

## **DECISION**

### **Introduction**

This hearing was convened as a result of the tenant submitting Applications for Dispute Resolution (applications) seeking remedy under the *Residential Tenancy Act* (Act). The tenant submitted two applications. The first application is to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2023 (2 Month Notice) and to recover the filing fee. The second application is to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2023 (10 Day Notice) and to recover the filing fee.

The parties listed on the cover page of this decision attended the teleconference hearing.

### **Service**

As both parties confirmed service of the Proceeding Package and documentary evidence, I find there were no service issues.

### **Preliminary and Procedural Matter**

As both parties confirmed that the tenant paid the unpaid rent within 5 days of July 2, 2023, both parties were advised that the 10 Day Notice is of no effect and did not have to be disputed as a result. Therefore, I dismiss the tenant's application regarding the 10 Day Notice as rent was paid for July 2023. I do not grant the filing fee related to the 10 Day Notice application as a result.

### **Issues to be Decided**

- Should the 2 Month Notice be cancelled?
- If so, is the tenant also entitled to recover the filing fee for that application?

## **Background and Evidence**

A copy of the 2 Month Notice was submitted in evidence which is dated April 30, 2023. The tenants confirmed that they received the 2 Month Notice on April 30, 2023, and disputed the 2 Month Notice on May 14, 2023, which is within the 15-day timeline provided for pursuant to section 49(8)(a) of the Act.

The landlord and their agent attended the hearing and testified that the landlord's son, M.I., age 47, plans to move into the rental unit and required a two-bedroom unit for marine charts due to a Freighter Pilot course M.I. is currently enrolled in. The landlord testified that M.I. was evicted from their previous two-bedroom rental where M.I. was not charged rent in exchange for maintaining the rental property.

The landlord was unable to provide the name of the school M.I. was enrolled in and there was no documentary evidence of the schooling, such as an Affidavit from M.I., school registration document, or witness testimony from M.I. Although neither party indicated they had any witnesses at the outset of the hearing, in the remaining 10 minutes of the hearing, the landlord was presented with the option of calling M.I. as a witness and after waiting ten minutes for the Telus operator to connect which they failed to do, the landlord was given the option of an adjourned hearing or to not call M.I. as a witness. The landlord made the decision not to call M.I. as a witness at the end of the 62-minute hearing. The landlord stated that M.I. was previously a commercial fisherman but that the industry was no longer productive.

There is no dispute that M.I. was not provided a 2 Month Notice under the Act but instead relied on a phone call and subsequent email dated after the 2 Month Notice was served on the tenants in this matter. In the documents submitted by the landlord, M.I. does not confirm they are attending school.

The tenant questioned whether the landlord had created fake documents after issuing the 2 Month Notice to justify issuing the 2 Month Notice. The landlord denied creating any fake documentation.

The tenant also questioned how many rental properties the landlord owns. The landlord testified that they own 3 rental units in the same building as the rental unit subject to this dispute. The subject rental unit is a two-bedroom unit, while the other two rental units are one-bedroom units according to the landlord. The landlord denied owning any other two-bedroom units.

Regarding September 2023, the landlord confirmed that the tenant has paid for use and occupancy.

The landlord testified and presented an email proving that the tenant offered a voluntary rent increase to stay in the rental unit, which the landlord declined, citing that their son needs the rental unit.

The tenant also testified that the rental unit is in immediate need of renovation and questioned whether the landlord was intending to renovate the rental unit before their son moves in. The landlord replied that they only intend to clean the carpets before their son moves into the rental unit.

### **Analysis**

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

When tenants dispute a 2 Month Notice, **the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld.** If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

As the tenant applied to dispute the 2 Month Notice within the required timeline, the onus reverts to the landlord to provide sufficient evidence to prove that the 2 Month Notice is valid and issued in good faith.

I have carefully considered the evidence and I find the landlord has failed to provide sufficient evidence of the son planning to move into the rental unit. I have reached this finding as the landlord was not aware of the school name and the fact that M.I. did not provide an Affidavit or witness testimony to support that they are in school and require a two-bedroom unit. At the very least, I would have expected the details of the school name and for M.I. to testify or provide an Affidavit of their intention, which the landlord failed to provide.

As a result, I find the landlord has failed to meet the burden of proof and I cancel the 2 Month Notice as a result. I also find that the landlord may not issue a new 2 Month Notice regarding this matter as this matter has already been heard and decided upon.

I afford no weight to the need for renovations as I find this is not relevant to the 2 Month Notice before me and that the landlord has not met the burden of proof to support the 2 Month Notice indicated above.

Pursuant to section 62(3) of the Act, I make the following order:

**I ORDER** that the tenancy shall continue until ended in accordance with the Act.

**Conclusion**

One of the tenant's applications are successful. The other is dismissed.

The 2 Month Notice dated April 30, 2023, is cancelled, and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant has received a one-time rent reduction of \$100 for one filing fee. The other filing fee was dismissed without leave on the 10 Day Notice matter.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 6, 2023

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Residential Tenancy Branch