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State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Web Site: www.dhcr.state.ny.us

Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433
(718) 739-6400

Docket Number:
TD410007AD
TD410010AD
TD410015AD
TD410017AD

**Order Denying Tenants Application For Decrease in Rent and
Granting Owner Permission to Modify Services**

Mailing Address of Tenant:

Various Tenants
c/o Jack L. Lester, Esq.
880 Third Avenue, Suite 900
New York, N.Y. 10022

Mailing Address of Owner:

Metropolitan Tower Life Ins. Co.
c/o Greenberg Traurig, LLP
200 Park Avenue
New York, N.Y. 10166
Attn: Daniel J. Ansell, Esq.

Subject Building (If different from tenant's mailing address):

PETER COOPER VILLAGE

Number and Street

Apt. No.

City, State, Zip Code

After consideration of all the evidence in the record and in accordance with the Rent Stabilization Code, the Rent Administrator determines:

See Addendum

August 15, 2005

Issue Date

Seth P. Clunk

Rent Administrator

RO-36 (10/93)

Web Site: www.dhcr.state.ny.us
Email address: dhcrinfo@dhcr.state.ny.us

INTRODUCTION

This proceeding was commenced by the tenants, through their appointed representatives, filing decrease in service complaints for four buildings in the Peter Cooper Village Complex:

8 Peter Cooper Rd.

370 First Avenue

531 East 20th St.

601 East 20th St.

The complaints challenged the new keycard entry system the owner has installed at the complex. The scope of the proceeding was further defined by the order of Justice Rolando T. Acosta. Justice Acosta presided over a proceeding brought by the Tenants Association, John Marsh and Assemblyman Steven Sanders wherein they sought to enjoin the owner, Metropolitan Tower Life Insurance Co. (MTL), from implementing the keycard entry system. This Supreme Court proceeding followed an earlier action by these same parties before Justice Solomon, which challenged the implementation of the keycard system upon the grounds that it violated the tenants' rights to privacy and also that the system violated the tenants' rights pursuant to the Rent Stabilization Law. Justice Solomon denied the tenants' application with respect to their claim that the system violated their rights to privacy and found that DHCR should, in the first instance, determine whether there would be a breach of the provisions of the Rent Stabilization Law.

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Justice Acosta in his determination has required an expedited proceeding before DHCR and indicated that DHCR is to address the issues regarding the implementation of the keycard security system in accordance with Justice Solomon's order "to the extent that Tenants claim that the proposed security system represents a diminution of service, a violation of the rent laws or an unauthorized change in the rent stabilized lease ... because the court lacks jurisdiction to consider those claims until Tenants have exhausted their administrative remedies before the DHCR". What is excluded from consideration is whether the implementation of the keycard security system is a violation of the tenants' rights to privacy.

The proceeding herein is a hybrid in that it is not simply a complaint of reduced services. While it is in part that, it is also a proceeding for a determination as to whether the owner's proposed action violates the Rent Stabilization Law and whether DHCR should refuse to allow the owner to implement the new system in the manner planned. In accordance with the Court's directive the issues will be determined in the context of the tenants' complaints. It must, however, be clearly understood that:

A. The simple substitution of an electronic keycard for a metal key is not a change or modification in service which is proscribed by the rent law, and DHCR has previously authorized this change in other buildings. However the additional elements of the proposed system need to be reviewed to determine that the tenants' rights and services are maintained.

B. Secondly, it should also be very clear that use of the term guests or invitee's in the papers submitted by the owner's and tenants has specific reference in this proceeding to persons who are to be issued keycards.

The status of persons who wish to visit tenants and don't have keys is unchanged. They are not required to submit to any processing, but simply go to the building of the person they are visiting and use the intercom to gain entrance. This proceeding involves only those persons who wish to be issued keycards.

ISSUES AND FINDINGS

1. What restrictions, if any, may be placed on the number of keycards that will be issued to each tenant?

The tenants' claim the owner will limit the number of additional keycards a tenant may obtain. They allege in their papers that the tenants are entitled to obtain additional keycards for care takers and guests, as previously there was no limit on the number of keys a tenant could obtain, although a charge was made for additional keys. The tenants further alleged that management kept no records or even inquired who the additional keys were for and would never refuse to issue new keys.

The owner has indicated that all tenants and lawful occupants will receive free keycards. In addition, there is no limit to the number of keycards which may be issued for an apartment. Tenants will receive up to four additional free cards for employees and guests. There will be a charge of \$8 per keycard for each additional keycard over that amount.

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The owner also indicates that, despite the tenant assertion to the contrary, MTL policy has been that metal keys would be issued only when the person had produced proper identification.

Finding: MTL is not going to limit the number of keycards that a tenant may obtain. There is no dispute regarding the charge per extra key. Therefore, as there will be no limit to the number of keycards a tenant may obtain, there is no change from current practice (except metal keys are exchanged for electronic keys) and thus there is no decrease in service. While the tenants allege that no record is currently kept of the identity of the individual for whom an additional key is issued there is some evidence in the record that tenants have been required to at least provide the name of the individual who would utilize the extra key. This tends to corroborate the owner's description of current policy. In any case, the owner is required to provide security at the premises and requiring the identity and identification of an individual who will be issued a key allowing entrance to a building is prudent and does not violate either the literal requirements nor the spirit of the Rent Stabilization Law or Code. (The issues of identification required to obtain a keycard and the photographs will be dealt with below.)

2. May the owner require periodic renewal of issued keycards?

The tenants also assert the owner will restrict access to guests and invitee's by compelling monthly renewal. However, the owner in response to this complaint indicated that guests would be provided permanent keycards. What was not indicated

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was the treatment of "invitees" or what class of individual falls into each class. However, the owner's papers give direction in this regard and in paragraph 19 of their answer of May 19, 2005 they seemingly reference listing a "company name" as an invitee. There is however, no discussion as to whether this class of individual would be granted permanent or limited keycard.

Finding: The Rent Stabilization Law requires an owner to provide security. In this instance the owner is seeking to enhance security at the subject premises, but it must be implemented with a view to the rights the tenants have enjoyed. "Guests" is being construed for discussion herein to include family members and friends who can be expected to visit on a regular basis or to visit as needed to care for a tenant or the apartment if the tenant is away. This access would necessarily not be subject to a particular schedule. (Acquaintances who rarely visit would not normally need a key).

Access to a tenant's or occupant's apartment was accomplished in the past simply by providing these individuals the appropriate keys (front door and apartment) which they would keep at the tenants' pleasure. The owner's current plan maintains this element. In fact the new system is superior in this regard for if a "guest" has, for some reason, become problematic the tenant may not previously have been able to obtain return of the keys. With the new system that problem is a simpler as access to the building can be quickly revoked by cancellation of the card.

"Invitees", which for purposes of this discussion are deemed to be caregivers, contractors, cleaning staff, etc. are in actuality a different class of visitor. However, the visits of caregivers and cleaning personnel may be as permanent and possibly more

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frequent than family and friends. The visits of other service personnel such as contractors may be intermittent and sporadic. To require the same treatment for this class of individual is not logical, but to institute a blanket and unyielding policy that each keycard would expire within 30 days could be viewed as such a radical change in the past practice to be violative of the Rent Stabilization Law in that there was no difference in treatment in the past.

Given the above, what would be permissible under these circumstances is that the tenant would inform the owner as to who is a "guest", i.e. family or friend, and who is an "invitee", an employee. With respect to "guests" they could be issued permanent and unrestricted keycards. With respect to invitees, the tenant or legal occupant would need to identify when the invitee would require access and whether there was limited period of time such access was required (e.g. contractors may be present for only a week or two whereas a care giver may attend a patient for a year or more).

This information is necessary so that the keycard can be programmed properly and, as appropriate, contain an expiration date (e.g. completion of work, end of therapy etc.) Furthermore, acknowledging that this is a security system, the owner may require of the tenants periodic review of the list of persons in possession of keycards for each tenant by mail or a similarly inobtrusive means. This would allow the owner to update the system and cancel unused and unneeded keycards and provide the enhanced security it seeks to provide.

3. May the owner install a security/entry system which may be more inconvenient for observant Jews on the Sabbath?

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The tenants argue that an electronic keycard security system creates a hardship for observant Jews who cannot utilize the card key system on the Sabbath or religious holidays. The owner has responded that security staff for the complex will be available to provide access to observant Jews as necessary.

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Finding: The tenants have not specified how this modification of the method of entry creates a hardship greater or different than the current method of entry. The tenants have therefore failed to establish that a greater hardship will exist than exists under the current system. However, it is important to note that the owner has acknowledged this is an issue and that security personnel at the complex will assist members of this faith in accessing their building as necessary.

4. May an owner maintain records of when tenants and others enter or exit a building?

The tenants allege that the internal tracking system is an invasion of privacy. The owner replies that the system does not have a tracking feature rather it can only record when a person enters the building.

Finding: Any issue as to the question of whether the "tracking" of tenants is an invasion of privacy has been precluded by the court and does not fall within the jurisdiction of DHCR. What is unsaid in this allegation is whether an electronic key system which stores information about a tenant's use of their keycard violates the Rent Stabilization Law and Code. The answer is that such a system does not violate the Code or Law. Simply put, the recording of data by this system is possibly more efficient than

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what could be recorded by a doorman or other employee of the owner, but the information gathered is no different. The accumulation of such information by employees has in fact been done in other circumstances involving rent stabilized buildings and has been admitted in evidence in administrative and court proceedings. This system simply automates the information gathering process.

5. Will implementation of the security/entry system improperly deny access, to buildings and areas where other services may be offered, to tenants who refuse to obtain keycards?

The tenants allege that refusal to obtain the keycard will subject the tenants to a loss of access to amenities and common areas.

Findings: There has been no decrease in service to the tenants in this regard. The Supreme Court has retained jurisdiction over this matter during the pendency of this administrative proceeding and has dictated terms and conditions for the tenants to obtain access since the owner implemented the security system. Furthermore, this issue is speculative in that the tenants have not alleged any specific instances where access has been denied except in the context of interpreting the court's order with respect of differences over the treatment of individuals with or without picture ID's. In addition, while no one can predict the future it should be noted that if the owner is given permission in this proceeding to implement the system a tenant's refusal to obtain a key would not constitute a denial of access to the building by the owner.

6. Is the intercom system inadequate and likely to malfunction and does the keycard entry system have sufficient emergency power to enable it to function in a blackout?

The tenants allege that the intercom system is inadequate and likely to malfunction and that the owner's papers indicated that the security system has limited emergency power available which will effectively deprive tenants of access to their apartments in the event of a blackout.

Finding: The tenants' allegation regarding the intercom is speculative in that it does not indicate a current malfunction of the system. Rent decreases may be authorized in the event there is an actual decrease in service, but there has been no evidence to suggest that there is such a current malfunction. Furthermore, a search of DHCR records discloses there have been no filings for decreased services for inadequate intercom for any of the buildings located in Peter Cooper Village.

With respect to the keycard system, the owner states that there is a very small failure rate and the system has a 72 hour back up in case of power failure. The tenants maintain that the 72 hour back up system is inadequate and note that security personnel are engaged in other activities during a blackout which would not allow them to be available to allow access to the buildings. The system as designed is adequate, especially in view of the fact that even the worst of the recent Northeastern blackouts lasted significantly less time than the 72 hours the back up power system would be available.

7. What documentation may the owner require for obtaining a keycard, may the owner record any data from such documentation?

One issue raised by the tenants deals with the documentation a tenant, guest or invitee is required to show to obtain a keycard and the fact that failure to comply with this new requirement results in a decrease in service (access) and is an increased opportunity for identity theft.

Finding: As the owner is under Court guidance and a ruling has established what is required with respect to providing tenants with keycards while this proceeding has been pending there is no basis to find there has been a decrease in service.

The issue as to whether the owner's proposed requirements for the issuance of a keycard violate the RSL or are an impermissible change in the terms and conditions of the lease remain.

The papers of both parties document that the tenants' descriptions of the requirements, which they feel are a significant change from current requirements, are based largely upon statements issued by the owner or its agents. The final statement on what documentation will be required was made by the owner's attorney in his submission of January 6, 2005 wherein he indicates

"(T)o obtain a card key, tenants merely have to show that they are entitled to have access to their respective building, which they can do by sharing a valid photo ID such as a driver's license or a passport as proof of identity. Tenants are asked to verify tenant and occupant information obtained from the tenants existing file and incorporated into a Tenant and Occupant Information Form ... and to make any changes."

The letter goes on to indicate other forms of photo identification would be acceptable in the absence of a license or passport.

In response to questions posed during this proceeding, the owner stated in response that "(t)he information on photo identification presented to obtain card keys is not being memorialized. However, that information is being verified against information contained in the tenant's lease file and the type of identification provided is recorded."

In short, if a keycard is desired the individual must provide photo identification, unless they are under the age of 18. For guests who are authorized to enter when a tenant is not home, but are not issued a keycard and are given access by security personnel no photo ID is required.

Furthermore, the owner has indicated that there will be no recording of driver's license numbers, passport number, etc. and that assertion is corroborated by the form submitted to DHCR as an exhibit attached to the January 6, 2005 letter.

Given the foregoing, it cannot be found that the documentation required to be produced by individuals who are seeking to obtain a key to the premises is unreasonable. Even if it constitutes a change in the rules that existed for obtaining a key, the new rules cannot be found as violative of the RSL or even a change in the terms and conditions of the lease. Requesting current information and verifying the person who is seeking the key is a tenant is inextricably tied to the landlord tenant relationship. Were an owner not to verify the identity of those to whom it issued keys it would be a breach of security service owed to the tenants.

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8. Given current concerns regarding the epidemic of identity theft, what information may the owner maintain in its records?

In addition to the limitations on recording documentation indicated in number "7" above, the tenants' concerns regarding identity theft must be acknowledged given the information purportedly contained in the tenants' files maintained by the owner. The tenants' submission contains an affidavit from Beth Givens, the founder of the "Privacy Rights Clearinghouse", which indicates that since the owner has tenants' social security numbers (for use with the deposit escrow account) in its records the availability of a photograph "is disturbing and unreasonable". She goes on to state that given the large number of employees who work in the management office the potential for misuse is increased.

Finding: (Initially it should be noted that the owner did not have an opportunity to respond to the affidavit".) However, review of the record indicates that the owner requires the social security number of the tenant to comply with the law regarding security deposits. While the affidavit indicates that the social security number alone is sufficient for a criminal to engage identity theft the addition of a photo would assist in that criminal endeavor. Ms. Givens also speculates that a database of tenant photos would make it easier for an employee with such intent to stalk an individual.

The tenants' arguments on this issue are basically constructed on the speculative notion that an employee of the owner will engage in criminal conduct. While the tenants' concerns regarding identity theft cannot be ignored, the speculation that an employee of the owner has such criminal intent it is not a basis upon which to find the system would

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violate the law or alter the terms and conditions of their leases. The affidavit clearly indicated the social security number as the most critical item in this crime and that information is already in the files of the owner for a lawful purpose. However, that does not mean that risks can not be minimized. Therefore, in implementing the system the owner may not request or retain, in any form, the social security number of more than one (1) tenant or legal occupant for each apartment unless the security deposit is kept in a joint type of an account. Keycards will be issued to all other persons involved with the unit without requiring their social security number. Furthermore, the owner has indicated that the keycard will not contain any personal data, including name, regarding the tenant. The owner is hereby directed to ensure this includes the social security number and financial data of the tenants. Furthermore, no information gathered by the owner may be transferred to any other person or organization not directly related to the management of this property.

9. Does the Rent Stabilization Law or the tenants' leases preclude the owner from requiring the tenants to be photographed for its security database and requiring that the photo be included on the tenants keycards

The tenants claim that the requirement by the owner that the tenants submit to a photograph, which will be retained in the data base of the security system and affixed to the keycard is a decrease in service, is violative of the Rent Stabilization Law and Code. They assert it is an unlawful change in the term and conditions of their leases in that no photographs have ever been required to obtain a key. The owner responds that the

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photographs are necessary for the enhanced security system to operate as intended and do not decrease service, violate the RSL nor are they an unlawful change in the terms and condition of their tenants leases.

?
not so

Finding: The owner in its papers describes a security system for the complex which contains a CCTV system capable of verifying the identity of a person entering the premises using a keycard, with the photograph of that individual maintained in the system data base. Admittedly, the system is not a facial recognition system which would bar access if the photo taken at the door and the photo on record did not match. The system is routinely monitored in the security office which is open on a 24/7 basis. Thus, monitoring personnel can determine in real time if the person who entered the building was the keycard holder and, if not, dispatch mobile units to investigate. Even if the system is not monitored continually it is still a significant enhancement over the current metal key system.

how so

While submitting to the photograph is an additional requirement, its impact in terms of inconvenience is minimal. It can be accomplished on the site of the complex at the same time the tenant's data is reviewed and the keycard produced. This may be accomplished within a relatively short time period, and is only a slight variation on the process currently used to obtain a metal key. Arrangements for disabled or elderly tenants can also be made. Given the fact that this system is a clear improvement in security and that the inconvenience to the tenants to take a few moments to have their photographs taken, is limited, possibly to a single occasion, it can not be said that the proposed action is a decrease in service, nor does it violate the spirit or intent of the Rent Stabilization Law and Code. Neither can this requirement be construed as an unlawful

change to the terms and conditions of the lease. The owner in its papers points out that tenants' leases contain a clause requiring tenants to abide by the rules of the owner, which was considered and adjudicated by Justice Solomon, for she noted that provision in the lease and indicated the leases would not be violated by the proposed system.

The tenants also claim that the photograph and the system are not for security, but to create a database in order to root out and ultimately evict illegal subtenants or non-primary residents so as to remove units from Rent Stabilization.

The fact that the owner may use the system to also identify illegal sub-tenants and non-primary residents who are abusing the rent regulatory system does not render this change unlawful.

10. May the owner require tenants to obtain a keycard which contains their photograph?

The tenants by reference to "totalitarian states" have likened the keycard to identity papers issued by Nazi Germany or the Soviet Union of the Gulags and have indicated that the keycard "has struck a deep and threatening note with a substantial majority of the tenants at Peter Cooper Village."

Finding: To say the least, the characterization is an exaggeration. Enhanced security has been a general theme in American society subsequent to the 2001 terrorist attacks. Buildings in all sectors of the City are employing the use of photo identification cards and electronic access methodologies. The Peter Cooper Village complex is also unique in comparison to other residential buildings in Manhattan, as the property is not

limited to the building itself but to the extensive grounds surrounding it, which despite appearances, remains private property to which only tenants and invitee's have a right of access. To this end, having an easily recognizable identification card for the complex, which contains a photograph and which clearly identifies the holder as authorized to be on the premises does not violate the terms and conditions of the lease or the Rent Stabilization Law and Code.

The record shows that the owner, in previous statements, has amended its original plan and will no longer require that the card contain the name of the individual. Therefore, owner is directed to issue keycards which contain only the tenant's photo and no other personal information.

The attacks of September 11, 2001 and the more recent terrorist targeting of civilians in London, clearly shows that terrorist activity has not stopped and unfortunately this threat to life and property throughout the City and Country remains. In this climate, the owner's action in seeking to address this potential threat and enhance the security of the tenants in a minimally intrusive manner cannot be denied.

In accordance with the findings above, there has been no decrease in services to the tenants and it is further found that the proposed security system does not violate the spirit or intent of the Rent Stabilization Code and Law nor is it an impermissible change in the terms and conditions of the leases.

Therefore, the owner is granted permission to implement the system 40 days from the date of this determination in accordance with the modifications and directives made above and summarized below. Implementation is delayed for 40 days in order to allow any parties aggrieved by this order to file a Petition for Administrative Review (PAR). If

a PAR is filed, the automatic stay provision of Rent Stabilization Code Section 2529.12 will apply.

The owner may implement the proposed security system but must comply with the conditions as provided above and summarized below:

1. All tenants and lawful occupants will receive free keycards. In addition, there is no limit to the number of keycards which may be issued for an apartment. Tenants will receive 4 free cards for employees and guests. There will be a charge of \$8 per keycard for each additional keycard over that amount.

2. Tenants and "Guests" will receive permanent keycards. Invitees will receive keycards which may be limited to the actual time services are being rendered to the tenants. Owner may periodically request tenants to verify that keycard information is current.

3. Individuals obtaining keycards must provide appropriate proof of identity, but the owner may not record any data (i.e. driver's license number).

4. Owner may not request or retain, in any form, the social security number of more than one (1) tenant or legal occupant for each apartment unless the security deposit is kept in a joint type of an account.