or after which an act is authorized or required to be done means such number of calendar days *exclusive of the calendar day from which the reckoning is made* (emphasis supplied). If such period is a period of two days, Saturday, Sunday or a public holiday must be excluded from the reckoning if it is an intervening day between the day from which the reckoning is made and the last day of the period. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. *The day from which any specified period of time is reckoned shall be excluded in making the reckoning* (emphasis supplied).

It therefore follows that the date of completion of service cannot be included in computing the ninety-day period. Even if it were included respondent would have been entitled to May 1, 2022 for termination of the tenancy as the process server allegedly effectuated service in the middle of January 31, 2022. Contrary to the assertion of petitioner’s counsel this is not an issue of prejudice to respondent. It is an issue of the correct Notice that respondent was entitled to as a matter of law.

Furthermore, contrary to the assertion of petitioner’s counsel the argument presented by respondent is not grounded “upon the false assumption that the eviction proceedings began on the eighty ninth day after notice was given, on April 30, 2022”. It is an issue relating to the Notice required as a prerequisite to the proceeding. The Court find that the Notice was defective as a matter of law. Therefore, the Court need not reach the issue of the alleged Traverse regarding the personal service. The motion is granted and the proceeding is dismissed without prejudice to the commencement of a proceeding with a proper Notice of termination. This constitutes the decision and order of the Court.

DATED  
December 15, 2022

SO- ORDERED

  
KENNETH T. BARANY  
J.H.C

**Hon. Kenneth T. Barany**  
Judge, Housing Court