



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: ET  
Tenant: OLC

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought to end the tenancy early and obtain an order of possession and the tenant sought to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

The landlords raised, in their Application, that the tenancy at the core of this dispute is transitional housing and is therefore exempt from the *Act*. The landlords provided into evidence a letter dated September 22, 2009 from BC Housing that states that tenants “sign a program agreement which provides residents with a 24 month tenancy after which time they are expected to secure more long term housing. As a result, this is not permanent housing and should be considered transitional in nature.” The landlord’s agent provided testimony with regard to a definition provided on the BC Housing website indicating that transitional housing may last up to 2 or 3 years.

The landlords provided a copy of a “Fixed Term Program Tenancy Agreement” that stipulates that the complex is a transitional apartment building and that “Traditional Apartment Buildings DO NOT fall under the scope of the Residential Tenancy Branch. All tenants agree to a two year (24 month) tenancy with the [Society], at the end of two years the tenant shall move from the premises...”

The length of the tenancy identified in the agreement stipulates that this tenancy starts on April 28, 2011 and is for a fixed length of time of 2 years ending on April 28, 2013 but at the end of this length of time the parties are provided with two options. The first option is that the tenancy may continue if at the end of the tenancy, program goals have not been achieved and more time is needed and may be negotiated or the tenancy ends and the tenant must move out of the residential premises. The first option was selected in this agreement.

The landlord’s agent testified that if an extension is considered at all it would be for a maximum of 5 months and only to complete a specific program that would support the tenant in preparing to move to new accommodation. The agent further testified that

many of their tenants achieve their independence and move out of this property within 3 or more months.

The tenancy agreement includes a general clause that states the intention of the housing is to provide the tenant with an opportunity to address the root cause of homelessness or at risk of homelessness in a safe affordable setting while working on the skills needed to regain and maintain themselves in the community. The clause goes on to identify a list of potential programs for the tenant to be involved with.

For a tenancy to be considered transitional, the agreement should include not only a statement that the agreement is transitional in nature, but would also provide a start and end point. The agreement could also be expected to include an outline of the services provided, the program, therapy or counseling services the tenant must attend as a condition of the tenancy; including any services provided by the landlord that would assist in a transition to independent living, detoxification programs or residential treatment. I am satisfied that the agreement submitted into evidence complies with these requirements, with the exception of having a finite end point, see below.

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". From Webster's New World Dictionary: Third College Edition transition is defined as a passing from one condition, form, state, activity, place, etc. Webster's also defines passing as going by, beyond, past over, or through and lasting only a short time; short-lived; fleeting; momentary.

Applying the inclusive principal of statutory interpretation I refer to the use of the term "emergency shelter" in determining the intended meaning of transitional housing. I find that the exclusion of emergency shelters and transition houses from the application of the *Act* refers to accommodation that is of a temporary nature designed to house individuals or families moving from one place to another, often in emergency situations. I find this determination consistent with the definition of transition and passing, as provided above.

In the case before me the tenancy agreement signed by the parties allows for an extension beyond the 2 year limit and despite the agent's testimony that there is a maximum of a 5 month extension the contract itself does not stipulate any such finite end to extensions, as such, implying that there may be indefinite extensions. As such, I find the tenancy agreement is for a tenancy not necessarily of a temporary or passing nature.

When asked as to why the landlord has filed an Application seeking an order of possession if they believe this tenancy does not fall under the jurisdiction of the *Act* the landlord submitted that they find they must Dispute Resolution Services provided by the Residential Tenancy Branch because tenants file Applications which end up being adjudicated, through the hearing process.

In the evidence submitted by the landlord, there was reference to a previous decision between these two parties. Upon review of that decision dated April 24, 2012 in which the landlord applied for a monetary order against the tenant for overholding a previous rental unit and for damage to that unit.

The landlord testified that during that hearing they raised the issue of jurisdiction, however the Dispute Resolution Officer wrote nothing in that decision about jurisdiction or that it had been raised as an issue. Further, I find it unlikely that a party filing an Application for Dispute Resolution to obtain a monetary order against a tenant would raise the issue of jurisdiction at their own hearing that the tenant did not attend. This action would defeat the purpose of making the Application in the first place.

In addition and despite this hearing dealing with Applications from both the landlord and the tenant, I note the landlord filed their Application for an order of possession on May 7, 2012; prior to the tenant submitting her Application on May 8, 2012. The landlord testified that they applied because the tenant had indicated on May 7, 2012 that she intended to file an Application for Dispute Resolution in regard to the landlord's notice to end the tenancy.

As it has been the landlord who has initiated both this action and the previous action against the tenant for which the landlord obtain a monetary order, through the Dispute Resolution Services provided for under the *Act*, I find the landlord is attempting to use the *Act* when it is their benefit and to assert exemption from the *Act* when it is contrary to their needs. As such, I find the landlord by their own actions have treated this tenancy as a tenancy governed by the *Act*.

For these reasons I accept jurisdiction in the matters raised in these cross Applications.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without a 1 Month Notice to End Tenancy for Cause, pursuant to Section 56 of the *Act*.

It must also be decided if the tenant is entitled to an order to have the landlord comply with the *Act*.

#### Background and Evidence

During the hearing the parties came to the following settlement agreement:

1. The landlord withdraws their Application;
2. The tenant withdraws her Application;
3. The tenant agrees to vacate the rental unit no later than June 1, 2012 at 1:00 p.m.;

4. The parties agree to the landlord receiving an order of possession, based on this agreement.

Conclusion

In support of the above agreement I grant the landlord an order of possession effective **June 1, 2012 after service on the tenant.** This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 31, 2012.

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Residential Tenancy Branch