



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction and Preliminary Matter

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenants and respondents SS and PY appeared, with SS and PY dialing into the teleconference hearing on separate telephone lines.

At the outset of the hearing, I informed all parties that due to the documentary evidence submissions of the tenants and SS, which was reviewed prior to the hearing, it would be necessary to explore the issue of jurisdiction of this dispute as to whether this dispute fell under the Act.

The parties were informed that the only issue that I would consider on this date was the matter of jurisdiction, and that I would hear testimony from all parties in that regard. The parties were further informed that if I declined to hear the tenants' dispute due to jurisdictional issues, they would receive a Decision so stating.

The parties were also informed that if I found that this dispute fell under the jurisdiction of the Act, I would make that determination in the form of an Interim Decision, and the parties would receive a notice of a new hearing to hear the merits of the tenants' application at the reconvened hearing.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?

Background and Evidence

*Tenants' evidence-*

In support of their application that this dispute was under the jurisdiction of the Act, the tenants submitted the following oral and written evidence:

On November 4, 2013, the tenants went to the rental unit as advertised on a popular website for a viewing, meeting respondent PY. According the tenants, PY stated that he owned 12 other houses with respondent SS. On this date, PY's sister or sister-in-law, SP, was present with her two children. PY informed the tenants that SP was living in the rental unit and would be leaving by November 15, 2014.

The tenant submitted that the following day they advised PY in a text message that they would take the rental unit, which was on the upper floor of a home, negotiating a move-in date of November 15, 2013, although the tenants originally requested a December 1, 2013, move-in date. The tenant submitted that PY said he had other tenants who could move in earlier than December 2013, so this led the tenants to accept a November 15 move-in date.

PY informed the tenants that SP would be vacating no later than November 12, and that he would clean and repair the rental unit by November 15.

The tenants and PY met at the rental unit on November 8, 2013, to sign the tenancy agreement, at which time the tenants signed, but PY only initialled each page, informing the tenants that his partner SS would sign the document and he would email the signed tenancy agreement to the tenants, according to the tenants.

On November 15, 2013, the tenants said that SP had not fully vacated, but that they moved their personal property into the rental unit later in the day and began residing there, as they were given the keys. According to the tenants, they signed an application to rent on November 15, 2013, with PY.

On the morning of November 25, 2013, the tenant submitted that they received an email from PY, informing them that SS was the owner of the rental unit and receiving a signed copy of the tenancy agreement.

On the evening of November 25, the tenants arrived home and discovered that the locks had been changed and that all their personal property had been put into the garage. It was at this time, the tenants called the police and PY to find out why this happened. PY, according to the tenants, informed them that SS had the locks changed and placed their personal property in the garage. PY also refused to come to the rental unit, despite the tenants' request.

The tenants then received a call from SS and the tenant advised SS to come to the rental unit. SS then stated to the tenants that he did not know who they were. At around 7:00 p.m., SS and two other people came to the rental unit, and the police soon attended thereafter. SS kept informing the tenants and the police that the residential property was his house and he could do what he wanted. The police verified with the tenants that SS asserted that he was the owner and did not know the tenants.

*Respondent SS' oral and written evidence in response-*

SS submitted that PY answered an ad on the popular website and that his sister, SP, along with her two children, had rented the home since July 2011.

SS submitted that he received a text message from PY on October 22, 2013, informing him SP wanted to go back to Korea for 6 months to finish training, asking SS if a friend of SP's could take over the rental unit in her absence. SS said that it would be permissible, as long as the friend filled out an application. SS asked when the friend would be moving in and PY replied that it would be around November 15.

SS submitted that on October 30, he reminded PY that he had to pick up the rent cheque and meet the new people moving into the rental unit. PY then informed SS that SP would be moving out on November 5 and would pay the rent for November. On November 5<sup>th</sup>, according to SS, he asked PY when could he have a walk-through of the rental unit, and PY replied that they could meet on November 9. SS submitted that PY, by November 9, had already met with the tenants and had the tenancy agreement signed, which occurred on November 8.

On November 10, PY communicated with SS, asking SS to send an application form to PY. SS stated that he assumed this was the same friend PY mentioned to him at the beginning of the month and was not aware of the tenants until later.

According to SS, he and PY were to meet at the rental unit on November 15, for a walk-through. On November 14, PY sent a text message to SS and asked for an extension of time for SP to move out of the rental unit, until November 22. SS pointed out that PY and the tenants had already signed the tenancy agreement, for a start date of November 15.

SS also submitted that PY communicated to him in November, stating that SP may not return to Korea and may need the rental unit for another year.

On November 24, SS communicated with PY to remind him of their walk through the next day and SS also informed PY that he, SS, had rented the rental unit for December 1, 2013, to other tenants. SS pointed out that PY on this date did not mention the tenants or that they had moved into the rental unit, after having signed a tenancy agreement with PY. SS submitted that he went by the rental unit on November 24, did not see any lights on, but after looking through the glass door, noticed packed boxes, thinking they were SP's. According to SS, he informed PY that he could help move SP's personal property into the garage.

On November 25, SS submitted that he received another text message from PY telling SS that it was impossible for SP and her family to move out by the end of November, due to his father's illness, asking if SP could stay another 6 months.

SS informed PY that it was not possible as he had new tenants moving in on December 1.

On November 25, SS attended the rental unit for a final walk-through with PY, after having sent PY a text message reminding him of their appointment. After PY failed to show for the appointment, SS let himself into the rental unit, and noticed all the packed boxes, assuming they were SP's, which caused SS to move the personal property into the garage for safekeeping so that SS could ready the rental unit for the new tenants on December 1.

Later in the day, according to SS, he received a call from the tenants inquiring about the lock change and their personal property being in the garage, at which time SS informed the tenants he did not know who they were.

SS denied signing the copy of the tenancy agreement provided, as it was apparent his signature was copied and pasted into that document, by PY.

SS submitted copies of all text message and email communication between him and PY.

*Respondent PY's oral evidence in response-*

PY argued that SS did know about the tenants, as shown by one text message to SS, and submitted that SS did sign the tenancy agreement on November 9. PY submitted that the tenants were actual tenants of SS.

PY did not deny that SS was the owner of the residential property.

In response to my question, PY stated that in this case, he collected the tenants' first month's rent and security deposit and gave them to his sister, SP.

Later on PY confirmed, that during SP's tenancy, it was his pattern to collect rent from SP and the lower tenants, and gives the funds to SS.

Analysis

In order for the applicant/tenants to succeed in this application, the applicant/tenants must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords, tenants and strata corporations.

In considering whether or not a tenancy existed, under the Act, a landlord is defined as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement.

Similarly a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In the circumstances before me, I find that the respondent SS was the owner of the home in question, but did not authorize or allow the tenants to occupy the rental unit or

nor did he ever accept rent or a security deposit from the tenants. The tenants' monthly rent and security deposit, instead, were paid to PY, who I find was not authorized by the owner to enter into a tenancy agreement with the tenants.

I cannot accept the evidence of PY, that SS had approved the tenants as tenants, due to the contradictions of PY's testimony dealing with collection of the tenants' rent and security deposit to give to SP, and then stating later that he collects the rent from SP to give to PY. It is important to note that the evidence shows that PY has returned the tenants' monthly rent and security deposit to them.

I find the evidence of SS shows that SS was never aware that the tenants had moved into the rental unit, primarily due to the fact that PY continually requested extensions of time for SP to move, knowing that the tenants had already moved into the rental unit and SP have vacated, having executed a tenancy agreement with PY on November 8, 2013.

I find that the respondent/owner SS cannot meet the definition of a landlord and that the applicants had no legal relationship with the respondent SS and I therefore find that the parties had not entered into a tenancy agreement, the rights and obligations of which are enforceable under the Residential Tenancy Act.

I also find that respondent PY was not acting as an agent of the owner, SS.

### Conclusion

In light of the above, I decline to find jurisdiction to resolve this dispute. The applicants/tenants are at liberty to seek the appropriate legal remedy to this dispute.

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: June 16, 2014

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Residential Tenancy Branch

