



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act by allowing her to opt out of a Seniors Supportive Housing Program.

At the beginning of the hearing the Landlord's agents said they served the Tenant with the Landlord's evidence package yesterday. RTB Rule of Procedure 4.1 says that a Respondent must serve the Applicant with any evidence it intends to rely on no later than 5 days before the hearing. The Landlord's agent could not explain why he had served the Tenant late and the Tenant objected to the late filed evidence. In the circumstances, I find that the Tenant has had little opportunity to respond to this documentary evidence and accordingly, I find that it should be excluded pursuant to RTB Rule of Procedure 11.5(b). The Landlord's agent was, however permitted to refer to that evidence in his oral evidence.

At the beginning of the hearing the Parties also confirmed that the Landlord does not provide health care services and that rental property is not a community care facility or a continuing care facility. Consequently, I find that this dispute is not excluded under s. 4 of the Act.

Issues(s) to be Decided

1. Is the Tenant entitled to opt out of a Seniors Supportive Housing Program?

Background and Evidence

The Tenant has resided in the rental property for approximately 8 years. Approximately 3 years ago, the Landlord instituted a Seniors Supportive Housing Program in the rental property. Under the terms of the Program, existing tenants of the rental property are permitted to opt in or opt out of the Program every 12 months.

The Tenant formerly resided in a rental unit on the 5th floor and was transferred to another unit on the 3rd floor on or about April 1, 2010. The Tenant said her doctor requested that she be transferred off of the 5th floor because there was a smell of

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marijuana smoke which made her very ill and for which she had to be hospitalized. The Tenant said that part way through her move into the new suite, the Landlord's agent advised her that she would have to sign a new tenancy agreement which required her to subscribe to the SSH Program. The Tenant argued that she was deceived into signing this document by the Landlord however, the Landlord's agent (S.F.) claimed that the Tenant was "deemed to need housekeeping services" at the time. The Tenant said that after a period of time, she became unhappy with the food and housekeeping services provided as a part of this Program and asked the Landlord for forms or information on how to opt out of it but the Landlord advised her that as she was now a new Tenant, she could never opt out.

The Tenant's agent said the Landlord has refused to respond to his requests for information about the Program and as a result he had to make a request pursuant to the Freedom of Information and Protection of Privacy Act. As a result of the request, the Tenant's agent said he received a document issued by B.C. Housing entitled "*Senior's Supportive Housing (SSH) Program Framework October 2007 (Rev.: April 16, 2009)*" that states at p. 8 as follows:

"Existing tenants will not be obliged to take advantage of those support services introduced as part of the SSH program **and others** (emphasis added) may opt out of the program. Accordingly, operators must establish an implementation plan identifying those tenants that do not wish to participate or receive SSH support services."

The Tenant's advocate argued that the Landlord has implemented no rules or policies to support its claim that a new tenant may never opt out of the SSH program and further argued that the above-noted excerpt from the framework for the Program supports his position that the Landlord has no authority for denying new tenants' requests to opt out of the SSH program. The Tenant's agent also argued that it was a breach of natural justice that the Tenant was forced by the Landlord to subscribe to the Program and told that she can never opt out of it yet, the Landlord has failed or refused to provide her any information about how the Program works.

The Landlord's agent admitted that the tenancy agreement signed on March 18, 2010 does not contain a term stating that the Tenant may never opt out of the SSH Program. The Landlord's agent claimed however, that he and another agent of the Landlord verbally advised the Tenant that this would be the case when she signed the tenancy agreement. The Landlord's agent also admitted that he was not relying on any legislative or regulatory provision as authority for this practice but rather on an unwritten directive from B.C. Housing. The Landlord's agents argued that once the rental property was converted to the SSH Program, it was necessary to have new tenants subscribe to it so that it could be offered to as many occupants as possible.

Analysis

Section 6(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that the Landlord's practice of never allowing new tenants to opt out of the SSH Program imposes a significant obligation on tenants and that if such a term is to be enforced against a Tenant, it must be clearly expressed.

There is no term in the Parties' tenancy agreement that states the Tenant may never opt out of the SSH Program and the Landlord's agent admitted that his practice of not permitting new tenants to opt out is based on an "unwritten directive from B.C. Housing." In the circumstances, I find that there is no evidence that the Landlord has the authority to deny the Tenant the ability to opt out of the SSH Program. To the contrary, I find that B.C. Housing's publication which sets out the Framework of the Program suggests that the Landlord would implement a practice to allow "other" than existing tenants (ie. new tenants) to also opt out of it.

The Tenant's agent claimed that the Landlord has refused his request for information or rules regarding how to opt out of the SSH Program which occurs during the annual Rent Review procedure (which is currently in progress). In the circumstances, **I Order that the Tenant may opt out of the SSH Program effective January 1, 2011 and I further Order the Landlord to provide her forthwith with the appropriate information and forms to do so.**

The Tenant also sought compensation for reimbursement of the fees she has paid into the SSH Program to date, however, she did not apply for that relief on her application and as a result, she must make a separate application for it. The Tenant also claimed that the Landlord's agent (B.S.) was harassing her and threatening to evict her as a result of her attempt to opt out of the SSH Program and she sought an Order that he refrain from doing so. I find that there is insufficient evidence at this time to support such an Order however the Tenant may reapply for that relief (and/or for compensation) upon providing sufficient particulars of the alleged harassing conduct.

Conclusion

The Tenant's application is granted in part. 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: December 14, 2010.

Dispute Resolution Officer