



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, LRE, LAT, FF

Introduction

This is the Tenant's application to cancel a notice to end the tenancy; for an order suspending or setting conditions on the Landlord's right to enter the rental unit; authorization to change the locks on the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties were represented at the hearing. It was determined that the Tenant served an agent of the Landlord's with the Notice of Hearing documents on January 13, 2012, at 11:45 a.m. by handing the documents to the Landlord's agent.

Preliminary Matter

The Tenant provided a copy of a letter, dated January 9, 2012, stating that the Landlord had received reports that he had made threats against several staff members, which violates a material term in the Occupancy Agreement. The letter advises the Tenant that he must vacate his suite by January 13, 2012.

Jurisdiction

At the outset of the Hearing, the Landlord's agent submitted that I had no jurisdiction to decide this matter because the residential property provides transitional housing and is therefore exempt from the *Residential Tenancy Act* (the "Act").

The Tenant moved in to the rental unit on September 2, 2011. A copy of an "Occupancy Agreement" was provided in evidence by both parties. The Tenant paid a security deposit in the amount of \$425.00 when he moved into the rental unit. The Tenant also signed a "Schedule A" to the Occupancy Agreement, which includes rules which he agreed to abide by while living at the residential property.

The Tenant stated that his tenancy falls within the jurisdiction of the Act because when he moved into the building he intended to live there on a permanent basis. He also stated that he filled out an application with BC Housing when he was applying to rent the suite and that BC Housing subsidizes his rent. The Tenant provided a copy of the BC Housing "Application for Rent Subsidy" form in evidence.

The Landlord's agent testified that the Tenant filled out the BC Housing application form for ease of use only and that the Landlord does not receive any subsidy from BC Housing for any floor in the residential property. He stated that the Landlord simply uses the same method of calculation when determining an occupant's monthly housing charge. The Landlord's agent testified that the market rent for the Tenant's suite is \$850.00, but that the Tenant pays according to his ability which is 30% of his income and that currently the Tenant pays \$303.00 per month.

The Tenant testified that the 3rd and 5th floors of the residential property house people who are in transition while attempting to overcome alcohol or drug dependencies, but that he lives on the 4th floor, which is specifically for people on social assistance or disability. The Tenant testified that he receives a disability pension and that he is not a recovering addict. The Tenant stated that he has not yet been cleared by his doctor to work again, but hopes to be able to do so in the future.

The Landlord's agent testified that the Tenant wrote on his application that he wanted to transition to better living conditions.

Jurisdiction Analysis

The parties provided conflicting evidence with respect to whether or not BC Housing provides subsidy to the Landlord. I find that whether or not BC Housing provides subsidy is not a determining factor with respect to whether Section 4 of the Act applies to this tenancy. It is not unusual for an agency offering transitional housing to have a subsidy agreement with BC Housing. The Occupancy agreement provided identifies the Landlord as the "Operator", and was signed by the Tenant and the Landlord only.

Section 4 of the Act provides that the Act does not apply to certain living accommodation, including "living accommodation provided for emergency shelter or transitional housing." The Act does not define "transitional housing", however Webster's New World Dictionary defines "transition" as:

"a passing from one form or stage to the next"

For a tenancy to be considered transitional, ideally the occupancy agreement would include not only a statement that the agreement is transitional in nature, but would also provide a start and end point. In this case, the Occupancy Agreement indicates that the residential property is:

"a second-stage residential facility providing-transitional housing (maximum TWO year stay) made available in the course of providing rehabilitative services and other supports to people in a variety of circumstances, including men and/or women who have attended and graduated from a residential treatment facility and are ready to move to the next level of stability and self-reliance. [The

residential property] is a critical part of the spectrum of services available to those in need of housing and rehabilitative services in our community.”

The Occupancy agreement also provides an initial term of:

“one calendar month and begins on the first day of Sept and ends on the last day of Sept. Subject to the other provisions of this Agreement, the occupancy of the Unit by the Resident shall continue after the date the initial term of this Agreement comes to an end, on a “month to month” basis, on the same terms and conditions as are contained in the Agreement (except to the extent that these terms are modified by the Operator), until the Operator determines that the objectives of the services have been met or will not be met, or the Operator (or the Resident) otherwise decides to terminate the occupancy of the Residence.”

I find that there is sufficient evidence that the parties entered into an agreement that the Landlord would provide transitional housing for the Tenant. The Occupancy Agreement provides for a maximum two year term, and indicates that it is a second stage facility for those that are ready to move to a level of stability and self-reliance. Therefore, I find that this tenancy is exempt under Section 4(f) of the Act and I decline jurisdiction.

Conclusion

I find that this tenancy is exempt under Section 4(f) of the Act and I **decline jurisdiction**.

Dated: January 30, 2012.

Residential Tenancy Branch