



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRAFALGAR MANAGEMENT LTD. AND DENMAX HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

Both parties and witnesses attended the hearing and gave sworn or affirmed testimony. The tenant confirmed service on her of the Notice to End Tenancy dated December 22, 2016 to be effective February 28, 2017 by registered mail and the landlord confirmed service by registered mail of the tenant's Application. I find the documents were legally served for the purposes of this hearing. The tenant applies 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;
- b) To reduce rent pursuant to sections 27 and 65 of the Act for repairs not done or facilities not provided as promised; and
- c) To recover the filing fee for this application.

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

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for their own use? 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 tenancy commenced October 22, 1996, it is a month to month tenancy and rent is \$750 a month. There was discussion concerning a security deposit of \$300 paid October 22, 1996. The landlord said there was a letter in file that it was to be remitted to MPA. The tenant said she knew of the MPA association but believed her deposit was still in trust with this landlord. The landlord served a Notice to End Tenancy for the following reason:

*The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

The landlord's agents gave evidence that the owner of the building had instructed them to serve the 2 Month Notice to End Tenancy on this tenant because the owner's son wanted to occupy the unit. They said the son was married over the New Year. The owner, his mother, had formed the intention of giving each of her 3 sons a building to manage and this first married son was given this building. They chose this particular unit for his wife and him to occupy for it is the ground floor unit with a good view and would give him good visibility to observe the comings and goings in the building. They emphasized that there are no vacant units in the building.

The tenant and her representatives said the landlord was acting in bad faith and that is the main issue. They do not contend that the owner's son wishes to live in the building but they said there were other, more suitable units in the building which the owner's son could occupy. They contended that it was discrimination and prejudice against this tenant that caused the Notice to End Tenancy. The tenant is disabled and has been in hospital for months. They pointed to emails in evidence which they say proves their points. The tenant has been a tenant for 20 years and little or no maintenance has been done.

Included with the evidence is a company registration showing the owner as the President and Secretary of the company which owns the unit. There are also many emails and letters submitted by the tenant and a copy of the Notice to End Tenancy. 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 cause to evict the tenant.

The tenant stated that bad faith is the main issue. Residential Policy Guideline 2 states:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*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.*

I find the evidence of the landlord credible that the son of the owner was married recently and is going to move into the building to assist in supervision as part of the long term goal of the owner to have her 3 sons manage her buildings. I find the landlord's evidence credible that they chose this tenant's unit because of the location and not because of discrimination or prejudice. I find their description of the unit being on the first floor and suitable as a supervisory location is credible. I find that the tenant did not dispute the recent marriage of the son or the intention of the landlord's son to occupy the unit but rather disputed the choice of her suite over others. I find the landlord's explanation of the choice is logical and does not indicate discrimination. I find if the son chose another suite, that tenant would have to be evicted as there are no vacant units in the building.

I examined the tenant's evidence as requested. I find she was in hospital for several months and the emails discussed moving her stuff in order to get painting and some repairs done. In October, the landlord said the work could not be done due to the amount of her belongings in the unit. Her stuff was not removed due to costs involved but her representatives tried to move it so painting could be done. Several emails discussed clean up necessary. The painting was finally completed. The landlord indicated there would be no further repairs or renovations done at this time. The tenant contended these emails showed discrimination and prejudice and the denial of further repairs showed they planned to end her tenancy. However, in reading the emails, I find no indication of discrimination or prejudice but merely an effort to resolve an ongoing issue of clearing the unit to get work done. I find the unit was never cleared of belongings and this is the more likely explanation of the email saying only painting would be done at this time. I find the emails of the tenant's representatives indicate they are exploring other options due to the tenant's serious medical issues. Her niece indicated that the tenant will not recover for many months.

Considering all the evidence submitted, I find the landlord has satisfied the onus of proving on a balance of probabilities that the *landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.* I find the weight of the evidence is that the son of the sole officer of the family corporation intends in good faith to occupy the rental unit. Therefore I dismiss the application of the tenant.

I note the tenant is entitled to one month's free rent pursuant to a section 49 Notice and section 51 of the Act provides for extra payment if the landlord does not fulfill their stated purpose within a reasonable time of ending the tenancy.

I find the tenancy terminates on February 28, 2017. Section 55 of the Act provides an Order of Possession may be issued to the landlord in these circumstances. Considering the health of the tenant and the landlord's statement of willingness to be flexible in dates, I find the landlord entitled to an Order of Possession effective April 30, 2017.

I decline to make an Order to Repair as the tenancy is ending. I decline to give a rent rebate for repairs not done as I find insufficient evidence that the landlord was negligent in doing repairs. As stated by the tenant in the hearing, she already is paying rent significantly lower than rentals in that location. I find from her email evidence there were issues with housekeeping and the amount of the tenant's belongings which appeared to be causing some delay but I find the landlord appeared to be willing to do the repairs when the issues were resolved. On November 23, 2016 an email indicated cleaning was not done yet so painting could not be started. I find when the landlord said by email in December 2016 that no repairs other than painting would be done was on the occasion when it appeared that the tenant's belongings could not be removed for repairs.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed with no recovery of the filing fee due to lack of success. The tenancy is at an end on February 28, 2017. An Order of Possession is issued to the landlord effective April 30, 2017.

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: February 01, 2017

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Residential Tenancy Branch