



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenants: CNC FF  
Owner: OPC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held on January 11, 2018. The Tenants applied to cancel the 1 Month Notices to End Tenancy for Cause (the 1-Month Notices), and the owner applied for an order of possession based on these 1-Month Notices.

S.P. and A.P. both attended the hearing and each of these individuals stated that they were the Respondents/owners. This will be addressed further below. One of the Tenants, E.S., attended the hearing to represent the Tenants. All parties were given a full opportunity to be heard, to present evidence and to make submissions.

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.

### Preliminary Matters

In the Tenants' application, they indicated that one of the owners, A.P., works at the Residential Tenancy Branch (RTB). In the hearing, A.P. stated that she has not worked at the RTB for well over a year. At the beginning of the hearing, I addressed this matter directly. I explained to the Tenant, E.S., that I have never previously met or talked to A.P., and do not work in the same city that she used to be located in. I further explained that my role as an arbitrator is to conduct fair, unbiased, and neutral hearings. In considering all of this, I determined that there was no conflict of interest or prejudice to either party in allowing the hearing to proceed, given my lack of personal involvement in the matter. All of this was clearly explained to both parties during the hearing, and neither party took issue with this explanation and rationale provided during the hearing.

At the end of the hearing, I expressed that the hearing would need to be adjourned, due to lack of time to hear all the issues. I informed all parties that there would be new hearing scheduled

where we would continue on to hear the remainder of the application and issues. However, upon further review of the evidence and testimony submitted to me, I find an adjournment is not necessary, since I currently have enough information to render a decision.

During the hearing, it was made clear by all parties that there have been marital issues, along with separation/divorce proceedings with respect to A.P. and S.P. The consistent evidence presented at the hearing is that A.P. and S.P. are both owners of the property, despite S.P. not living there anymore. Sometime in the Spring of 2017, around April, S.P. moved out of the main floor of the family home to another location. There are two different rental units in the basement of the family home, and one of the Tenants, E.S., previously lived, without issue, in the smaller unit for several years.

On April 30, 2017, shortly after S.P. moved out of the family home, E.S. moved into the larger basement unit, where he currently resides with J.S. At the time the Tenants moved into the larger basement unit, they made a verbal agreement with A.P., who was the only one of the two owners still living on the property. They made an agreement with respect to rent payments, security deposit, pet deposit, and that the tenancy would be month to month. E.S. and A.P. confirmed that they agreed on these items. Then, over the next couple of months, the relationship between the Tenants and A.P. began to degrade, and one of the Tenants, E.S., worried about the security of his tenancy because he did not have anything in writing with either of the owners.

At the beginning of July 2017, the Tenant, E.S., stated that he spoke to S.P. about setting up a formal written tenancy agreement in order to protect himself. Subsequently, a written tenancy agreement (also provided into evidence), was signed between S.P. (named as the "Landlord") and the Tenants, E.S. and J.S. This agreement, which utilized the standard tenancy agreement form, was signed on July 4, 2017. This agreement also included an addendum which specified the following:

- all communication regarding rental agreement and issues will be communicated and resolved with S.P.
- rent will be paid to S.P.
- any previous rental agreement is null and void
- inspection of the suite will only be done by S.P. or an agent appointed by S.P.

Since signing the written agreement with S.P., the relationship between the Tenants and A.P. has continued to degrade. A.P. is alleging that the Tenants are meddling in her relationship with S.P., harassing her and not cleaning up around the rental unit, among other allegations. A.P. issued two 1-Month Notices for Cause to the Tenants, one on October 27, 2017 and the other on November 20, 2017. S.P. testified that he had no involvement in issuing these notices, and it was all done by A.P.

Upon review of the evidence and testimony, I note that there was an oral tenancy agreement as of the end of April 2017, with respect to the rental unit. However, I find this agreement was then superseded by the new written tenancy agreement signed with S.P. on July 4, 2017. This written agreement is more compelling evidence with respect to the roles, rights and responsibilities of the involved parties. Further, the addendum clearly states that any previous agreement is null and void. The written agreement clearly identifies that S.P. is the landlord who formalized the agreement and was the one who permitted occupation of the unit, going forward. I find it important to note the following definitions under the Act:

**"landlord"**, in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person **who**, on behalf of the landlord,

(i) **permits occupation of the rental unit under a tenancy agreement**

[my emphasis added]

I find S.P. was the landlord for the purposes of this Act, as he was an owner and he permitted the Tenants to occupy the rental unit under the written agreement. Further, I note that the addendum to the written tenancy agreement clearly states that:

- all communication regarding rental agreement and issues will be communicated and resolved with S.P.
- rent will be paid to S.P.

Although A.P. may be a part owner, I do not find she is a landlord for the purposes of this tenancy, since it was only S.P. who was identified as the Landlord on the written agreement. I find that S.P. is the rightful Landlord under the Act.

It appears much of the dysfunction between the owners (S.P. and A.P.), and the Tenants is a result of, and coincides with, the marital discord between the owners. Further, I note that S.P. testified that over the past couple of years when one of the Tenants, E.S., lived in the other smaller unit, there were no issues and he was a good tenant. It appears much of the dysfunction with the tenancy has arisen since the relationship between S.P. and A.P. degraded in the spring of 2017.

I find it would be a breach of the Tenants' rights under the Act to quiet enjoyment of the rental unit, if the marital discord between the owners was allowed to affect this tenancy. The owners should resolve their differences in the correct legal forum, and not embroil the Tenants in the dissolution of their personal relationship.

Upon review of the evidence before me, I note that both 1-Month Notices were issued by A.P. and not S.P. Although section 47 of the Act allows a landlord to end a tenancy by issuing a notice for cause, I am mindful the S.P., the individual operating as the Landlord, did not issue the 1-Month Notice. Rather, A.P. did and she did not have the authority to do so. As such, I find both 1-Month Notices are null and void and are hereby cancelled.

The landlord, S.P., remains at liberty to re-issue a Notice to End Tenancy should the landlord decide to pursue eviction.

As the Tenants were substantially successful with their application, I grant them the recovery of the filing fee against the Respondent. I find the Tenants are entitled to a monetary order in the amount of \$100.00 against the Respondent, A.P.

### Conclusion

The Notices issued on October 27, 2017, and November 27, 2017, have been cancelled and the tenancy continues until it is ended in accordance with the Act.

I have made no finding as to whether there were sufficient grounds for eviction and the landlord is at liberty to issue a notice to end tenancy if the landlord so chooses.

The Tenants are granted a monetary order for \$100.00.

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: January 15, 2018

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Residential Tenancy Branch