



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding YALE MANOR LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPE

### Introduction and Preliminary Matters

On August 12, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for end of employment. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Landlord testified that he had received an evidence package from the Tenant; however, the Tenant stated that she did not receive an evidence package, as part of the Notice of Hearing, from the Landlord. Because the Landlord failed to provide sufficient evidence that the evidence was contained in the Notice of Hearing, the one-page document was excluded as evidence in this hearing, in accordance with the *Rules of Procedure*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Should the Landlord receive an Order of Possession for end of employment, in accordance with Section 48 of the Act?

### Background and Evidence

The Tenant and the Landlord agreed on the following terms of the Tenancy Agreement:

The month-to-month tenancy began on October 1, 2010, when the residential property was under the management of a different company. A new management company took

over management of the property on March 1, 2018. The Tenant's monthly rent is \$550.00 and is due on the first of each month. A security deposit of \$275.00 was collected at the beginning of the tenancy and the Landlord still holds this amount.

The Landlord testified that the Tenant used to be a caretaker for the building and now that she was not, the Landlord wanted to use her unit to house their caretakers and maintenance staff. The Landlord acknowledged that the Tenant was not the manager when they took over the residential property, that the Landlord has never paid the Tenant as a manager and that they have since collected rent from Tenant.

The Landlord stated that the Witness served a One-Month Notice to End Tenancy for Cause, dated April 2, 2018 (the "Notice"), by taping it to the Tenant's door. The move-out date on the Notice stated, June 1, 2018. The Landlord stated that the reason the Notice was given to the Tenant, as noted on Page 2 of the Notice, was that the Tenant's rental unit is part of the Tenant's employment as a caretaker, manager or superintendent of the property, the Tenant's employment has ended, and the Landlord intends to rent or provide the rental unit to a new caretaker, manager or superintendent.

The Tenant stated her tenancy began on October 1, 2010 and did not include any terms regarding employment or management of the residential property. The Tenant submitted a contract, dated October 9, 2013, when she was given a list of the Manager's Responsibilities and a statement that her start date was November 1, 2013 and that she would received \$800.00 a month for the responsibility of being the manager.

The Tenant also submitted a letter, dated November 15, 2017, that ended her position as a manager for the residential property. She was provided severance pay and the previous Landlord indicated that the Tenant would still responsible to pay her rent and that the tenancy continued.

The Tenant said that she did not receive the Notice and wasn't made aware of it until the Notice of Hearing was served to her.

### Analysis

The Landlord stated that he served the Notice to the Tenant by taping it to her door on April 2, 2018. The Landlord testified that he served the Notice to the Tenant based on Section 48 of the Act that states that a Landlord may end the tenancy of a person employed as a caretaker, manager, or superintendent of the residential property of

which the rental unit is a part by giving notice to end tenancy if the rental unit was rented or provided to the tenant for the term of her employment, the tenant's employment as a manager is ended, and the landlord intends in good faith to provide the rental unit to a new caretaker, manager or superintendent.

If I find that the reason set out in the Notice is valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept the Tenant's undisputed evidence that her tenancy began in 2010 and that she was not employed by the Landlord at that time. The Tenant provided evidence that her position as manager was separate from her tenancy, began in 2013 and ended in 2017 with no effect on the rent that she paid for her rental unit. As such, I find that the Landlord's reasons for issuing the Notice are invalid and do not comply with Section 48 of the Act.

As a result of the testimony, evidence and the above findings, I dismiss the Landlord's Application for an Order of Possession and the tenancy will continue until it is ended in accordance with the Act.

### Conclusion

The Landlord's Application is 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: October 01, 2018

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Residential Tenancy Branch