



# 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**

Landlord: OPL, FF  
Tenant: OPC, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

This hearing was convened as a result of the landlord's Application for Review Consideration. A new hearing was granted due to the landlord's inability to participate in the 2<sup>nd</sup> of two hearings held previously on these matters as the call in codes provided to the parties were incorrect.

The matter was originally adjudicated by an Arbitrator who issued her decision on June 12, 2013. In that decision, the Arbitrator granted the tenant's Application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property; granted the tenant was entitled to recover the filing fee from the landlord by way of a monetary order; and dismissed the landlord's Application for an order of possession and recovery of his filing fee.

I explained to both parties at the outset of the hearing that while this was a new hearing and that I would hear testimony from both parties and consider the evidence on file provided by both parties that the possible outcomes of the hearing include that I may confirm, vary, or set aside the original decision issued by the previous Arbitrator.

### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In the alternative it must be decided if the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the

landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy commenced prior to the year 2000 and that rent is currently \$1,229.80. The parties agree the tenancy pre-dates the current landlord's ownership of the property.

The parties have been in two previous hearings related to the landlord's attempts to obtain additional rent increases. The first hearing resulted in a decision in May 2 2011 dismissing the landlord's Application and the second resulted in a decision dated August 12, 2011 granting the landlord a 10% rent increase.

Both parties have provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on February 13, 2013 with an effective vacancy date of April 30, 2013 citing the landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The landlord submits the following 5 specific reasons that he intends to hire an onsite manager:

1. Concerns that tenants are accessing the rooftop of the property for gatherings and parties despite the fact that it is not designed for such activity. For example there are no railings or protections against someone falling from the rooftop;
2. Concerns over health and safety for the building. Specifically the landlord states a concern regarding rats due to excessive garbage dumping by neighbours and others in the community; tenants discarding garbage in the basement of this building; and the ability to respond to emergencies more effectively such as heating system collapse;
3. The ability for the landlord to deal with minor repairs in a timelier manner. The landlord submits that he currently must outsource this work and as such is subject to the availability of the contractor;
4. The potential for future development. The landlord submits that he is working with the local authorities to seek approval for renovations that would increase the number of units in the residential property; and
5. Current caretaker. The landlord submits that his current caretaker, who is 78 years old and lives at a different location, is no longer able to handle the work required in this property.

The landlord submits that he has since hired an individual to do this work but that he has not yet started any work on the property and is waiting for the outcome of this hearing to be able to proceed with moving on the property to begin work.

The landlord testified that he specifically chose this unit to be the caretaker's unit for a number of reasons including:

1. Proximity to the roof – as one of the landlord's concerns is around people using the roof inappropriately he wants the caretaker to be in a location where he might hear people on the roof – allowing for units 5, 6, 7, or 8 as these units are all on the top floor;
2. Proximity to view of the alley and garbage areas – another concern is the neighbourhood usage of the landlord's garbage area and he wants the caretaker to be in a location where he may observe others usage – allowing for units 5 or 6 as these both face the alley;
3. Unit 5 currently rents out at a higher rental rate than unit 6 and the landlord feels that because he is taking a unit out of the available units in the property he should be able to minimize the loss of potential rental income by removing one of the lowest paid rents in the residential property. The landlord submits that unit 10 is the lowest rental rate in the building; and
4. The landlord submits that there behavioural issues with the tenant from unit 6. Specifically the landlord believes that the tenant had changed her locks without giving the landlord a copy of the keys until sometime later; the tenant does not communicate with the property manager; the tenant's furniture was found on the roof; and that she allowed a homeless person in her unit and he took her furniture onto the roof.

The tenant questions the landlord's motives for ending the tenancy for the stated purposes because she believes that the landlord is unhappy that she prevented him from obtaining a 43% rental increase and that he continues to want to raise the rent on the unit.

The landlord argues that if he wanted to get an additional rent increase who would have simply applied for another additional rent increase and would not have resorted to attempting to end the tenancy and take one of his units out of availability, to house a caretaker.

The tenant submits that she finds it unlikely that someone who is qualified to be an onsite manager/caretaker would still be available after all this length of time to start working for the landlord after finding out the outcome of these proceedings.

The tenant submits that the if the landlord could chose unit 5 if he wants to be able to view the garbage area because unit 5 is directly above the garbage area and that it would be more appropriate to be in unit 8 if he is concerned about people accessing the roof because it is right beside the stairs to the roof and directly under where people did congregate when they were on the roof.

The tenant submits that she has not let a "homeless" person in her unit but rather a friend who was between homes. She states that she had been unaware that he was accessing the rooftop and that his was extra patio furniture of his that had been on the rooftop not her household furniture.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends in good faith to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Residential Tenancy Policy Guideline #2 states that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Based on the landlord's testimony, I am satisfied that the landlord is intending to hire a new caretaker/manager for the residential property. I also am satisfied that the landlord intends to provide the caretaker/manager with rental accommodation.

I also accept that in selecting a unit to provide the caretaker/manager the landlord has presented reasonable justification for the selection of the subject unit. Even consideration of the selection of one of the units with the lower end of rental amounts on the property I find to be reasonable.

However, I accept the tenant's position that the landlord has been motivated, at least in part, to select this particular unit by his recent endeavours to seek a rent increase for the unit where he was only partially successful in obtaining a rent increase. He sought 43% and was granted an increase of 10%.

I also find, based on the landlord's own testimony, that the landlord believes the tenant to be a problem tenant and in fact, he blames the tenant as one of the tenants who is wrongfully using the rooftop for parties. I note that one of the landlord's justifications for hiring an onsite caretaker/manager is specifically to deal with the issue of tenants accessing the rooftop.

For these reasons, I find that in addition to his intent to convert a rental unit into a caretaker unit he also has an ulterior motive to end this particular tenant's tenancy. I therefore find no reasons to set aside or vary the decision and orders of June 12, 2013.

### Conclusion

Based on the above, I confirm the decision and orders of June 12, 2013.

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: August 23, 2013

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Residential Tenancy Branch