



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION AND ESTATE
WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

PRELIMINARY HEARING – INTERIM AND FINAL DECISION

Dispute Codes CNL, FF, (OLC – Unit 207 only)

Introduction

This matter involves six very similar, if not identical, Tenant Applications for Dispute Resolution, under the *Residential Tenancy Act* (the “Act”) for the following:

- 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
- authorization to recover their filing fees for this application from the landlord pursuant to section 72.

One of the tenants in Unit 207 also applied for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlords’ interests at this preliminary hearing were initially represented solely by the landlords’ resident building manager (the building manager). He testified that 2 Month Notices were issued to tenants in the 19 rental units in this 35 unit rental building on July 27, 2017, which had not yet been renovated. A copy of one of these 2 Month Notices was entered into written evidence by one of the tenants. The building manager confirmed that each of these 2 Month Notices cited the following reason for seeking an end to this tenancy by September 30, 2017:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant...*

During the course of the preliminary hearing, the building manager sought further advice and consultation with the landlords’ Senior Property Manager, who joined the preliminary hearing at that point, confirming that she was authorized to enter into settlement discussions with the tenants with respect to their applications.

Tenants in each of the six rental units involved in this preliminary hearing were represented. All of the Tenants, except Tenant GK, agreed that a copy of my decision could be provided to Tenant GT who would then forward a copy to the tenants in the other four rental units in this 35 unit rental building. The tenants in these five rental units stated that they intended to have legal counsel represent them at a future hearing should one become necessary to consider their applications.

Tenant GK was represented by her own legal counsel at this hearing. Although her legal counsel voiced objections to having Tenant GK's application considered as a part of a joint hearing with the other five tenants, he did not dispute that the tenants all appeared to be similarly positioned with respect to the landlord's 2 Month Notice. He also raised concerns that some of the tenants may be differently positioned to the extent that some rental units were closer to a fire that occurred in the rental building the day prior to the 2 Month Notices being issued to tenants in 19 different rental units in this building. The building manager testified that only a few of the rental units were directly affected by the fire and that these 2 Month Notices were unrelated to the fire on July 26, 2017.

All of those in attendance confirmed that they had received notification of this preliminary hearing mailed to them by the Residential Tenancy Branch on August 17, 2017. In the Notice of a Preliminary Hearing sent to the parties, information was provided as to the nature of the Preliminary Hearing, including the possibility that the concerns in dispute might be resolved as outlined below:

...The arbitrator also has the delegated authority to give legal effect to any settlement reached between the parties, in which case no further hearings would be necessary. At the preliminary hearing, the arbitrator may attempt to assist the parties to settle their dispute, an option that many parties find preferable to a formal hearing...

Although this was a preliminary hearing, the landlord's representatives confirmed that they were aware that the tenants had not agreed to vacate their rental units in accordance with the 2 Month Notices issued to them.

Issues(s) to be Decided

Should any of these applications be considered by way of a joint hearing? Should the landlords' 2 Month Notices be cancelled? Are the tenants entitled to recover the filing fees for their applications from the landlords?

Background and Evidence

Although this was scheduled as a preliminary hearing, the parties were able to resolve their dispute in accordance with section 63 of the *Act*. For that reason, I have outlined some of the background to the claims submitted as follows to provide context to the terms of settlement as outlined below.

At the hearing, the building manager testified that he believed that the landlords had applied for electrical permits prior to the issuance of the 2 Month Notices. Tenant BM gave undisputed sworn testimony that electrical permits from the municipality enabling authorization of the renovation work planned by the landlords were not issued until August 16, 2017. She testified that she had contacted the municipality and learned that the landlords had originally applied for these permits on July 26, 2017, and that this initial application had been denied by the municipality. She read into the record the Electrical Permit number from the copy she had obtained from the municipality, which was accepted by the municipality on August 16, 2017.

At the hearing, first the building manager and later the Senior Property Manager, did not dispute the tenants' claim that the landlords had not obtained all of the necessary permits and approvals that were required to repair the rental units in a manner that required the rental units to be vacant before the 2 Month Notices were issued. The landlords' representatives testified that all of the necessary permits were now in place for these renovations. Although the tenants had not entered copies of the approved electrical permit into written evidence, the tenants indicated that they would do so should this preliminary hearing lead to a full hearing of their applications regarding these 2 Month Notices. The five tenants other than Tenant GK advised that their legal counsel would not be available until October 23, 2017.

Analysis

Pursuant to section 63 of the *Act* and as referenced in the Notice of Preliminary Hearing, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Under these circumstances, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute with respect to the 2 Month Notices issued to these tenants.

All parties in attendance reached an agreement to a settlement of all issues arising out of the tenants' applications under the following final and binding terms:

1. The landlords agreed to withdraw the existing 2 Month Notices issued to the tenants in these six rental units.
2. The tenants agreed to withdraw their applications for dispute resolution relating to the 2 Month Notices of July 27, 2017.
3. As a gesture of good will, the landlords agreed to reimburse the tenants their \$100.00 filing fees for their applications. The landlords agreed that this reimbursement would occur by reducing the amount of the October 2017 rent due for each of these six rental units by \$100.00.
4. The landlords' Senior Property Manager agreed to discuss the individual circumstances regarding the landlords' proposed renovations with each of the tenants in these six rental units individually. At the hearing, she provided her telephone number and email address to the tenants in attendance to facilitate these conversations.
5. All parties in attendance agreed that they freely entered into this settlement agreement free of coercion and as a final and binding resolution of all issues arising out of these applications relating to the existing 2 Month Notices.

Conclusion

The 2 Month Notices issued on July 27, 2017 to the tenants in these six rental units are hereby cancelled and of no force or effect. These tenancies continue until ended in accordance with the *Act*.

To give legal effect to the settlement reached between the parties and as discussed at the hearing, I order the tenants in these six rental units to reduce their October 2017 monthly rental payment on a one-time only basis by \$100.00.

I make no other orders with respect to these tenancies or these applications. I also emphasize that this settlement has no bearing on tenants in any other rental unit in this building other than those involved in these six applications for dispute resolution. 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: September 08, 2017

Residential Tenancy Branch