



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER PARK LANE TOWERS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNL OPL

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49.

Service:

The Notice to End Tenancy is dated September 30, 2014 to be effective November 30, 2014 and the tenant confirmed it was served personally on September 30, 2014. The tenant /applicant gave evidence that they served the Application for Dispute Resolution personally and by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

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

Is the landlord a family corporation and if so, has the landlord corporation proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for the use of a close family member who owns, or whose close family member owns all the voting shares? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the Notice to End Tenancy is from a family corporation where the husband and wife each own 50% of the voting shares and they are the persons who intend to occupy the unit in issue.

It is undisputed that the tenancy commenced in August 2011, it is now a month to month tenancy, rent is \$986 a month and a security deposit of \$475 was paid.

The landlord served the Notice to End Tenancy pursuant to section 49 of the Act stating that "A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The tenant disputed the Notice and questions the motivations of the owners. He said he believes he has been targeted for he has had a number of confrontations with the agent of the owners and was told he was better not to fuss by the previous manager when he tried to get answers to his genuine concerns for safety and health of other residents and himself. He said that various other units are available and more suitable for the owner who uses a walker and whose health has significantly deteriorated. He pointed out that his unit is on the third floor, it is small and the owner would have problems using the bathroom using his walker, there are frequent elevator problems which would make it extremely difficult, if not impossible, for the owner to get to his medical appointments and it would be dangerous in an emergency. He said there is often gridlock traffic so it might actually take the owner more time to get to hospital than going from where he lives now. He agreed the owner may need a suite due to his health concerns but he is being targeted as no alternate was offered.

The agent and Counsel for the owners submitted detailed medical records showing the health problems and the frequency of hospital attendance required for the male owner. The agent said that there was no bad faith in the issuance of the Notice to End Tenancy. She said she and the owners had gone through all the possibilities in June 2014 when the owner's health dramatically deteriorated. They reviewed each possible suite and simply chose the best one with regard to the owner's needs. This one was chosen as it has easy access to the elevator and if an emergency occurs or an elevator breakdown, he would only need to be carried down two flights of stairs. They needed a balcony for the air conditioner, the bedroom was a good size and the owner currently manages in a hospital bathroom that is smaller than that in this suite. Although there has been a rule regarding single occupancy, they take special circumstances into account and one unit with the same layout as this unit already has a couple because of their circumstances. They are not concerned about the elevator issue as they have a contract with a professional who answers calls within two hours and both elevators would be unlikely to break down at the same time.

In answer to the tenant's assertion that he was targeted due to confrontations, the agent said that the tenant had already called many city departments and none of them found anything wrong with the building so they have nothing to fear from him and no reason to evict him. He has lived there for 3 years. The tenant referred to a 'toxic spill' issue but the agent refuted this with a professional report from an environmental protection

officer. I declined to into further complaints of the tenant as they were not part of the main issue and dispute.

Included with the evidence is the copy of the Notice to End Tenancy, several Affidavits often stating the same evidence as the agent regarding suitability of the suite, a BC Company Summary, many medical documents on the health and hospital attendance of the owner, statements and submissions of the parties, a copy of the rent cheque paid for November, an Environmental Inspection Report and a statement regarding confrontations and his problems by the tenant, some photographs of an advertisement.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good reason to evict the tenant. I find this closely held family corporation qualifies under section 49 of the Act to end a tenancy when the owners who own 100% of the shares require the unit for occupancy by themselves.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the need for a suite in this complex; the tenant also agreed the male owner may need the suite because of his medical issues. I find the medical evidence of the frequency of medical appointments in the vicinity of the suite is persuasive of the need of the owner to occupy a suite close to these hospitals.

Although the tenant questioned the owner's motivations in wanting his suite when other, more suitable ones were available, I prefer the evidence of the landlord that they carefully reviewed other possibilities and concluded this suite was the best, given the needs of the male owner. I find the landlord's evidence credible as they detailed the need for a balcony, easy access to the elevator and only some stairs necessary in an emergency. Although the tenant alleged an ulterior motive for ending his tenancy as he had had some confrontations with the agent, I find the evidence of the landlord credible and I prefer it to the tenant's evidence in this respect. I found the agent of the landlord's testimony to be forthright and honest as she noted the confrontations but emphasized that the desire to end this tenancy was only taken after long consideration of the needs of the owners, the elimination of other suites and the suitability of this suite to meet those needs. I found that the owners and she had considered other possibilities in the building but they had good reasons in each instance for ruling them out. As a result, I find the landlord has met the requirements of having acted in good faith in issuing the

notice, and that the sole shareholders of this closely held family corporation intend in good faith to occupy the rental unit.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on November 30, 2014 and as requested in the hearing and pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession effective November 30, 2014.

As the tenant has not received a free month of rent and requests in the hearing a monetary order for this, I find him entitled to a monetary order for \$986 pursuant to section 51 of the Act. I find there is no obligation to return the security deposit until after the tenant vacates and the parties have followed the provisions set out in section 38 of the Act so I decline to deal with it in this hearing.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy dated September 30, 2014 is dismissed. The tenancy is at an end on November 30, 2014. An Order of Possession is issued to the landlord effective November 30, 2014.

A monetary order for a refund of November's rent in the amount of \$986 is issued to the tenant. This order should be satisfied by the landlord on or before November 30, 2014 in accordance with section 51 of the Act.

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: November 20, 2014

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Residential Tenancy Branch

