



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MGEY INVESTCO 604.1 INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL FF CNL FF

Introduction

This hearing convened on March 25, 2013 for 70 minutes and again on June 12, 2013 for 11 minutes to deal with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on March 7, 2013, to obtain an Order of Possession for landlord's use of the property and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on February 27, 2013, to cancel a Notice to end tenancy issued for landlord's use of the property and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the March 25, 2013, teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy be upheld or cancelled?
2. If upheld, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord submitted 46 pages of documentary evidence which included, among other things, copies of: his written affidavit; photos of the rental building stairs, rooftop,

and exterior wall; affidavit from the current cleaner/building manager; affidavits from the current, former, and prospective building managers; notices that were posted in the building and issued to tenants; a building permit receipt; and Canada Post receipts.

The Tenant submitted 71 pages of documentary evidence which included, among other things, copies of: her written submission; letters from the previous property manager; documents pertaining to previous dispute resolution proceedings; advertisements listing units for rent in the building ; tenancy agreements with other tenants; statements from other tenants; a signed statement from the current building manager A.B.; photos of the interior and exterior of the building; and proof of service documents.

The parties confirmed that the Tenant has occupied the rental unit since before 2000. Rent is currently payable on the first of each month in the amount of \$1,229.80.

The Landlord's witness testified that he attended the building on March 24, 2013 and had seen inside the Tenant's unit as well as other units. He indicated that the Tenant's unit seemed adequate for a building manager to occupy as it had recently been painted. He advised that the flooring in the Tenant's unit was linoleum and that the windows appeared to be foggy. He compared the Tenant's unit to unit #4 and stated that they are similar; however, unit #4 had decorative tiles on the wall, may have had ceramic tile in the kitchen, and it also had older, foggy, windows.

The Landlord testified and described the layout of the building in great detail. He likened the shape of the building to that of a letter "H" with the Tenant's unit being a top floor unit in the southwest corner. He pointed to his photos to describe that the view from the Tenant's unit looks onto the back alley, garbage area, and the blue building across the alley. The Landlord argued that the location of the Tenant's unit was desirable for a resident manager's unit because it would allow the manager to hear if anyone was on the roof and see people from other buildings that may be dumping their garbage at the building.

The Landlord stated that there were ten good reasons why the Tenant's unit was chosen for the caretaker. Those reasons included: (1) the current caretaker is 77 years old and is not capable of handling the tenants or building maintenance issues; (2) the building is over 100 years old and requires a lot of maintenance; (3) the building is not set up for security or modern plumbing; and (4) the younger generation party more often and need more supervision.

The hearing time was about to expired so I instructed the parties on the procedure of reconvening. Each party informed me of their availability and it was determined that the hearing would reconvene on June 12, 2013 at 9:00 a.m. No one signed into the teleconference June 12, 2013, for either party.

Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. The hearing initially convened on March 25, 2013, with both parties in attendance. The hearing was reconvened on June 12, 2013, at 9:00 a.m.; however, no one attended for either party.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision.

Section 74 of the Act stipulates how a hearing may be conducted as follows:

- (1) Subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may conduct a hearing under this Division in the manner he or she considers appropriate.
- (2) The director may hold a hearing
 - (a) in person,
 - (b) in writing,
 - (c) by telephone, video conference or other electronic means, or
 - (d) by any combination of the methods under paragraphs (a) to (c).

In the absence of either party during the June 12, 2013 convening, the balance of the hearing was conducted based on the written submissions from both parties, in accordance with section 74(2)(b) of the Act. Upon review of the evidence before me, and on a balance of probabilities, I find as follows:

When a Tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and

- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

Notwithstanding the Landlord's arguments that they need to have a resident building manager, I accept the Tenant's submissions that the Landlord has an ulterior motive in choosing her unit for the building manager to occupy; specifically, the Landlord's failed attempts at increasing her rent. I make this finding in part because there are / were other units that were going to be vacant that could have been reserved for the resident manager. Furthermore, the Landlord's concern for monitoring access to the rooftop and back alley garbage could have easily been resolved by the installation of a wireless alarm / monitoring system rather than evicting a long term tenant. Therefore, I find the Landlord has provided insufficient evidence to meet the test for proving the good faith requirement and his application is hereby dismissed, without leave to reapply.

The Tenant has been successful with her application to have the notice cancelled, therefore I award her recovery of her **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$50.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord's application is HEREBY DISMISSED, without 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: June 12, 2013

Residential Tenancy Branch

