



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. I find there was no Notice to End a Residential Tenancy, but rather a Mutual Agreement to End Tenancy, dated September 29, 2017 to be effective October 30, 2017. The landlord admitted personal service of the application for dispute resolution. I find the documents were legally served pursuant to section 89 of the Act.

The tenant applied mistakenly to cancel a Notice to End the Tenancy for cause. There was no section 47 Notice but rather a Mutual Agreement to End Tenancy. The tenant queries if he is bound by the Agreement signed by the other occupant/tenant of the unit. He submits he is a tenant in common, not a joint tenant and should not be bound to vacate.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The original tenancy began on December 5, 2014 on a fixed term for one year with 3 tenants (J.R., R.T. and J.) sharing the home and on the lease. This lease is not in evidence as they could not find it but the parties agreed it was as described. Rent was \$1100 a month with \$650 security deposit. J. moved out April 2015 and forfeited his portion of the security deposit to the remaining tenants, J.R. and R.T. who stayed and shared. Then there was some conflict, the landlord wanted to raise the rent, J.R. wanted a 3 month Notice of Rent Increase and R.T. wanted to end the lease. R.T. said he signed a new lease but J.R. refused to sign. R.T. then signed a Mutual Agreement to End Tenancy effective October 30, 2017 but he is still in the unit. The landlord said she wants to rely on the Mutual Agreement to End Tenancy and for all tenants to leave. R.T. said as a witness that he and J.R. paid their portions of the rent separately by email to the landlord. The landlord said the unit was rented for \$1100 total and she did not care how the tenants apportioned it provided she got her full monthly rent for the unit. She said it was always a joint tenancy in her mind as all the tenants were on the lease and were responsible for the full amount of the rent.

J.R. said he thought he was a tenant in common since he made separate payments and does not want to be held to a mutual agreement to end tenancy that R.T. signed.

### **Analysis:**

The issue is the status of J.R. and whether he is bound by the Mutual Agreement to End Tenancy. Residential Tenancy Policy Guideline 13 states:

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

*A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.*

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

*Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.*

*Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives **proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.***

### **Tenants in Common**

*"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.*

*In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.*

### **Occupants**

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant*

I find the weight of the evidence is that J.R., the applicant, is a co-tenant. He was on the original lease with R.T. and never signed a new lease with the landlord. Furthermore the landlord regarded the parties as co-tenants. As a co-tenant, I find J.R. is bound by the Mutual

Agreement to End Tenancy signed by his co-tenant, R.T. Sections 44 and 45 of the Act provide a tenancy may be legally ended with a Mutual Agreement to End Tenancy.

**Conclusion:**

The tenancy of both tenants is ended. The tenant, J.R.'s application is dismissed without recovery of the filing fee due to lack of success. I find the landlord entitled to an Order of Possession effective January 31, 2018 as agreed by the parties.

Since the tenancy ended legally pursuant to a Mutual Agreement to End Tenancy, I find the landlord is at liberty to rent to whomever she wishes.

December 21, 2017

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Residential Tenancy Branch